CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

EXCISE APPEAL NO. 86726 OF 2021

(Arising out of Order-in-Original 02/CGST/NM/Commr/KV/2021-22 dated 29.06.2021 passed by the Commissioner of CGST & CEx, Navi Mumbai.)

CEAT LTD
RPG HOUSE,
463, ANNIE BESANT ROAD,
WORLI MUMBAI-400 030. **Appellant**

Vs.

COMMISSIONER CGST & CENTRAL EXCISE, **Respondent**
NAVI MUMBAI
10TH FLOOR, SATRA PLAZA,
PALM BEACH ROAD, SECSTOR 19 D,
VASHI, NAVI MUMBAI-400705.

Appearance:
Shri Bharat Raichandani, Advocate for the Appellant.
Shri X.P.M. Mascarenhas, Superintendent, Authorised Representative for the Respondent:

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86158/2025

Date of Hearing : **27/06/2025**
Date of Decision: **30.07.2025**

Confirmation of penalty under Section 15(2) of the CENVAT Credit Rules 2004 read with Section 78 of Finance Act, 1994, by the Commissioner alongwith interest under Rule 14 of the CENVAT Credit Rules read with Section 11 AA of the Central Excise Act, 1944 on the reversed credit of Rs. 13,06,662/- availed by the appellant during the period from April 2012 to March 2016, on foundation and structures raised for maintenance of effluent water treatment plants and electrical works etc. has been assailed by the assessee appellant in this appeal.

2. Fact of the case, in brief, is that appellant is a Tyre manufacturer having registration under Excise Act. It had availed CENVAT Credit on inputs, capital goods and input services as per CENVAT Credit Rules, 2004 (CCR) in respect of Service Tax paid against receipt of service by it. During CERA audit made for the above

referred period, it was pointed out that inadmissible credit amounting to Rs. 2,31,80,909/- was taken by the appellant and show cause-cum-demand notice was accordingly issued on 06.09.2017. Before issue of show cause notice, appellant had already reversed CENVAT Credit of Rs. 13,06,662/- without interest, which credit was availed for such maintenance and construction related to foundation and structures for water treatment plant, electrical works etc. Appellant had contested the show cause and in the adjudication order passed by the Commissioner, as referred above, demand of Rs. 2,18,74,247/- was dropped by Ld. Commissioner, against which Department is apparently not in appeal, but he disallowed availment of Cenvat Credit on Service Tax paid for Rs. 13,06,662/- as well as appropriated the said amount that was reversed by Appellant while also confirming imposition of penalty and interest at applicable rate on the said amount. Appellant is before this forum challenging legality of the said order.

3. During the course of hearing, Ld. Counsel Mr. Bharat Raichandani, Advocate submitted that on *bonafied* belief that services received by the Appellant qualified as input services, even in respect of civil construction and support structure as capital goods, which did not fall under exclusion clause of the definition of input service, they have availed the credit but after it was pointed out by the Audit even before issue of show cause on 06.09.2017 and issue of audit report on 20.06.2017, they reversed the credit that itself would go to show the *bonafied* intention of the appellant that it had not willfully violated the provision of tax statute. He further submitted that for such *bonafied* mistake, in view of judgment reported in *Mahadev Logistics Vs. Customs Excise Settlement Commission in W.P. No. 113 of 2015, Sanghvi land developers Pvt Ltd Vs. Mumbai East in Appeal No. ST/87344/2018, M/s. Bajaj Travels Ltd. Vs. Commissioner of Service Tax in CEAC-06 of 2009, Kanthuria Portfolio Vs. CCE 2003 (158)355(T), Goenka Woollen Mills Vs. CCE 2001 (135)ELT 873(T), n*o penalty can be imposed since there was no suppression of fact, as Audit had taken those figures from appellant's Accounts book only for which extended period is also not invocable. He further submitted with reference to para 1.17, judgment in the case of; Patton Ltd., V. CCE reported 2006 ELT 496, Aditya College of Competitive Exam v. CCE 2009 (16) STR 154, CCE

v. Thyssenkrup Industries India Ltd. 2017 (48) STR 81, Graphite India Limited 2018- TIOL-1028, that when audit was conducted through which such discrepancy could be identified, there cannot be any allegation of suppression to be made against the appellant. While disputing the imposition of interest which he claims to be compensatory in nature, he has put it in writing in his written note of argument and also orally pleaded that appellant agrees to pay interest for the period the said credit was utilized till the same was reversed but he challenged the legality of the order passed by the Commissioner in respect of imposition of penalty on the reversed amount by invoking extended period.

4. Ld. Authorised Representative Mr. X.P.M. Mascarenhas, Superintendent objected to the contention of the appellant and supported the reasoning and rationality of the order passed by the Commissioner as such availment of CENVAT Credit of Rs. 13,06,662/- was in contravention of provision of Rules-2(L) and Rule 3 of Cenvat Credit Rules since for laying of foundation and super structure for support of capital goods no credit is admissible for which he sought for no interference in the order passed by the Commissioner by the Tribunal.

5. I have gone through case record, written submission made by the parties and carefully analysed the argument placed on the issue. At the outset, it is to be said that appellant has not contested against the reversal of Cenvat Credit and voluntarily paid the same well in advance immediately after being pointed out by the Audit. Recovery proceedings on inadmissible credit are also initiated under Section 73 like recovery of tax dues, in which event, even Section 73 sub-clause 3 would have come to the rescue of appellant in prohibiting the Respondent Department to serve Show Cause Notice when either on its own ascertainment or on the basis of being informed by the Central Excise Officer (through Audit), such reversal was made before issue of show cause. Otherwise also, in view of decisions noted above in the preceding para on allegation of suppression, it is to be reiterated that when matter was pointed out by the audit, appellant is not supposed to be awarded with penalty by invoking extended period. It would be worthwhile to reproduce para-6 of the decision passed by this Tribunal in Graphite India Limited, cited supra that would bring more clarity to the issue that under no circumstances,

suppression of fact or malafied intention to evade payment of duty would be established only because Audit party had found some credit availed as inadmissible, it reads; ..

> *Now coming to the statutory audit procedure, the purpose of audit, as available in the Manual published by the Institute of Chartered Accountants of India in respect of EA audit and CERA audit under Chapter 17 is that the idea behind such conduct of verification is to reasonably ensure that no amount, which under the central excise law is chargeable as duty, escapes taxation and the process of verification is always carried out in the presence of assessee and in the process, the auditor is required to discuss the matter with the assessee and advice him to follow correct procedure in future. It is also referred in the said manual that after such submission of audit report, in cases where the disputed amount have not already been paid by the assessee at the spot, demand notices are issued by the department for their recoveries. EA 2000 audit was therefore held to be participative audit. Likewise CERA audit is conducted by the Comptroller and Auditor General of India in respect of receipt and expenditure of the Government of India. It also discharges revenue audit which covers central excise, service tax and customs laws during which time the assessees were examined by CERA audit party to point out the deficiencies , leakages of revenue and non recoveries of dues by the Central Excise Department. Therefore, it cannot be said that only because audit party had found some credit availed as inadmissible, suppression of fact is made out. It cannot also be established that appellant had any mala fied intention to suppress its duty liability from the department.*

6. Hence in carry forwarding judicial precedent set by this Tribunal and to maintain consistency as well as creditability in the order to be passed by this Tribunal, the following order is passed.

THE ORDER

7. The appeal is allowed in part and the order passed by the Commissioner in imposing equal penalty on the reversed credit amount of Rs. 13,06,662/- is hereby set aside, while confirming interest on the reversed amount from the date of its utilisation till its actual re-payment is made, to be paid and deposited by the Appellant within two months of receipt of this order.

(Order pronounced in the open court on 30.07.2025)

Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

Arti