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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 770 of 2011

(Arising out of Order-in-Original No. 08/Commr/CE/Kol-III/2010-11 dated 26.05.2011 passed by the Commissioner of Central Excise Kolkata III Commissionerate 180, Shanti Pally, Rajdanga Main Road, Kolkata-700107)

M/s. EPCOS India (P) Ltd. **: Appellant**
Kulia Kancharapara, Road,
Netaji Subhas Sanatorium,
P.O. Kalyani, Dist. Nadia Pin-741521

VERSUS

Commissioner of Central Excise, Kolkata-III **: Respondent**
180, Shanti Pally, Rajdanga Main Road, Kolkata-700107

APPEARANCE:

Shri Deepro Sen, Advocate
Shri Vasudev A., Advocate for the Appellant
Shri S. Dey, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76184/ 2025

DATE OF HEARING / DECISION: 25.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No.08/ COMMR/ CE/ KOL-III/ 2010-11 dated 26.05.2011 passed by the Ld. Commissioner, wherein CENVAT Credit amounting to Rs. 3,98,37,514/- has been disallowed, along with interest and imposition of equal amount of credit disallowed as penalty. Aggrieved against the confirmation of the said demands, the appellant has filed this appeal.

2. The facts of the case are that M/s. EPCOS (herein after referred as the appellant) were availing the credit of duty paid on inputs and capital goods as well as the credit of service tax paid on input services in terms of the provisions of CENVAT Credit Rules, 2004. Accordingly, the Appellants were filing monthly statutory ER-1 and ST-3 returns duly disclosing the availment of CENVAT Credit.

2.1. On 18.12.2007, the Appellant got registered with the Central Excise department as a 'dealer' vide Registration No. AAACI6950QXD003 in order to engage in the purchase and sale of imported articles viz. Coil Formers, EMC Modules i.e., IDM-12 and IDM-13 etc. After such registration as a "dealer", the Appellant started the aforesaid activity of purchase and sale of such products for the first time with articles imported vide Bill of Entry No. 389045 dated 25.01.2008.

2.2. During the course of CERA audit conducted in November 2009, a Spot Memo dated 01.12.2009 was issued calling upon the Appellant to reverse the amount of credit attributable to "trading" activity since such credit of service tax paid on input services attributable to activities of trading imported goods would not be admissible. In response to such CERA Audit, the Appellant on 04.12.2009 duly reversed the CENVAT Credit amounting to Rs. 22,534/- used for the trading activity along with interest amounting to Rs. 2,903/-. The said reversal of CENVAT Credit along with interest was also intimated to the Department by way of letter dated 08.12.2009.

2.3. On 14.01.2010, the jurisdictional Superintendent of Central Excise vide letter dated 14.01.2010 directed the Appellant to furnish all the invoices relating to trading activity for the period from April 2006 to December 2009. The Appellant duly replied to the same vide letter dated 08.02.2010 submitting all the details sought. However, without considering the *suo-moto* reversal of CENVAT Credit amounting to Rs. 22,534/- along with interest of Rs. 2,903/- made by the appellant, the underlying Show Cause Notice was issued proposing to deny the entire CENVAT Credit availed on service tax paid on input services amounting to Rs. 3,98,37,514/- on the ground that the Appellant have taken credit of service tax without any bifurcation of the value of such input services with respect to manufacturing and trading activity. On adjudication, the Ld. adjudicating authority has disallowed the credit along with interest and imposition of equal amount of credit disallowed as penalty. Aggrieved against the confirmation of the said demands, the appellant has filed this appeal.

3. The appellant submits that there is no allegation in the show cause notice or any finding in the impugned order to the effect that the services in question are not qualified as "input services" as defined under Rule 2(1) of the CENVAT Credit Rules, 2004. The proportionate credit attributable to the manufacturing activity is not in dispute. The only issue stated in the impugned order is that the segregation of services used between trading activity and manufacturing activity having not been done on actual basis in the present case; hence, entire credit is denied.

3.1. The appellants submit that the department cannot proceed beyond the rules to demand and recover the aforesaid credit. There is no mechanism provided under the CENVAT Credit rules for such an action proposed to be taken by the department in the present case. There is no dispute that appellants are manufacturer of final products (Ferrite Core and Ferrite Powder). Hence, once this fact is not in dispute, credit cannot be denied to the appellants. It is not the case that the appellants are only importing and selling Coil Formers, IDM-12 etc. and are not manufacturers of final products. Had that been the case, the revenue could have alleged that CENVAT Credit rules do not envisage availing of credit of service tax paid on input services received for purchase and sale of goods by a dealer/trader. However, this is not the case of the Revenue. The appellants submit that the Rules envisage a person who is a manufacture of final products cum service provider, manufacturer of final products cum service provider cum seller of goods etc. However, the impugned order seems to have overlooked this aspect. Therefore, the impugned order is liable to be set aside.

3.2. The appellant submits that the Rules only envisage a situation to deny credit of service tax paid on input service when input services are used in manufacture of exempted goods or for providing exempted output services. In other words, the conditions laid down under the CENVAT Credit rules for denial and recovery of credit to the extent the same are used for exempted services are enshrined under Rule 6 only. In the instant case, admittedly, Rule 6 of the said rules have not been invoked in the Show Cause Notice and the Ld. Commissioner also holds that Rule 6 of the said rules will have no application in the present case since trading is not an exempted service. Once this is the admitted position, there is no question of denying credit of service tax paid on input services to the appellants. Therefore, the impugned order is liable to be set aside.

3.3. The appellant submits that at the most the Appellant may be liable for reversal of credit exclusively attributable to the activity of trading. In this regard, the Appellant submits that the Appellant has *suo moto* reversed CENVAT Credit amounting to Rs. 22,534/- along with interest of Rs. 2,903/- that is exclusively used for the 'trading' activity during the relevant period. Such reversal was made on 04.12.2009, i.e., prior to the issuance of the underlying SCN dated 28.01.2011. The quantification of such reversal is also duly supported by a CA certificate. Therefore, since the Appellant has duly reversed the credit attributable to the "trading" activity along with interest, it would be construed as if the Appellant has not availed any credit on such "trading" activity. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Chandrapur Magnet Wires (P) Ltd. v. Collector of Central Excise, Nagpur 1996 (81) E.L.T. 3 (S.C.)***

3.4. The appellant submits that "trading" activity as an exempted service under Rule 2(e) of CENVAT Credit Rules, 2004 has been inserted only w.e. Form 01.04.2011. Thus, for the period prior to 01.04.2011, trading' cannot be considered as an exempted service and reversal of CENVAT Credit attributing to 'trading' is not warranted. The appellant submitted that the issue is no longer res *integra* inasmuch as the Hon'ble CESTAT has consistently held that there is no provision for disallowance of credit availed prior to 01.04.2011 availed on service tax paid on input services which also were utilized for trading activity. Reliance is also placed on the decision of ***Posco India Pune Processing Centre Pvt. Ltd. v. Commissioner of CE & ST, Pune – I – 2024 (3) TMI 1040 – CESTAT Mumbai .*** The same view has been taken by the Tribunal in the case of ***M/s Orient Bell Limited, M/s Orient Ceramics And Industries Ltd. Versus Commissioner Of Customs, Central Excise And Service Tax, Noida And (Vice-Versa) 2018 (3) TMI 7 - CESTAT Allahabad.*** Accordingly, the appellant submitted that the demand confirmed in the impugned order is not sustainable.

3.5. The Appellant submits that they have duly produced the CA certificate which supports the quantification of CENVAT Credit attributable to 'trading' activity which has been reversed by the Appellant. It is a trite law that a certificate from an expert in the accounting profession, the same has immense evidentiary value. Therefore, such certificate ought to be objectively examined. Reliance is placed on the decision of the Hon'ble CESTAT Delhi in the case of ***Hero Motocorp Ltd. v. Commissioner of Customs (Import & General) – 2014 (302) E.L.T. 501 (Del.).***

3.6. In the light of the fact that the CENVAT Credit attributable exclusively to the trading activity stands reversed along with interest prior to issuance of the underlying SCN, the Appellant should have been provided the benefit of Section 11A(2B) of the Central Excise Act, 1944 and the SCN must not have been issued. Hence, the proceedings are not sustainable and is liable to be set aside.

3.7. The Appellant submits that as per Rule 2(l) and Rule 3 of the CENVAT Credit Rules, 2004, they are eligible to avail CENVAT Credit on the input services that is used in or in relation to the manufacture of final products. Therefore, merely because the Appellant carried out 'trading' activity during the relevant period, it cannot be a valid ground in order to deny such a legally eligible CENVAT Credit to the Appellant. It is pertinent to note that the Department has invoked Rule 14 of the Credit Rules in order to deny the CENVAT Credit which is impermissible since Rule 14 of the Credit Rules can be invoked only for recovery of CENVAT Credit that is wrongly taken or erroneously refunded.

3.8. In this regard, the appellant submitted that the issue is no longer res-integra since the CESTAT Allahabad in the case of ***L.G. Electronics India Pvt. Ltd. v. Commr. of Cus., C.Ex. & S.T., Noida – 2017 (3) G.S.T.L. 249 (Tri. – All.)*** has held that in order to invoke provisions of Rule 14 it is to be first established that either the CENVAT Credit was not admissible, or Rule 6 of Credit Rules was applicable in the transaction. It is a fact on record that Rule 6 has not been invoked in this case and hence Rule 14 of the CENVAT Credit Rules cannot be invoked to reverse the credit.

3.9. The Appellant further submitted that they have been filing ER-1 and ST-3 returns regularly during the relevant disclosing the availment of CENVAT Credit. It is as trite law that extended period cannot be invoked when the details are required in the relevant statutory records are furnished by the assessee. In this regard, reliance is placed on the following decisions –

(i) **Commissioner v. Meghmani Dyes & Intermediaries Ltd. – 2013 (288) E.L.T. 514 (Guj.)**

(ii) Synergy Engineers Group Pvt. Ltd. v. Principal Commissioner, Cus., C. Ex., & S.T., Bhopal – 2023 (73) G.S.T.L. 546 (Tri. – Del.)

(iii) Kaybee Tex Spin Ltd. v. Commissioner of Customs, Ahmedabad – 2022 (381) E.L.T. 407 (Tri. – Ahmd.)

(iv) Infosys Ltd. v. Commissioner of Central Tax, Bangalore – 2019 (369) E.L.T. 975 (Tri. – Bang.)

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that on 18.12.2007, the Appellant got registered with the Central Excise department as a 'dealer' in order to engage in the purchase and sale of imported articles viz. Coil Formers, EMC Modules i.e., IDM-12 and IDM-13 etc. After such registration as a "dealer", the Appellant started the aforesaid activity of purchase and sale of such products. CENVAT Credit availed on service tax paid on input services amounting to Rs. 3,98,37,514/- on the ground that the Appellant have taken credit of service tax without any bifurcation of the value of such input services with respect to manufacturing and trading activity.

6.1. We observe that there is no dispute that appellants are manufacturer of final products (Ferrite Core and Ferrite Powder). Once this fact is not in dispute, credit cannot be denied to the appellants. It is not the case that the appellants are only importing and selling Coil Formers, IDM-12 etc. and are not manufacturers of final products. Had that been the case, the revenue could have alleged that CENVAT Credit rules do not envisage availing of credit of service tax paid on input services received for purchase and sale of goods by a dealer/trader. However, this is not the case of the Revenue. The appellants submit that the Rules envisage a person who is a manufacture of final products cum service provider, manufacturer of final products cum service provider cum seller of goods etc.

6.2. We observe that in the present case, the issue involved is whether the entire quantum of CENVAT Credit availed on input services can be denied where some services have been used towards trading. We observe that "trading" activity as an exempted service under Rule 2(e) of CENVAT Credit Rules, 2004 has been inserted only w.e.form 01.04.2011. Thus, we observe that for the period prior to 01.04.2011, 'trading' cannot be considered as an exempted service. The question of reverse of CENVAT Credit will arise only when it is established that the appellant has been providing dutiable and exempted services and availed CENVAT Credit in respect of input services which are used exclusively for providing exempted output services. In such cases where the appellant has provided both dutiable and exempted services, the provisions of Rule 6 has to to be invoked to quantify the reversal of credit required. We observe that in the impugned order, it is categorically held that Rule 6 of the CENVAT Credit is not applicable in this case.

6.3. Since "trading" activity as an exempted service under Rule 2(e) of CENVAT Credit Rules, 2004 has been inserted only w.e. form 01.04.2011. Thus, we observe that for the period prior to 01.04.2011, there is no requirement for reversal of credit availed on input services even if part of the said input services are used for "trading" activity prior to 01.04.2011. Further, we the Appellant has *suo moto* reversed CENVAT Credit amounting to Rs. 22,534/- along with interest of Rs. 2,903/- that is exclusively used for the 'trading' activity during the relevant period. Such reversal was made on 04.12.2009, i.e., prior to the issuance of the underlying SCN dated 28.01.2011. The quantification of such reversal is also duly supported by a CA certificate.

6.4. We observe that the issue is no longer res integra inasmuch as the Hon'ble CESTAT has consistently held that there is no provision for disallowance of credit availed prior to 01.04.2011 availed on service tax paid on input services which also were utilized for trading activity. Reliance is also placed on the decision of ***Posco India Pune Processing Centre Pvt. Ltd. v. Commissioner of CE & ST, Pune – I – 2024 (3) TMI 1040 – CESTAT Mumbai*** wherein it has been held as follows:

> "*…………..*
>
> *It can be seen that mention of trading as exempted service appeared in Chapter V of Finance Act, 1994 for the first time with effect from 01.04.2011. The present demand is for the period prior to 01.04.2011. Therefore, the definition of exempted services with effect from 01.04.2011 is not applicable to the period of the present show cause notice. During the period of present show cause notice, there was no whisper of trading in Chapter V of Finance*

> *Act, 1994 which deals with the provisions of law related to levy of service tax.* ***We, therefore, hold that there was no provision of law for disallowance of CENVAT Credit availed on service tax paid on input services which also were utilized for trading activity during the relevant period."***
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> [Emphasis supplied]

6.5. Reliance in this regard is also placed *on* ***M/s Orient Bell Limited, M/s Orient Ceramics And Industries Ltd. Versus Commissioner Of Customs, Central Excise And Service Tax, Noida And (Vice-Versa) 2018 (3) TMI 7 - CESTAT Allahabad*** wherein the Hon'ble CESTAT held as follows:

> *5. It stands contended by the appellant that the trading activities were introduced as exempted services w.e.f. 01.04.2011. As such prior to the said date trading was not a service activity and hence was not an exempted service so as to deny the CENVAT Credit availed in respect of common input services. Reference stands placed on various decisions of the Tribunal.*

6.6. We observe that the entire proceedings have been initiated against the Appellant in order to deny the CENVAT Credit under Rule 2(l) and Rule 3 of the CENVAT Credit Rules, 2004 by invoking Rule 14 of the Credit Rules merely because the Appellant along with its primary activity of manufacturing ferrite products carried out 'trading' activity which during the relevant period. Therefore, it was held that since the law does not provide for any mechanism to reverse such CENVAT Credit attributable to an activity that is neither a manufacturing activity nor a service, the complete CENVAT Credit availed on input services has been denied.

6.7. Further, we observe that the Appellant has duly reversed the credit attributable to the "trading" activity along with interest, it would be construed as if the Appellant has not availed any credit on such "trading" activity. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Chandrapur Magnet Wires (P) Ltd. v. Collector of Central Excise, Nagpur 1996 (81) E.L.T. 3 (S.C.)***

6.8. Further, we observe that CESTAT Allahabad in the case of ***L.G. Electronics India Pvt. Ltd. v. Commr. of Cus., C.Ex. & S.T., Noida – 2017 (3) G.S.T.L. 249 (Tri. – All.)*** has held that in order to invoke provisions of Rule 14 it is to be first established that either the CENVAT Credit was not admissible, or Rule 6 of Credit Rules was applicable in the transaction. The relevant portion of the ruling is extracted as below:

> "***6.*** *Having considered the rival contentions and on perusal of record, we find that in the present case, M/s. L G Electronics India Pvt. Ltd., was manufacturing the goods and also trading the goods on being imported and being procured from other manufacturers. They were taking CENVAT Credit on service tax paid on input services as stated earlier. The show cause notice has proposed to recover CENVAT Credit of Rs. 45.63 crores under Rule 14 of CENVAT Credit Rules, 2004. For the computation of alleged inadmissible CENVAT Credit that was proposed to be recovered the method adopted was on the basis of turnover of manufacture and turnover of trading a ratio was calculated and total CENVAT Credit of Service Tax paid on input services was distributed in that ratio and the component attributable to trading was proposed for denial of CENVAT Credit and recovery of CENVAT Credit was proposed under Rule 14 of CENVAT Credit Rules, 2004. During the relevant period, said Rule 14 provided that whenever the CENVAT Credit has been taken and utilized wrongly or has been erroneously refunded, the same along with interest shall be*

> *<u>recovered from the manufacturer or the provider of the output service and provisions of Section 11A of Central Excise Act, 1944 & Section 73 of Finance Act, 1994 was applied for effecting such recoveries. It is very clear that for recovery of CENVAT Credit under said Rule 14, first it is to be established that CENVAT Credit has been either taken wrongly or utilized wrongly. Further, the said Rule 14 has also been provided for recovery of amount mentions in sub-rule (3) of Rule 6 of CENVAT Credit Rules under Explanation 2 under sub-rule (3) of said Rule 6. The provision at Explanation 2 under sub-rule (3) of said Rule 6 provide for recovery of CENVAT Credit which was admissible at the time of taking credit. In order to invoke provisions of said Rule 14 it is to be first established that either the CENVAT Credit was not admissible or Rule 6 was applicable in the transaction then only CENVAT Credit could be recovered under Rule 14 of CENVAT Credit Rules, 2004. In the present case, admittedly, there is no allegation in the said show cause notice that the appellants had taken credit of any inadmissible CENVAT Credit. Further the show cause notice dated 9-5-2011 states that Rule 6 of CENVAT Credit Rules, 2004 is not applicable in the present case. Therefore, the said show cause notice did not make out a case for invocation of provisions of Rule 14 of CENVAT Credit Rules, 2004.</u> Therefore, show cause notice was not sustainable for the reasons that the contention in the show cause notice did not allow recovery of CENVAT Credit under Rule 14 of CENVAT Credit Rules, 2004. Therefore, the proposal for recovery of CENVAT Credit, interest on the same and penalty is not sustainable. We, therefore, set aside the impugned Order-in-Original and allow all the appeals. The appellant shall be entitled to consequential relief, if any, in accordance with law."*
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> [Emphasis supplied]

6.9. In the instant case, we observe that the Department has neither established as to how the CENVAT Credit is not admissible to the Appellant nor invoked Rule 6 of Credit Rules. Thus, we observe that in a case where the Department has failed to establish that CENVAT Credit is not admissible and Rule 6 also not being applicable, the hold that he entire proceedings initiated by invoking Rule 14 of the Credit Rules is void-ab-initio and the impugned Order is liable to be set aside. Reliance is further placed on the following decision of M/s. HCL Comnet

Ltd. v. Commissioner of Central Excise & S.T., Noida – 2017 (7) TMI 526 – CESTAT Allahabad.

6.10. In view of the discussions above we hold that the denial CENVAT Credit confirmed in the impugned order is legally not sustainable and hence we set aside the same. Since, the appellant is eligible to avail the credit, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP