

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 86397 OF 2015

[Arising out of Order-in-Original No: PUN-EXCUS-002-COM-013-14-15 dated 31st March 2015 passed by the Commissioner of Central Excise, Pune – II.]

Principal Commissioner of Central Excise

Pune – II

ICE House, 41/A Sassoon Road, Pune - 411001

... Appellant

versus

L'Oreal India Pvt Ltd

426 Mahalunge-Ingle, Chakan-Talegaon Road

Chakan, Pune - 410501

...Respondent

APPEARANCE:

Shri AK Srivastava, Assistant Commissioner (AR) Advocate for the appellant

Shri Mihir Deshmukh, Shri Jai Totlani and Ms Sharni K Gupta, Advocates for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86979/2025

DATE OF HEARING:

26/06/2025

DATE OF DECISION:

26/12/2025

PER: C J MATHEW

This appeal, filed by Commissioner of Central Excise, Pune-II

against order¹ of the same authority at the instance of competent Committee of Chief Commissioners under section 35E of Central Excise Act, 1944, is limited to the non-imposition of penalty under section 11AC, in conjunction with rule 15 of CENVAT Credit Rules, 2004, on recovery of ₹ 63,67,519 confirmed under rule 14 of CENVAT Credit Rules, 2004. The dispute, in its original and wider form², came up before the Tribunal on two occasions upon which the entirety of matters, relating to credit of duty paid on ‘inputs’ used for manufacture of ‘cosmetic preparations containing alcohol’ – a non-excisable commodity – ordered³ to be recovered with like penalty and retention of credit of tax on ‘input services’ attributable to ‘traded goods’ with like penalty in the first instance⁴ and, in the second instance⁵, on includibility of tax paid on ‘advertising services’ used exclusively in promoting manufactured goods for computing reversal to be effected were restored before the original authority with appropriate directions only to be decided partially against the assessee by orders dated 6th January 2012 and 29th July 2013. An appeal, filed in the meanwhile against the first⁶ of the *de novo* adjudications, of jurisdictional Commissioner of Central Excise challenging non-imposition of penalty as also against partial relief granted in the second round of adjudication,

¹ [order-in-original no. PUN-EXCUS-002-COM-013-14-15 dated 31st March 2015]

² [show cause notice dated 26th July 2007]

³ [order-in-original no. 03/CEX/2008 dated 27th February 2008]

⁴ [final order no. A/121/12/EB/C-II dated 6th January 2012]

⁵ [final order no. A/766/13/EB/C-II dated 29th July 2013]

⁶ [order-in-original no. 01/RKS/CEX/PI/2013 dated 15th February 2013]

was also disposed off by the Tribunal⁷ by way of remand which was taken up by the adjudicating authority in the third round. The final order, now impugned, is of grievance only to the appellant-Commissioner and only on the penalty that was dropped in the second round for not having been restored in the outcome of the third round by the adjudicating authority.

2. It appears in the records that recovery of ₹ 63,67,519, proposed for wrongful availing of credit of duty paid on inputs deployed in the manufacture of non-excisable goods, had been paid by the respondent, M/s L'Oreal India Pvt Ltd, and taken note off in the very first round of adjudication in addition to ₹ 76,88,567 from out of ₹ 3,59,43,559 proposed to be recovered for wrongful availing of credit of tax paid on 'input services' to the extent attributable to volume of trading in the total turnover. On conclusion of proceedings for the second time, the impugned order, while confirming liability of ₹ 63,67,519, along with applicable interest, dropped penalty of like amount originally proposed in relation to the former.

3. According to Learned Authorized Representative, the adjudicating authority had no option but to invoke section 11AC of Central Excise Act, 1944 upon ordering recovery of duties of central excise under section 11A of Central Excise Act, 1944. It was his

⁷ [final order no. A/305/14/EB/C-II dated 11th April 2014]

contention that, but for the initiation of investigations, the appellant would have remained silent and continued to ignore the recovery obligated under the CENVAT Credit Rules, 2004 owing to which rule 14 therein read with section 11A of Central Excise Act, 1944 had to be resorted to.

4. Learned Counsel for the respondent submitted that very clear finding, based on the factual circumstances, had been recorded in the impugned order and, owing to which, the imposition of penalty would be contrary to law.

5. It is seen that the respondent had discharged the obligation, in not retaining ineligible credit attributable to manufacture of non-excisable goods as well as trading activities, under rule 6 of CENVAT Credit Rules, 2004 before issue of show cause notice. It is also seen that the amount so volunteered has been appropriated in the impugned order even though such was not necessary in light of appropriate reversal. The proceedings for recovery, to be invoked in the event only of 'non-payment/short-payment' of duties of central excise, under section 11A of Central Excise Act, 1944, is superfluous save for the purpose of imposition of penalty under section 11AC of Central Excise Act, 1944 and only in circumstances reflecting ingredients permitting invoking of the said provision. The show cause notice is lacking in tenable allegation with evidence of such ingredients being in existence.

6. The dispute arose in relation to ‘input’ utilised for manufacture of non-excisable goods and ‘input service’ attributable to trading undertaken by the respondent. There is no allegation in the show cause notice that these credits were barred under rule 3 of CENVAT Credit Rules, 2004 or that the impugned ‘inputs’ were identifiable, from the very beginning, as suitable for deployment in the manufacture of only non-excisable goods. Consequently, the breach of CENVAT credit scheme could, at best, be the retention once so deployed for manufacture of non-excisable goods. It may not be out of place to take note that the bar on retention, mandated in rule 6 (1) of CENVAT Credit Rules, 2004, is governed by the precedence assigned to rule 6(2) therein and that the mandated reversal, by any of the methods, in rule 6 (3) of CENVAT Credit Rules, 2004 is qualified by *non-obstante* clause controlling the preceding two sub-sections. Consequently, the resort to debit of percentage of value of ‘exempted goods’ sufficed for retention of the credit taken initially.

7. The circumstances in which the impugned order has rendered the finding that

'23.6 In this regard, I also find that the Honb'le CESTAT, while remanding back the case for de novo adjudication has also directed to take note of the observations made by it in Para 7 of its earlier Order dated 06-01-2012, and before taking any view on imposition of penalty, give a finding whether there is any mala fide intention on part of the assessee to avail

ineligible credit, in view of the fact that the assessee, while following the procedure, albeit wrongly, of reversing 10% of the value of non-excisable goods under Rule 6(3)(b) of the CCR, 2004, has reversed an amount which is more than the Cenvat credit availed by them.

23.7 From the evidence available on record, the factum of payment of 10%/8%, as applicable, of the total price of non-excisable goods is not disputed by the Department, as is evident from the verification and confirmation report of the Range Superintendent dated 26-07-2012. It is also seen that the assessee have paid the entire amount of demand of Rs.63,67,519/- alongwith interest before the issue of Show Cause Notice dated 26-06-2007, which is less than the amount of Rs.90,86,941/- originally paid by them in terms of Rule 6(3)(b) of the CCR, 2004, albeit mistakenly. Although, the assessee have departed from the procedure required to be followed by them, I find that they have ended up paying more duty than what was legally required to be paid. Further, I find that this is a clear case of mis-interpretation of law because the assessee appears to have confused the words 'exempted goods' as appearing in Rule 6(3)(b) of the CCR, 2004, with the words 'non-excisable goods'. Although, in real terms, the non-excisable goods are also exempted from payment of Central Excise duty, in the context of CCR, 2004, no credit is per se admissible on inputs used in the manufacture of non-excisable goods. Further, this mistake has been accepted by the assessee and they have reversed the credit taken on such goods. Thus this is a clear cut case of mis-interpretation of law and therefore mandatory penalty under Section 11 AC of the Act, would not be imposable in this case.

23.8 In this regard, I find that in the case of Asstt. Commissioner Vs. Velliappa Textiles Ltd. as reported in 2003

(157) ELT 369 (SC), the Hon'ble Supreme Court has explained the difference between mens rea and negligence, by holding that mens rea focuses on mental state of the accused, requiring proof of a positive state of mind such as intent, recklessness or willful blindness while negligence measures conduct of accused irrespective of subjective mental state. For imposing mandatory penalty under Section 11AC of the Act, the guilty mindset or intent is required to be proved. Intent is deliberate and hence willful suppression is required for penalty. In the instant case, I also find that the assessee have indicated such reversals @ 10%/8% in their monthly ER-1 returns filed by them from time to time. Therefore, the mens rea to intentionally evade payment of duty is absent in this case.

23.9 Further, I find that the Hon'ble Supreme Court, in the case of M/s Rajasthan Spinning & Weaving Mills-2009(238) ELT 3 (SC) has, inter alia, held that for imposing penalty under Section 11AC of CEA, 2004, suppression should be willful or contravention of provisions must be coupled with an intent to evade duty. Similarly, in the case of UOI Vs Dharmendra Textile Processors - 2008-TIOL-192-SC-LB, the Hon'ble Supreme Court, while holding that mens rea is not an essential element for imposing penalty for breach of civil obligations, has also observed that " It is delinquency of the defaulter itself which establishes his blameworthy conduct without any further proof of the existence of mens rea.' In the instant case, I find that there has not been any deliberate default in payment of any duty due to the department, but a wrong procedure has been followed in respect availing cenvat credit on inputs used in the manufacture of non-excisable goods, which was mis-construed as exempted goods and credit availed, that has led to this infraction, which cannot be equated with a blameworthy conduct as envisaged in the

aforesaid decision of the Hon'ble Supreme Court in the case of Dharmendra Textile Processors, supra.

*23.10 In this case, I find that the contravention of provisions of CCR, 2004, and the Act is not disputed, but to hold that as a deliberate attempt to evade payment of duty would be very harsh in view of the fact that on the same issue, the assessee were regularly paying 10%/8%, as applicable, of the total price of non-excisable goods being cleared and following the stipulations laid down under Rule 6(3) (b) of CCR, 2004, albeit mistakenly. From the aforesaid facts, I find that there has been no deliberate tax delinquency, per se, on the part of the assessee and their bona fides stands proved, although the wrong procedure followed by them has led to the instant demand. Accordingly, I am inclined to take a lenient view and hence while upholding the confirmation of demand of Cenvat Credit amounting to Rs.63,67,519/- alongwith applicable interest on the same, under the provisions of Rule 14 of CCR, 2004, read with Section 11A and 11AB *ibid*, I hold that since the assessee had paid the entire amount of demand of inadmissible Cenvat credit along with interest, before issue of Show Cause Notice, imposition of penalty under Section 11AC on the assessee will be too harsh and hence I do not propose to impose any penalty on the assessee on this count.'*

in the impugned order to be unassailable is in accord with our observation *supra* and the absence of controverting thereto in the appeal of the jurisdictional Commissioner of Central Excise renders the challenge to the non-imposition of penalty to be untenable.

8. In like manner, the order⁸ of the Tribunal, while deciding the appeal⁹ of assessee, in *L'Oreal India Ltd v. Commissioner of Central Excise, Pune-II*, impugning the very same order, held that the penalty imposed under rule 15(2) of CENVAT Credit Rules, 2004 to be not tenable and relying on the findings in the impugned order on penalty under rule 15(1) of CENVAT Credit Rules, 2004 not liable to be invoked in relation to credit of duty paid on 'inputs' attributable to production of non-excisable goods that is impugned by the jurisdictional Commissioner of Central Excise herein.

9. For the above reason, the appeal is without merit and is dismissed.

(Order pronounced in the open court on 26/12/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*

⁸ [final order no. A/86080/2022 dated 14th November 2022]

⁹ [appeal no. E/86339/2015]