

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI**

**APPEAL NOS: E/121 & 466/2010  
APPLICATION NO: E/MISC/85317/2018**

[Arising out of Order-in-Original No: 17/COMMISSIONER/GOA/  
CX/2009-10 dated 29<sup>th</sup> October 2009 passed by the Commissioner of  
Customs & Central Excise, Goa.]

*For approval and signature:*

**Hon'ble Shri C J Mathew, Member (Technical)  
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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1. Whether Press Reporters may be allowed to see the  
Order for publication as per Rule 27 of the : Yes  
CESTAT (Procedure) Rules, 1982?
  2. Whether it should be released under Rule 27 of  
CESTAT (Procedure) Rules, 1982 for publication : Yes  
in any authoritative report or not?
  3. Whether Their Lordships wish to see the fair copy : Seen  
of the Order?
  4. Whether Order is to be circulated to the : Yes  
Departmental authorities?
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**APPEAL NO: E/121 /2010**

Andrew Telecommunications India Pvt Ltd

... *Appellant*

*versus*

Commissioner of Customs & Central Excise  
Goa

...*Respondent*

**APPEAL NO: E/466/2010**

Commissioner of Customs & Central Excise  
Goa

... *Appellant*

*versus*

Andrew Telecommunications India Pvt Ltd

...*Respondent*

**Appearance:**

Shri RP Jindal, Consultant for assessee-appellant

Shri Ajay Kumar, Additional Commissioner (AR) for Revenue

**CORAM:**

**Hon'ble Shri C J Mathew, Member (Technical)**

**Hon'ble Shri Ajay Sharma, Member (Judicial)**

**Date of hearing:**

**12/07/2018**

**Date of decision:**

**06/11/2018**

**ORDER NO: A/ 87865-87866 / 2018**

**Per: C J Mathew**

M/s Andrew Telecommunications India Pvt Ltd, aggrieved by the recovery of ₹ 1,28,63,118, representing the duty discharged by debit of CENVAT credit upon removal of goods from their factory to temporary place of storage but reversed by them in their CENVAT credit account after debiting CENVAT credit once more at the time of disposal of the goods from the temporary place of storage, under section 11A of Central Excise Act, 1944 along with interest under

section 11AB of Central Excise Act, 1944 in order-in-original no. 17/COMMISSIONER/GOA/CX/2009-10 dated 29<sup>th</sup> October 2009 of Commissioner of Customs & Central Excise, Goa is in appeal before us.

2. The appellant manufactures 'base stations' and, owing to paucity of space for accommodating the huge volumes manufactured for their customers, sought permission in March 2007 for storage at a hired premises pending clearance without payment of duty pending. As the required permission was granted only a year later, the appellant was compelled to clear the goods on payment of duty to store the same at the hired premises. Between May 2007 and November 2007, the CENVAT credit account was debited with ₹ 1,28,63,118 on assumed value of clearance. On subsequent disposal, the CENVAT credit account was debited with the actual duty of ₹ 1,06,94,122 - and undisputed liability - with the earlier debits re-credited in November 2007. Proceedings were initiated against the appellant in November 2008 to recover this re-credited amount, along with applicable interest, and for imposition of penalty. The adjudicating authority dispensed with the penalty in the impugned order leading to appeal by Revenue.

3. Incidentally, on the plea of the appellant, during investigations, that there had been doubled discharge of duty liability, the central

excise authorities advised that a claim for refund be filed as the present proceedings pertained to violation of rule 4 of CENVAT Credit Rules, 2004 prohibiting availment of credit except on such goods as were received in the factory of manufacture. Appellant did file the claim but the competent authority rejected the claim which, upon appeal to the first appellate authority, obtained approval of eligibility in order dated 23<sup>rd</sup> May 2011, and the competent authority was directed to sanction the refund of the very same amount that was sought to be recovered in the proceedings now impugned before us. The refund process culminated with the sanction in order no. ACCEX (Div IV)/1100-R/15-16 dated 12<sup>th</sup> October 2015. By Miscellaneous Application, appellant seeks to introduce this sanction in the proceedings as germane to the grounds of appeal.

4. We have heard Learned Consultant for the assessee and Learned Authorised Representative. As the order sanctioning refund is material to the proceedings, we allow the Miscellaneous Application. The two appeals are taken up for disposal in this common order.

5. The dispute centres around the eligibility for consolidated reversal of the individual debit entries in the CENVAT credit account upon discharge of duty liability for the second time on clearance to customers. There is no dispute on the quantum of duty liability discharged thereby. It is the contention of Learned Authorised

Representative that, notwithstanding the discharge of duty liability twice, assessee was not entitled to take credit on its own except in relation to inputs received in the factory of manufacture.

6. With the sanction of the refund claimed by the assessee, the lack of authority to retain the duty discharged in the first instance has been established and acknowledged. With such acknowledgement, the entitlement for reinstating of the debited amount cannot anymore be in question. The assessee was, thereby, held to be eligible for that quantum of credit from the date on which the goods were cleared to their customers on payment of appropriate duties of central excise. The proceedings for recovery of that amount cannot be sustained in consequence. With the entitlement of re-credit, effective from the date of payment of duties for the second time, there is no scope for recovery of interest.

7. In the factual circumstances narrated *supra*, impugned order must be set aside. Appeal of assessee is allowed. Appeal of Revenue is dismissed.

*(Pronounced in Court on 06/11/2018)*

**(Ajay Sharma)**  
**Member (Judicial)**

**(C J Mathew)**  
**Member (Technical)**