CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85426 OF 2020

[Arising out of Order-in-Appeal No: PVNS/161/RGD/ APP/2019-20 dated 21st November 2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad.]

Nitco Limited
Vill: Shrigaon, Post: Poynad, Tal: Alibag
Dist : Raigad – 402 108 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Raigad
Utpad Shulk Bhavan, Plot No.1, Sector 17
Khandeshwar, Navi Mumbai - 410206 ***…Respondent***

APPEARANCE:

Shri Prasanna Sudke, Chartered Accountant for the appellant

Shri PK Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85078/2025

DATE OF HEARING:	13/08/2024
DATE OF DECISION:	29/01/2025

This appeal of M/s Nitco Limited challenges order[1] of

[1] [order-in-appeal no. PVNS/161/RGD/ APP/2019-20 dated 21st November 2019]

Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad for having upheld the order of the original authority to deny credit of ₹ 34,34,904 availed under CENVAT Credit Rules, 2004 and recovery thereof under section 11A of Finance Act, 1994, along with applicable under section 11AA Central Excise Act, 1944, and penalty of ₹ 3,43,490 under section 11AC of Central Excise Act, 1944.

2. Learned Chartered Accountant for the appellant submitted that the impugned credit had been availed on tax paid towards amount charged as ‘minimum production demand fees’ in invoice of M/s Saisha Trading LLP in accordance with agreement dated 1st September 2014 for supply of ‘coal gas’ owing to operation of section 66E of Finance Act, 1994 enumerating ‘declared services’ for the purpose of levy. It was further submitted by him that the lower authorities had incorrectly held the same as not having been procured for the purpose of manufacture and that the impugned order had rejected their appeal on erroneous facts and incorrect inferences. He submitted that the first appellate authority had failed to take notice that the invoices had been furnished by a successor organization of the original party to the agreement and that the order in their favour for the earlier period had been incorrectly distinguished on facts that were conveniently overlooked.

3. Learned Authorised Representative submitted that the order of the first appellate authority for the earlier period was not binding on the Tribunal and that the Tribunal could discard the finding therein if not in accordance with law. It was further submitted by him that the payment to the contracting party had been made on account of non-procurement which could not, by any stretch, be accepted as eligible for CENVAT credit of goods used in manufacture of the final product.

4. The appellant had entered into an agreement with M/s Saisha Trading Pvt Ltd on 1st September 2014 with ‘minimum production demand fees’ as condition of supply of ‘coal gas’ and tax discharged thereon under section 66E of Finance Act, 1994 on the understanding of having been in conformity with ‘declared services’ enumerated in section 66E of Finance Act, 1994. The first appellate authority discarded the arguments of the assessee on the ground that the invoice had been issued by an entity which came into existence only after 3rd August 2015 whereas the agreement impugned in appeal pertained to the previous financial year. This finding, inasmuch as the invoices perused by the first appellate authority make it abundantly clear that M/s Saisha Trading LLP was formerly M/s Saisha Trade Pvt Ltd, is specious. Nothing has been placed on record to indicate that, with the change in constitution, the agreement had terminated. Moreover, these facts were insinuated in the impugned order without placing the appellant on notice of intention to do so with liberty to furnish explanation thereof.

5. The first appellate authority has discarded the precedent value of the decision of the Commissioner of Central Excise (Appeals) on the premise that the contracting party was the predecessor entity of the issuer of the invoice against which the credit was availed. The distinguishment recorded by the first appellate authority is, therefore, based on incorrect facts. The findings of the first appellate authority are based, therefore, on failure to appreciate the facts and circumstances as well as the grounds of appeal preferred by the appellant herein. In view of the incorrect appreciation, the impugned order does not have validity for affirmation by us. At the same time, the grounds of appeal preferred before the first appellate authority in the challenge to the order of the original authority had not been considered. Accordingly, in the interest of justice, it would be appropriate that the appeal would be considered afresh.

6. To enable this we set aside the impugned order and remand the matter back to the first appellate authority to limit determination of outcome of the appeal on the grounds raised therein. The appeal is allowed by way of remand.

(Order pronounced in the open court on 29/01/2025)

(C J MATHEW)
Member (Technical)

**/as*