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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76072 of 2018

(Arising out of Order-in-Original No. 12/Commr.Audit/C.Ex./BBSR/2017-18 dated 28.12.2017 passed by the Commissioner (Audit), G.S.T. & Central Excise, Bhubaneswar, Central Revenue Building, Rajaswa Vihar, Bhubaneswar - 751 007, Odisha)

Commissioner of G.S.T. and Central Excise : **Appellant**
Bhubaneswar Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

VERSUS

M/s. Hindustan Coca Cola Beverage Pvt. Ltd. : **Respondent**
Plot No. 60, Khurda Industrial Estate, Khurda,
District: Khurda (Odisha)

APPEARANCE:

Shri Argho Mukherjee, Authorized Representative,
Assisted by Shri Prasenjit Das, Authorized Representative,
For the Appellant / Revenue

Shri Arnab Chakraborty, Advocate,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77803 / 2025

DATE OF HEARING / DECISION: 26.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The respondent had procured capital goods for manufacture of "Maaza" beverages. The said procurement was made between December, 2009 and February, 2011. At the time when the capital goods were received by the respondent in their factory, the excise duty on "Maaza" beverages was fully exempt. Hence, no duty was being discharged for the clearances of Maaza Beverages from the factory premises by the respondents. However, the respondent took CENVAT Credit for the capital goods received.

2. The Revenue proceeded to recover the CENVAT Credit availed on such capital goods on the ground that, per se, no CENVAT Credit could be taken for such capital goods which were used in the manufacture of exempted finished goods.

3. After due process, the ld. adjudicating authority, after due verification, found that the appellant had taken the credit on capital goods which were to be used in the manufacture of exempted goods, but during the material period these capital goods were not put to use nor any manufacture of exempted goods had taken place during that time. Accordingly, he dropped the proceedings.

3.1. Being aggrieved, the Revenue is before the Tribunal.

4. The Ld. Authorized Representative of the appellant-Revenue relies on the case-law of *Commissioner of Central Excise, Indore v. Surya Roshni Ltd. [2003 (155) E.L.T. 481 (Tri. – Del.)]* wherein it has been held by the Tribunal that eligibility towards CENVAT Credit is to be determined based on the time when the goods are received in the factory premises by the manufacture. He contends that the ld. adjudicating authority fell in error in not applying this case-law and by dropping the proceedings initiated against the respondent. Therefore, it is his prayer that the impugned order be set aside and the appeal be allowed.

5. The Ld. Counsel appearing on behalf of the respondent submits that in respect of capital goods received, the CENVAT Credit becomes eligible when the same are 'put to use' rather than as and when such capital goods were 'received in the factory'. He supports the findings of the ld. adjudicating authority

in the impugned order. He further produces before us the case-law of *Principal Commissioner, C.G.S.T. & C.Ex., Vadodara-I v. Hindustan Coca Cola Beverages Pvt. Ltd. [2025 (4) TMI 6 – Gujarat High Court]* wherein the Hon'ble High Court has upheld the decision of the Tribunal, Ahmedabad rendered vide *Final Order No. 11362 of 2024 dated 05.06.2024*, holding that CENVAT Credit eligibility is required to be seen based on the time as to when capital goods are put to use. The Ld. Counsel submits that the issue in the cited case law is absolutely identical being in respect of the same company (respondent herein) and in respect of the same goods in question viz., Maaza Beverages. In view of these submissions, he prays that the Revenue's appeal be dismissed.

6. Heard both sides, perused the appeal papers and the case-law relied upon before us.

7. We find that the issue before us is no more *res integra* and stands squarely covered by the decision of the Ahmedabad Bench of the CESTAT in the case of *Hindustan Coca Cola Beverages Pvt. Ltd. v. Commissioner of Central Excise, Vadodara-I* vide *Final Order No. 11362 of 2024 dated 05.06.2024* wherein the Bench has held as under: -

> *"4. We have carefully considered the submission made by both sides and perused the records. We find that limited issue involved in the present case is that whether the appellant is entitle for CENVAT Credit on capital goods in a case where the capital goods were received on date when the finished goods to be manufactured i.e. Maza fruit pulp juice was exempted whereas at the time of commencement of the production on such capital goods, the same final product became dutiable. This is the second round of appeal before this Tribunal after remand vide order dated 08.03.2022. The said order is reproduced below:*

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5.1. As per our view even if the goods per se were exempted during the receipt and installation of the capital goods but if the said capital goods were not put to use for manufacture of any exempted goods it cannot be said that the said capital goods were used exclusively for manufacture of exempted goods in terms of Rule 6(4) of Cenvat Credit Rules, 2004. The revenue has heavily relied upon the decision in the case of Surya Roshni Ltd-2003(155) ELT 481 (Tri-Del) on the ground that the same was upheld by the Supreme Court but the factual position as submitted by the Learned Senior Counsel is that though the Tribunal had decided the matter against the assessee and the appellant in that case has approached the Supreme Court. The Hon'ble Supreme Court dismissed on the ground of jurisdiction thereafter, the appellant filed an application under Section 35(H) (1) of Central Excise Act, 1944 which is not yet decided. Therefore, firstly the judgment in the case of Surya Roshni has not attained finality either by the Hon'ble High Court or Hon'ble Supreme Court. Secondly, in the facts of Surya Roshni's case at the time of receipt of capital goods the goods manufactured there upon was exempted and the capital goods was used for substantial period right from its commencement exclusively for manufacture of exempted goods and after substantial time of use the product manufactured on the said machine become dutiable. In this fact the Tribunal has taken a view that at the time of start of use of capital goods, the assessee was manufacturing exempted goods on the very same machine therefore, the capital goods when put to use the goods manufactured there from were exempted. In the fact of the present case the capital goods even though receipt earlier but when it started manufacturing the goods were dutiable i.e. from 01.03.2011. In this position, it appears that the capital goods on which the cenvat was claimed by the appellant was never used exclusively for manufacture of exempted goods. However, since the adjudicating authority has decided the case only on the

> *basis that at the time of receipt of capital goods the product was exempted, therefore, the fact regarding commencement of such capital goods and the status of finished goods manufactured from that capital goods whether the same was dutiable or exempted needs to be verified. Therefore, the entire matter deserves to be re-considered in view of our above observation. Accordingly we set aside the impugned order and remand the matter of Appeal No. (E/11692)/2013 to the adjudicating authority for passing a fresh order after giving sufficient opportunities to the appellant.*
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From the above order it can be seen that the legal issue that in given case whether the date of eligibility of CENVAT Credit has to be reckoned on the basis of date of receipt of capital goods or the date of commencement of production as has been observed by the Tribunal is absolutely clear that the eligibility of credit on capital goods has to be taken as on date of start of production, particularly for the reason that since provision of Rule 6 (4) provides the relevant date related to manufacture of finished goods either exempted or dutiable therefore, irrespective of any date of receipt or installation of capital goods, for the purpose of Rule 6(4) CENVAT Credit Rules, 2004 the date of production of the goods has to be taken that whether on that date finished goods were dutiable or exempted. Therefore on that point the issue stand settled by this Tribunal in this case itself. The Adjudicating Authority was having limited scope to verify the date of commencement production and the status of exemption or dutiable of the said goods as on date of production. Therefore, the order of the Adjudicating Authority in the remand proceeding visiting to the legal issue is absolutely illegal and incorrect particularly for the reason that the revenue has not challenged the views taken by this Tribunal in the order dated 08.03.2022. Having said so, now we examine the fact for which the matter was remanded. We find that the appellant in their daily production record first time shown production of Maaza pet 600 ML bottles on 29.03.2011 before that in the months of January and February, 2011, the production of Maaza RGB was shown as goods

> *produced which are not manufactured on the capital goods in question as the capital goods in the present case are meant for production of Maaza in PET bottles. Therefore, it is quite evident from the records produced by the appellant that the goods were manufactured on the capital goods meant for manufacture of Maaza pet bottle only from 29.03.2011 on that date the finished goods was admittedly dutiable as the exemption earlier provided for such final product was done away. With this fact vis a vis the observation made in this Tribunal's earlier order dated 08.03.2022, we are of the considered view that appellant are eligible for CENVAT Credit. All the Judgments relied upon by the revenue are not relevant to the facts of the present case. Therefore, such Judgments are distinguishable. In view of our above observation and finding and also in view of the observation made in earlier order 08.03.2022, we hold that appellant are legally entitled for the CENVAT Credit on the capital goods in terms of provision Rule 6(4) of CENVAT Credit Rules, 2004."*

7.1. This decision was agitated by the Revenue before the Hon'ble High Court of Gujarat wherein the Hon'ble High Court, vide Order dated 27.03.2025 observed as follows: -

> *"12. Thus on perusal of the above finding of fact arrived at by the Tribunal, it appears that the respondent assessee commenced its daily production of 600ML bottles on 29.03.2011 and before that in the months of January and February, 2011, production of Maaza RGB was shown as goods produced which are not manufactured on the capital goods in question as the capital goods in the present case were meant for production of Maaza in PET bottles. The Tribunal has therefore, rightly come to the conclusion on the basis of evidence produced on record by the respondent assessee that goods were manufactured on the capital goods meant for manufacture of Maaza PET bottles only from 29.03.2011 and on that date, finished goods were admittedly dutiable as exemption earlier provided on such final products was done away. Admittedly the capital goods were utilised for the purpose of production of products of respondent assessee which were dutiable after 01.03.2011.*

> *13. In view of such factual findings arrived at by the Tribunal, we are of the opinion that no question of law much-less any substantial question of law arises from the impugned order of the Tribunal which requires any interference by this Court."*

8. Finding that the issue is squarely covered in favour of the respondent, we dismiss the appeal filed by the Revenue.

(Dictated and pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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

Sdd