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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75716 of 2017

(Arising out of Order-in-Original No. BSR-Excus-002-Com-No-16-18/16-17 dated 19.01.2017 passed by the Commissionerate of Central Excise, Customs & Service Tax, Bhubaneswar-II C. R. Building, Rajaswa vihar, Bhubaneswar-751007)

M/s. National Aluminium Co. Ltd. **: Appellant**
P/1, Nayapalli, Nalco Bhavan,
Bhubaneshwar-751013 Orissa

VERSUS

Commissioner of Central Excise Customs and Service Tax, **: Respondent**
C. R. Building, Rajaswa vihar,
Bhubaneswar-751007

APPEARANCE:

Shri J. Mohanty, Advocate
MS. Shreya Mundhra, Advocate for the Appellant

Shri D. Sue, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77096/2025

DATE OF HEARING / DECISION: 30.07.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original BSR-Excus-002-Com-No-16-18/16-17 dated 19.01.2017 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II C. R. Building, Rajaswa vihar, Bhubaneswar-751007.

2. The facts of the case are that M/s. National Aluminium Company Limited (NALCO) (herein after referred as the appellant), a central public sector undertaking and a Navratna Company, under the

Ministry of Mines, Govt. of India, engaged in the manufacture of Aluminium metal falling under Chapter 76 of the Central Excise Tariff Act, 1985, at their Smelter plant located at Angul. The Appellant owns a captive power plant for generation of electricity, which is used in the manufacture of Aluminium metal, the final product. The Appellant avails CENVAT credit on various capital goods, used both in the smelter plant and the captive power plant, including their stores and spares, components and accessories comprising of nearly 35,000 items, which are maintained as inventory for smooth operation of the plant.

2.1. As per the accounting policy of the company, stores and spares which have not moved/used for more than five years are treated as non-moving spares, the value of which is reduced by 95% without any change in the quantity. In the CENVAT credit scheme, in terms of Rule 3(5B) of the CENVAT Credit Rules, 2004, proportionate credit was required to be reversed when the value of capital goods is written off in the books of accounts of the manufacturer.

2.2. Before completion of the quantification process, show-cause notices were issued by the learned Commissioner seeking recovery of proportionate CENVAT credit with interest under Rule 14 of CENVAT Credit Rules, 2004 and imposition of penalty under Rule 15(1) of CENVAT Credit Rules, 2004. The demands under the show-cause notices were raised based on the 95% written off value shown in the Trial Balance Sheet of the respective years. The reversal amount was worked out by the department by applying the rate of central excise duty prevalent at the material time to the written off value. Accordingly, the following Notices were issued to the appellant demanding recovery of Cenvat credit totally amounting to Rs. 2,24,44,915/- under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 & penalty under Rule 15(1) of CENVAT Credit Rules, 2004.

Sr. No.	**SCN No. & Date**	**Period Involved**	**Amount Demanded in SCN (₹)**	**Amount Confirmed vide Order-in-Original (₹)**
1.	V(76)15/Adjn/B-I/Cenvat/08/2013/7004-06-A dated 21.03.2013	F/Y 2011-12	1,47,80,471/-	76,31,105/-
2.	V(76)15/Adjn/B-I/Cenvat/102/2013/1768-70-A dated 23.01.2014	F/Y 2012-13	1,09,77,488/-	58,39,803/-
3.	V(76)15/Adjn/Audit/B-II/14/2015/3260-62-A dated 20.02.2015	F/Y 2013-14	1,85,51,945/-	89,74,007/-
	TOTAL		**4,43,09,904/-**	**2,24,44,915/-**

2.3. The said Notices were adjudicated by the Commissioner vide the Impugned Order, wherein the Ld. Commissioner has confirmed the entire demand of Rs. 2,24,44,915/- and appropriated the same. The impugned order also demanded interest under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 and imposed penalty of Rs. 2,24,44,915/- under Rule 15 of CENVAT Credit Rules, 2004. Being aggrieved by the impugned Order, the Appellant has filed the present appeal.

3. The Appellant submits that during the relevant period 2011-12 to February 2013, there was no recovery mechanism under Rule 3(5) of the CENVAT Credit Rules, 2004 as Rule 14 of the CENVAT Credit Rules, 2004 does not specifically contemplate for such recovery. Only by virtue of Notification No. 3/2013-CE(NT) dated 01.03.2013 w.e.f. 01.03.2013, the recovery provision has been inserted through an Explanation to Rule 3(5B). The said Explanation was introduced only w.e.f. 01.03.2013 and cannot have retrospective effect. Therefore, in the absence of recovery provision, the direction to recover the amount for the period 2011-12 to February 2013 is bad in law.

3.1. Reliance in this regard is placed on the following judicial precedents:

- *BHEL v. Commissioner 2024 (10) TMI 1249 - CESTAT BANGALORE*
- *HP India Sales Pvt. Ltd. v. Commissioner (2024) 24 Centax 278 (Tri.-Bang)*
- *GKN Driveline India Ltd. v. Commissioner 2023 (9) TMI 1131 - CESTAT Chandigarh*
- *M/S. Ericsson India Pvt. Ltd. Versus CCE, Jaipur [2019 (3) TMI 776 - CESTAT New Delhi]*

3.2. In view of the above, it is submitted that until the period 28.02.2013, the demand for recovery of CENVAT Credit is liable to set aside on this ground alone.

4. For the period thereafter, interest in terms of Rule 14 of CENVAT Credit Rules, 2004 read with

Section 11AA of the Central Excise Act, 1944 is attracted only when CENVAT Credit is wrongly taken and utilized. Reliance in this regard is placed on *NALCO v. Commissioner 2023 (6) TMI 368 - CESTAT KOLKATA.* However, in the present case, for the period March 2013 to 2013-14, the Appellant had sufficient CENVAT credit balance to discharge the liability, and hence the credit was not utilised. The details of Cenvat credit available as balance in their account are furnished herein-below:

Month	**CENVAT Closing Balance (Rs.)**
March 2013	2,14,69,46,657
April 2013	3,08,25,56,668
May 2013	2,48,92,17,990
June 2013	1,83,22,46,947
July 2013	1,52,60,41,886
August 2013	2,71,38,11,119
September 2013	1,27,77,22,966
October 2013	5,06,82,22,000
November 2013	3,98,71,01,818
December 2013	4,02,81,14,143
January 2014	3,86,85,12,123
February 2014	3,96,46,72,222
March 2014	1,86,12,50,335

4.2. Thus, the appellant submits that for period March 2013 to 2013-14 also no interest is payable, since the Appellant had sufficient CENVAT credit balance to discharge the liability.

5. Regarding the penalty imposed, the appellant submits that no recovery mechanism existed for the period 2011-12 to February 2013, no penalty is leviable for this period. Further, the Appellant submits that the provisions of Rule 3(5B) & Rule 6(3)(b) of the CENVAT Credit Rules, 2004 are similar. As such, the provisions of Section 11AC of the Central Excise Act, 1944 are inapplicable in as much as they relate only to short payment of duty, whereas the present case relates to reversal of credit as per Rule 3(5B) of the Cenvat Credit Rules, 2004. Thus, Section 11AC is inapplicable to the present case as well.

5.1. Reliance in this regard is placed on the following judgments:

- *GKN Drive Line India Ltd. v. Commissioner 2017 (357) E.L.T. 1083 (Tri. - Chan.)*
- *CCE v. Sangrur Agro Ltd. - 2010 (254) E.L.T. 25 (P & H)*
- *Eastern Medikit Ltd. v. CCE - 2009 (242) E.L.T. 51 (Tri.-Del.).*

5.2. Thus, then appellant submits that the penalty imposed is also liable to be set aside.

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

7. Heard both sides and perused the appeal documents.

8. In the present case, we observe that the appellant has reversed Cenvat credit as provided under Rule 3(5B) of the CENVAT Credit Rules, 2004,

when the value of capital goods is written off in their books of accounts. However, they have not reversed any interest at the time of reversal. The impugned order has demanded interest as well as imposed penalty for the alleged violation of non reversal of Cenvat credit at the time of writing off the value of the capital goods.

8.1. We observe that there was no recovery mechanism under Rule 3(5) of CENVAT Credit Rules, 2004. Only by virtue of Notification No. 3/2013-CE(NT) dated 01.03.2013 w.e.f. 01.03.2013, the recovery provision has been inserted through an Explanation to Rule 3(5B), which reads as follows:

> *"Explanation. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken."*

8.2. We observe that the said Explanation was introduced only w.e.f. 01.03.2013 and it cannot have retrospective effect. Therefore, we hold that in the absence of recovery provision, demand of interest for the period 2011-12 to February 2013 is not sustainable.

8.3. In respect of the credit reversed after 01.03.2013, we observe that in terms of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944, interest is liable to be paid on reversal only when CENVAT Credit is wrongly taken and utilized. In this regard, we observe that for period March 2013 to 2013-14, the Appellant had sufficient CENVAT credit balance in their Cenvat credit account to discharge the liability.

Accordingly, we hold that the demand of interest is not sustainable.

8.4. We find that this view has been held by the Tribunal, Bangalore in the case of *BHEL v. Commissioner 2024 (10) TMI 1249 - CESTAT BANGALORE.* The relevant part of the said decision is reproduced below:

> *7. We find that the issue is no more res integra and considered by this Tribunal in the case of Hewlett Packard India Sales Pvt. Ltd. Vs. CST, LTU, Bengaluru [2024(8) TMI 718 CESTAT BANGALORE]. This Tribunal after referring to the judgments in the case of Ericsson India Pvt. Ltd. Vs. CCE (supra) and GKN Driveline (India) Ltd. (supra), held as follows:-*
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> > *7. A plain and simple reading of the same makes it clear that in the event, the assessee pays service tax in respect of a taxable service which is not paid by either wholly or partially for any reason, he may adjust the service tax so paid by him against the service tax liability for the subsequent period. Therefore, it is clear that the assessee is allowed to adjust service tax excess paid against the service tax liability for the subsequent period. Whereas in the present case, the appellant had erroneously availed cenvat credit of Rs.2,03,69,972/- and sought to adjust against service tax paid on export of services previously which cannot be considered as an adjustment of service tax relating to service tax liability for the*

subsequent period. However, we find that erroneous availment of cenvat credit under Rule 3(5) of the Cenvat Credit Rules, 2004 could be recoverable only after insertion of the recovery provision to the said Rule by insertion of an Explanation through amending Notification No.3/2013-CE(NT) dated 01.03.2013 as amended only w.e.f. 01.03.2013. The said explanation reads as under:-

Cenvat Credit Rules, 2004 Amendment

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rule to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These Rules may be called the CENVAT Credit (Amendment) Rules,2013

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, after the proviso to sub-rule (5B), the following shall be inserted, namely:-

"Explanation. If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in

> *rule 14, for recovery of CENVAT credit wrongly taken."*

[Notification No. 3/2013-C.E. (N.T.), dated 1-3-2013]

Therefore, recovery of the said cenvat credit by the learned Commissioner is erroneous. This principle has been laid down by the Tribunal in the case of Ericsson India Pvt. Ltd., which later followed in GKN Driveline (India) Ltd. (supra), which reads as:-

> *12. After considering the submissions of both the parties and perusal of material on record, we find that the appellant as per the normal commercial practice in the automobile industry has made a provision for writing off the cenvat credit on inputs as per Rule 3(5B) of the Cenvat Credit Rules, 2004. During the audit, the department was of the view that the appellant is required to reverse Cenvat Credit availed on inputs which were written off as per Rule 3(5B) of the Cenvat Credit Rules.*
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> *13. Further, we find that during the relevant period, there was no recovery mechanism under Rule 3(5B) of the Cenvat Credit Rules and the explanation which was introduced vide Notification No. 3/2013 dated 01.03.2013 was from 01.03.2013 vide which it was provided that if the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for*

recovery of CENVAT credit wrongly taken. This recovery mechanism introduced from 01.03.2013 cannot be made applicable from the retrospective date and it can be only prospective and this issue was considered in various decisions cited (supra) by the Tribunal wherein it was held that when there was no recovery mechanism before 01.03.2013, therefore, no recovery can be affected and accordingly the present proceedings initiated under Rule 14 of Cenvat Credit Rules read with Rule 3(5B) of the Cenvat Credit Rules is liable to be dropped. 14. It is pertinent to note that the identical issue was considered by the Division Bench of the Tribunal in the case of Ericsson India Pvt. Ltd. cited (supra) wherein the Tribunal has held as under: -

> *"7. Having considered the rival contentions, we find that the issue is one of interpretation. We further find that for reversal of cenvat credit on partial writing down of value of inputs, the provision was introduced only first time by amendment of Rule 3(5B) of Cenvat Credit Rules, with effect from 01.03.2011. Further, there was no provision prior to 01 March 2013 for recovery of cenvat credit and interest thereon under Rule 3(5B) etc. which was made applicable with effect from 01.3.2013 only, by virtue of*

Notification No. 3 of 2013-CE(NT) dated 01.03.2013. The notification provides that if the manufacturer of goods or the provider of output service fails to paythe amount payable under sub-rule (5), (5A) and (5B), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken. 8. Learned Counsel have also pressed the ground that as they were not required to reverse the cenvat credit on partial writing down the value of inputs, prior to 01.03.2011, accordingly, we hold that as there was no such legal requirement. The learned Counsel also prays that they are entitled to refund, already reversed credit on account of partial writing down of value, prior to 01.03.2013. 9. In this view of the matter, we hold that the issue has arisen due to change of opinion on the part of the Revenue, but there is no suppression of facts on the part of the appellants. Further, we find that no amount was due to be reversed under rule 3(5B) on the date of issue of show cause notice. Accordingly, we hold that larger period for limitation cannot be invoked and no show cause notice was required to be issued. Accordingly, we hold that

> *impugned order is not sustainable, and is set aside. Appeal is allowed with consequential relief. In this view of the matter, we set aside the demand, penalty and interest"*

8.5. In view of the above findings and by relying on the decisions cited supra, we hold that the appellant is not liable to pay interest for the reversal of Cenvat credit under Rule 3(5B) of the Cenvat Credit Rules, 2004.

8.6. As the appellant has reversed the cenvat credit and there is no liability of interest payable by them, we hold that the penalty imposed on the appellant is not sustainable. Accordingly, we set aside the same.

9. In view of the above findings, 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)

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