CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86889 OF 2022

[Arising out of Order-in-Appeal No: SM/113/Appeals-II/ME/2022 dated 23rd March 2022 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai]

Rosy Blue India Pvt Ltd
G Block, FC 6018, Bharat Diamond Course
Bandra Kurla Complex, Bandra East, Mumbai – 400051 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai East
9th Floor, Lotus Infocentre, Near Parel Station
Mumbai – 400 012 ***…Respondent***

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri Shashank Kumar Yadav, Additional Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86796/2025

DATE OF HEARING: 13/11/2025
DATE OF DECISION: 13/11/2025

PER: C J MATHEW

M/s Rosy Blue India Pvt Ltd is aggrieved, and, *ex facie*,

appearing unreasonably so, with order[1] of Commissioner of GST & Central Excise (Appeals-II), Mumbai directing remand to ensure compliance with principles of natural justice in the wake of their challenge to rejection of claim for refund of accumulated credit of ₹3,64,49,543 under rule 5 of CENVAT Credit Rules, 2004 for the period from January 2014 to March 2014.

2. The sanctioning authority, having taken the view that the application had been filed beyond the permissible limit from 'relevant date' prescribed in section 11B of Central Excise Act, 1944, issued show cause notice proposing rejection at the threshold and concluded proceedings with finding thereon but also noted therein that the application, as well as further correspondence, did not elicit any evidence that amount so claimed had been, as required, debited in the CENVAT credit account. The first appellate authority found not only that the bar of limitation was not breached and, instead of restoring the application for consideration on merit of eligibility and compliance also found it appropriate, in circumstances of observing that the order had travelled beyond the show cause notice, to dispose off the appeal thus

> *'14 From the records placed before me, it is seen that proper Natural Justice has not been provided in the present matter and therefore the matter is remanded back to the original adjudicating authority with the directions that the order should be passed after following Principles of Natural*

[1] [order-in-appeal no. SM/113/Appeals-II/ME/2022 dated 23rd March 2022]

Justice and giving an effective hearing to the Appellant. The appeal is disposed of in above terms.'

which is cause of cavil in this proceedings.

3. According to Learned Counsel for the appellant, remand was inappropriate as, having held the rejection for bar of limitation under section 11B of Central Excise Act, 1944 to be erroneous, it was incumbent for the claim for refund to have been allowed. He submitted that this was all the more so given the finding that venturing upon alleged failure to debit the claim amount in the CENVAT credit account was a ground not contained in the show cause notice and that the original authority had travelled beyond the show cause notice.

4. We have heard Learned Authorized Representative.

5. We find that the first appellate authority, having concluded that the bar of limitation had been erroneously invoked, could not but have restored that application before the sanctioning authority for further processing. In the absence of rejection – partially or entirely – for lack of entitlement or of eligibility, there was no scope for arrogating the remit of the sanctioning authority in appellate proceedings. That the claim was not time-barred is not open to challenge with no appeal having been filed by the jurisdictional Commissioner.

6. The cavil is restricted to the emphasis placed by the first

appellate authority on the *de novo* proceedings being strictly in compliance with principles of natural justice. It is not only obvious that this *caveat* is relevant only to the extent that the claim would not be allowed but also that, even without stating so, the original authority could breach principles of natural justice only at the cost of imperilling potential rejection. Considering the plea of the appellant thus

> *'10. ..... From the records placed before me, there is no doubt that proper and effective Natural Justice has not been provided in the present matter. I find that the main grievance of the Appellant is that the impugned order has been passed in gross violation of the principals of natural justice and without application of mind and without any legal basis. It is their contention that the impugned order is a non-speaking order as the same has been passed without giving any consideration to the submissions and case laws cited by them. The Appellant had also referred to the following case laws among others.....'*

as recorded in the impugned order, it does not appear appropriate for the appellant to take umbrage at the caution advised therein.

7. Thus, the effect of the decision in the impugned order is restoration of the claim before the original authority for proceeding as prescribed in the attendant procedure and with no prejudice to the appellant as opportunity is to be afforded to hear them. It is incumbent upon the original authority to be guided by both law and procedure and there is no reason to apprehend that the authority would not be so

guided.

8. Accordingly, we find no reason to interfere with the impugned order and, consequently, the appeal is dismissed.

(Operative part of the order pronounced in open court on 13th November 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*