IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76247 of 2016

(Arising out of Order-in-Original No. 23-25/COMMR/CE/KOL-II/Adjn/2015-16/ dated 31.03.2016 passed by the Commissioner of Central Excise, Kolkata-II, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Central Excise **: Appellant**
Kolkata-II Commissionerate
M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001

VERSUS

M/s. SRC Udyog Limited **: Respondent**
(erstwhile 'M/s. SRC Vyappar Private Limited')
Sankrail Industrial Park, NH-6, Dhulagori,
Sankrail, Howrah – 711 302

APPEARANCE:

Shri S.K. Dikshit, Advocate for the Appellant

None for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75722 / 2025

DATE OF HEARING / DECISION: 06.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. SRC Udyog Limited (the Respondent herein) are engaged in cutting of HR Coils into Plates / Sheets. The Respondent availed CENVAT Credit on the raw materials purchased by them and utilized the same while clearing their final products, in accordance with Rule 16 of the Central Excise Rules, 2002. The Respondent also undertook same procedure as job-work on behalf of others and obtained Service Tax Registration. The Department alleged that the activities of cutting / slitting of H.R. Coils, etc., do not amount to manufacture, in view of C.B.E.C. Circular

No. 811/08/2005-CX. dated 02.03.2005, which had been issued the said Circular in the light of the decision of Hon'ble High Court of Delhi in the case of Faridabad Iron & Steel Traders Association, as maintained by Hon'ble Supreme Court in the pronouncement reported in 2005 (181) ELT A68 (SC). Accordingly, the Department was of the view that the availment of credit by the Respondent on the said goods and utilization of the same against clearance of the goods so processed, is irregular in terms of sub-rule (1) and (4) of Rule 3 of the CENVAT Credit Rules, 2004.

1.1. On the basis of the above allegations, the following notices were issued to the Respondent.

Sl. No.	Show Cause Notice No.	DATE	PERIOD	CENVAT	E.CESS	S&HE CESS	TOTAL
1	V(15)2/HAL/AE/SRCU/ 2010/24948	29-11-2010	NOV,05-MAR,10	34,82,36,460/-	69,64,747/-	26,35,253/-	35,78,36,460/-
2	V.Ch.48(15)53/CE/HAL /Adjn/11/7423	09-05-2011	APR,10-MAR,11	5,36,48,821/-	10,72,981/-	5,36,496/-	5,52,58,298/-
3	V.Ch.72(15)33/CE/HAL /Adjn/2012/6691	25-04-212	APR,11-MAR,12	1,08,10,519/-	2,16,293/-	1,08,111/-	1,11,34,923/-
	TOTAL			41,26,95,800/-	82,54,021/-	32,79,860/-	42,42,29,681/-

1.2. All the above Notices were taken up together for adjudication in common proceedings. On adjudication, the ld. adjudicating authority held that extended period of limitation could not be invoked in the instant case as there was no suppression of facts on the part of the Respondent and therefore, held that the demand pertaining to the period from November, 2009 to March 2010 in respect of the first Show Cause Notice and the entire demand raised in respect of the other Two Show Cause Notices, are justified. Accordingly, the ld. adjudicating authority disallowed CENVAT credit of Rs. 10,04,67,657/- and ordered recovery of the said amount in terms of Rule 14 of the

CENVAT Credit Rules, 2004 read with Section 11A(10) of the Central Excise Act, 1944, and also ordered for payment of interest at appropriate rate on the amount of duty confirmed. However, the ld. adjudicating authority refrained from imposing any penalty on the Respondent under Rule 15(1) of the CENVAT Credit Rules, 2004 and on Shri Pankaj Lohariwal, Director of M/s. SRC Udyog Ltd, under Rule 26 of the Central Excise Rules, 2002.

2. On examination of the impugned order, the Committee of Chief Commissioners was of the opinion that the Commissioner had erred in his decision by partial dropping of the demand for the period from 1st Nov, 2005 to March 2010 for the first Show Cause Notice as the Respondent had not complied with the letter/order dated 12.07.2006 of the Assistant Commissioner to follow the procedure laid down in Rule 3(4) (b) of the CENVAT Credit Rules, 2004 and continued to avail CENVAT Credit fully knowing that such availment was irregular.

2.1. The Committee of Chief Commissioners is also of the opinion that though the ld. adjudicating authority has disallowed and ordered recovery of irregularly availed credit of CENVAT to the tune of Rs. 10,04,67,657/- in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(10) of the Central Excise Act, 1944, and ordered for payment of interest at appropriate rate on the amount of duty confirmed, he has erroneously refrained himself from imposing any penalty under Rule 15(1) of the CENVAT Credit Rules, 2004 as proposed. The Committee observed that as per Rule 15 (1) of the CENVAT Credit Rules, 2004, "if any person, takes or utilizes CENVAT Credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater." Accordingly, the Committee took the view that once it is established that credit has been wrongly availed, then there is no scope to waive penalty under Rule 15(1) of CENVAT Credit Rules, 2004; that since the ld. adjudicating authority had disallowed the CENVAT Credit and ordered for recovery of the same, penalty under Rule 15(1) of the CENVAT Credit Rules, 2004 should have been imposed. Thus, the Committee opined that the ld. adjudicating authority erred in his decision by not imposing any penalty under Rule 15(1) of CENVAT Credit Rules, 2004.

2.2. Accordingly, Revenue has filed appeal against the impugned order for determination of the following:

> (i) Whether the Commissioner has erred in his decision by partial dropping of the demand for the period from 1st November, 2005 to March 2010 for the first Show Cause Notice as the Noticee did not comply the letter/order dated 12.07.2006 of the Assistant Commissioner to follow the procedure laid down in Rule 3(4) (b) of the CENVAT Credit Rules, 2004 and continued availing CENVAT Credit fully knowing that such availment is irregular.
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> (ii) Whether the Commissioner has erred in his decision by not imposing any penalty under the provisions of Rule 15(1) of CENVAT Credit Rules, 2004 in the Order-in-Original No. 23-

25/Commr/CE/Kol-II/Adjn/2015-16 dated: 31.03.2016.

3. None appeared on behalf of the respondent. The matter is however taken up for disposal on the basis of the available records.

3.1. In their defence reply to the Show Cause Notice, the Respondent has stated that the jurisdictional Assistant Commissioner vide his letter C.No. V(30)8/CE/Tech/HWD-I/Misc/2005/2928 dt. 22.09.2006 directed them to follow Rule 16(2) of the said rules. It has also been stated that even after issue of the Circular No. 911/01/2010-CX. Dated 14-01-2010, the jurisdictional Assistant Commissioner vide his letter C.No. CE-20/SUL/Rg-11/HWD-1/2004/04 dt. 21.01.2011 informed the Respondent that the earlier correspondences were not order passed by his predecessor but an advice given to them and in case they are not satisfied by the advice given by him under his letter dated 24.12.2010 and continue to follow Rule 16 of the said rules, they may approach the Commissioner in terms of Rule 16(3) of the said rules. Thus, the Respondent’s contention is that from the above direction it is clear that the said officer did not deny Rule 16 in the instant case. In the said reply, the Respondent also contends that the instant case equal amount of the credit taken in the said goods has been reversed and so credit taken is not required to be reversed.

3.1. Further, it is seen that the Respondent has cited the following case law in their reply wherein appellate authorities have held that though a process does not amount to manufacture, credit on inputs cannot be denied as the manufacturer pays duty on the final products:

(i) Super Forgings & Steels Ltd. Vs. CCE Chennai [2007 (217) E.L.T. 559]

(ii) Ashoke Enterprises Vs. CCE Chennai [2008 (221) E.L.T. 559]

(iii)NRB Bearings Ltd. Vs. CCE Mumbai-11 [2008 (221) E.L.T. 134]

(iv)MPI Exports(P) Ltd. Vs. CCE Chennai [2008 (225) E.LT. 511]

(v) CCE, Kolkata-II Vs. Nipha Exports Pvt. Ltd. (2007 (217) E.LT. 355]

(vi) Shivali Udyog(1) Ltd. Vs. CCE Raipur [2006 (204) E.L.T. 94]

(vii) Sivamani & Co. Vs. CCE Coimbatore [2005 (221) E.L.T. 162]

(viii) CCE Pune-I Vs. Keetex [2008 (227) E.L.T. 536)

(ix)Ajinkya Enterprises Vs. CCE Pune-111 [2009 (243) E.L.T. 566]

(x) A-one laminators Vs. CCE [2012 (276) E.I.T. 172]

4. Heard the Ld. Authorized Representative of the Revenue appearing before us and perused the records.

5. We observe that the Respondent are engaged in cutting/slitting of H.R.Coils and conversion of the same to M.S. Plates. The said process does not amount to manufacture. Since the process does not amount to manufacture, the Respondent took recourse of Rule 16 of the Central Excise Rules, 2002, i.e. they used to bring the H.R. Coils under Rule 16(1) of the said rules and availed CENVAT Credit in terms of the said rules. After the conversion i.e., cutting/slitting of the goods, the resultant products, i.e. M.S. Plates were removed by debiting an amount as prescribed under Rule 16(2) of the said rules. This procedure adopted by them was known to the Department as the said procedure was advised by the jurisdictional Assistant Commissioner.

5.1. We find that the jurisdictional Assistant Commissioner vide his letter C.No. V(30)8/CE/Tech/HWD-I/Misc/2005/2928 dt. 22.09.2006 directed the Respondent to follow Rule 16(2) of the Central Excise Rules, 2002. Even after the issue of the Circular No. 911/01/2010-CX. Dated 14-01-2010, the jurisdictional Assistant Commissioner vide his letter C.No. CE-20/SUL/Rg-11/HWD-1/2004/04 dt. 21.01.2011 informed the Respondent that they may approach the Commissioner in terms of Rule 16(3) of the said rules , if they want to continue to follow the same procedure under Rule 16. Thus, we observe that the Department was well aware of the Rule 16 procedure being followed by the Respondent. Accordingly, we hold that there is no suppression of facts with intention to evade the duty established against the Respondent in this case. Hence, we find that the ld. adjudicating authority has rightly held that the extended period is not invocable in this case and dropped the demand raised in the notices by invoking extended period of limitation.

6. Thus, we find that the appeal filed by the Revenue on this ground has no merit and accordingly, we reject the department's appeal on this ground.

7. Regarding the issue of non-imposition of penalty under Rule 15(1) of the CENVAT Credit Rules, 2004, raised by the Revenue, we observe that in the instant case, the Respondent has paid an amount equal to the credit taken while clearing the goods after processing. The Department has accepted the equal amount of credit paid by the Respondent under Rule 16(2) of the Central Excise Rules, 2002.

7.1. We also observe that in a catena of decisions it has been held that though the process does not amount to manufacture, credit on inputs cannot be denied as the manufacturer paid duty on the final products. This view has been taken by the Tribunal at Mumbai in the case of *Ajinkya Enterprises v. Commissioner of Central Excise, Pune-III [2013 (288) E.L.T. 247 (Tri. – Mum.)],* wherein the Tribunal has held as under: -

> *"6. We have considered the detailed arguments of rival sides. On perusal of records, we find that the undisputed fact in this case is that the appellants are engaged in the activity of de-coiling of HR/CR coils, cutting and slitting thereof into specific sizes as per design of their buyer and carrying out pickling and oiling thereon. It is also not disputed that as held by various judicial pronouncements that activity of de-coiling of HR/CR coils, cutting and slitting thereof into specific sizes and carrying out pickling and oiling thereon does not amount to manufacture. Therefore, the issue before us is that whether the CENVAT credit taken by the appellants on HR/CR coils which were cleared by them on payment of duty, after the process of de-coiling, cutting and slitting into specific sizes and thereafter carrying out pickling and oiling is required to be reversed or not.*
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> *7. The learned SDR submits that as per law, the appellants were required not to take CENVAT credit on these goods i.e. HR/CR coils as their activity does not amount to manufacture. Therefore, the CENVAT credit taken by them is wrong and in that event, they are required to reverse the CENVAT credit. He further submitted that the duty was paid without any authority of law. Therefore, the question of allowing the credit on input does not arise. He relies on the decision of Velere Power India Pvt. Ltd. (supra), wherein it was held by this Tribunal that CENVAT credit was taken wrongly and duty equal to CENVAT credit is required to be paid under Rule 3(5) of Cenvat Credit Rules when the activity does not amount to manufacture. In that case the assessee took the credit on the inputs and after processing of inputs, the final products were cleared on lower value. The activity did not amount to manufacture but the duty was paid less at the time of clearance*

of the goods at lower value although the CENVAT credit was taken more than the duty paid. Therefore, differential duty was asked to be paid. Therefore, we are of the view that the ratio laid down in the decision of Velere Power India (supra) supports the case of the appellant. This is not the fact in this case before us.

8. In the matter in hand before us, the appellants have paid more duty than the credit availed after value addition. Therefore, the decision of Velere Power India (supra) is not relevant to facts of this case. The learned SDR also relied on the decision of Metlex (I) Pvt. Ltd. (supra), wherein the Apex Court has held that merely because the party mistakenly filed the classification list, does not mean that he had to pay duty, even if he is not bound to pay duty. If there is no manufacture then mere the fact that the classification list has been filed would not make them liable to pay duty. We have seen the decision of Metlex (I) Pvt. Ltd. (supra). In that case the facts are that the assessee wrongly filed their classification list on the ground that their activity amounts to manufacture and paid duty thereon. The Hon'ble Apex Court held that this does not bar them when their activity, does not amount to manufacture and they have mistakenly filed the classification list on the understanding that their activity is amounting to manufacture. The Hon'ble Apex Court, therefore, held that the assessee is not barred from taking the plea of not amounting to manufacture when they have paid the duty on mistaken belief that their activity amounts to manufacture. Therefore, the said decision is also not relevant to facts of this case. The learned SDR, further, relied upon the case of Nicholas Piramal (supra), wherein the facts of the case are that whether the Tribunal was right in allowing the assessee for reversal of credit taken instead of insisting upon the assessee to pay the amount equal to 8%/10% of total price of exempted goods as per Rule 6(3)(b) of the Cenvat Credit Rules, 2002. In that case, the Hon'ble High Court held that if a manufacturer is using common input for dutiable as well as for exempted goods, in that case the assessee is required to make separate account of inputs which are going in manufacturing of dutiable goods and separate account for inputs which are going in manufacturing of exempted goods. But, in case the assessee does not maintain separate account of inputs, in that case the assessee *is required to pay 8%/10% of the amount of exempted goods. In that scenario, the Hon'ble High Court held that the assessee is required to reverse 8%/10% of the amount. Therefore, the facts of that case are not relevant to the facts of this case.*

9. We have seen from the facts of this case where as per Circular dated 7-9-2001, the activity of slitting of HR/CR coils into strip was amounted to manufacture. It is admitted fact that the said Circular was withdrawn on 2-3-2005. Thereafter, the appellants sought clarification through various letters to the department to clarify whether the composite activity of de-coiling of HR/CR coils, cutting and slitting into specific sizes and thereafter pickling and oiling amounting to manufacture or not. That was clarified only on 24-6-2010. In the case of Resistance Alloys (supra) and P.V. Sanghvi (supra), wherein it was held that process of pickling and oiling would not amount to manufacture, but in the case in hand before us, the appellants were undertaking composite activity of de-coiling of HR/CR coils thereafter cutting and slitting into specific sizes and after that pickling and oiling taken place, which was clarified by the department only on 24-6-2010 saying that the said activity does not amount to manufacture. Therefore, following instructions issued through Circular No. 911/1/2010-CX., dated 14-1-2010, the appellants approached to the Commissioner for issuance of appropriate rectification for regularization of the CENVAT credit availed as their activity does not amount to manufacture and they have paid duty on clearance of the goods more than the credit availed. The Commissioner has also considered the representation of the appellant and forwarded to the Board for issuance of the required notification. The Board has neither rejected the proposal of the Commissioner, nor issued the notification for regularization of credit availed. In that situation, we are of the view that the benefit of the Circular No. 911/1/2010-CX., dated 14-1-2010 is available to the appellants.

10. Further, it is the admitted fact that the appellants are the manufacturer of excisable goods also. Therefore, as per Rule 3(5) of the Cenvat Credit Rules, 2004, if the activity in question of the appellants does not amount to manufacture, the appellants are required to pay duty equal to credit taken on clearance of such inputs under cover of

> *Central Excise invoices. As in this case, the activity of the appellants does not amount to manufacture, therefore, these inputs are cleared as such. In that event, as per Rule 3(5) of Cenvat Credit Rules, 2004 the appellants are required to pay duty equal to the credit taken thereon and the appellants have paid duty more than the credit availed.*
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> *11. The learned Advocate also relied on several case laws, wherein it was held that when duty paid at the time of clearance equal to or higher than the credit availed, the same is to be treated as reversal of credit. Therefore, no further reversal of credit is required as held by this Tribunal in the case of Repro India Ltd. (supra), Punjab Stainless Steel Industries (supra), Drish Shoes Ltd. (supra), SAIL (supra). In this case, it is admitted fact that the department has accepted duty paid by the appellants on their clearances and as per judicial pronouncement in the case of Ashok Enterprises (supra), Super Forgings (supra), SAIL (supra), M.P. Telelinks Ltd. (supra), Creative Enterprises (supra) which was upheld by the Hon'ble Apex Court that once duty on final products has been accepted by the department in the case, CENVAT credit cannot be denied even if the activity does not amount to manufacture.*
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> *12. Therefore in view of the above discussion, we find that the duty paid by the appellants has been accepted by the department which is admittedly more than the CENVAT credit availed by the appellants. Therefore, following the various judicial pronouncements as discussed herein above, we hold that the appellants are not required to reverse the credit. Accordingly, the appeals are allowed with consequential relief."*

7.2. By relying on the decision cited supra, we hold that the Respondent has rightly availed credit on the inputs and paid an amount equal to the credit taken at the time of clearance of the goods as provided under Rule 16(2) of the Central Excise Rules, 2002. Thus, we observe that the allegation of irregular availment of credit against the Respondent does not survive. Once, the credit availed by the Respondent is found to be regular, there is no irregularity in utilising the same to discharge the payment as per Rule 16(2) of the Central Excise Rules. Since the availment of credit and subsequent utilisation of the same for paying the amount as per Rule 16(2) of the Central Excise Rules,2002 are found to be regular, we hold that no penalty imposable on the Respondent. Consequently, we do not find any infirmity in the impugned order passed by the Ld. adjudicating authority.

8. In view of the above discussions, we uphold the impugned order passed by the ld. adjudicating authority and reject the appeal filed by the Revenue.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd