# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 89649 of 2018**

(Arising out of Order-in-Appeal No. MKK/196/RGD-APP/2018-19 dated 23.08.2018 passed by the Commissioner of Central Tax (Appeals), Raigad)

**M/s Amba River Coke Limited** **.... Appellant**
Village – Dolvi, Taluka – Pen,
Dist. Raigad, Maharashtra – 402 107

Versus

**Commissioner of Central Excise & Service Tax,** **.... Respondent**
**Raigad Commissionerate**
CGST Bhawan, 4th Floor, Plot No. 1,
Sector – 17, Khandeshwar, New Panvel,
Navi Mumbai – 410 206

APPEARANCE:

Shri Ramnath Prabhu, Advocate for the Appellant
Shri Ranjan Kumar, Authorized Representative for the Respondent

**WITH**

**Excise Appeal No. 85466 of 2019**
**&**
**Excise Cross Objection No. 85655 of 2019**

(Arising out of Order-in-Appeal No. MKK/196/RGD-APP/2018-19 dated 23.08.2018 passed by the Commissioner of Central Tax (Appeals), Raigad)

**Commissioner of Central Excise & Service Tax,** **.... Appellant**
**Raigad Commissionerate**
CGST Bhawan, 4th Floor, Plot No. 1,
Sector – 17, Khandeshwar, New Panvel,
Navi Mumbai – 410 206

Versus

**M/s Amba River Coke Limited** **.... Respondent**
Village – Dolvi, Taluka – Pen,
Dist. Raigad, Maharashtra – 402 107

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85202-85203/2026**

Date of Hearing: 27.01.2026
Date of Decision: 27.01.2026

***PER: S.K. MOHANTY***

Heard both sides and perused the case records.

2. The issue involved in these appeals pertains to the time limit, within which the CENVAT Credit is required to be taken in terms of Rule 4(7) of the CENVAT Credit Rules, 2004. Prior to the period 01.09.2014, no restrictions were imposed in the said rule, providing any prescribed time limit for taking of CENVAT credit. However, vide Notification No. 21/2004-C.E. (N.T.) dated 11.07.2014 (with effect from 01.09.2014), Rule 4(7) of the Rules of 2004 was amended, providing the time limit of six months from the date of issuance of the invoice, for taking the CENVAT credit. The said period of six months was subsequently amended vide Notification No. 06/2015-C.E. (N.T.) dated 01.03.2015, by extending the period upto one year, for the purpose of taking the CENVAT credit.

3. The appellant in this case, had availed the CENVAT Credit of central excise duty paid on inputs and service tax paid on the input services within one year from the date of issuance of the invoices, excepting in certain cases, where the credit in respect few invoices was availed after the period of one year. Since the availment of CENVAT Credit was not within the period of six months/one year from the date of issuance of invoices, the Department initiated proceedings against the appellant, seeking for denial of CENVAT Credit availed by them. The Annexure-1 appended to the Show-Cause Notice (SCN) had quantified the wrongly availed CENVAT credit after six months period amounting to Rs.42,14,299/- and the Annexure-2 to the said SCN had quantified the wrongly availed CENVAT credit after 28.02.2015 involving more than six months and in few cases more than one year period totally amount to Rs.1,22,47,364/-. The matter arising out of the SCN dated 18.01.2017 was adjudicated by the original authority vide Order-in-Original dated 13.12.2017, in confirming the proposals made therein. On an appeal filed against the said original order dated 13.12.2017, the learned Commissioner (Appeals) vide the impugned order dated 23.08.2018 has partly allowed the appeal in favour of the appellants. He has held that the appellants had correctly availed the CENVAT Credit amounting to Rs.1,21,37,918/- and has only upheld confirmation of the demand of Rs.43,23,742/- in the impugned order. Insofar as allowing the benefit of CENVAT Credit amounting to Rs.1,21,37,918/-, Revenue has preferred an appeal before the Tribunal. On the other hand, the assessee-

appellant has assailed the impugned order, to the extent it has rejected the appeal and denied the benefit of CENVAT Credit amounting to Rs.43,23,742/-.

4. It is an admitted fact on record that the appellants had availed the CENVAT Credit within one year from the date of issuance of the invoices by the supplier of inputs/service providers, except in few cases where the invoices were generated prior to the date of issuance of the notification 11.07.2014 (supra). Further, in paragraph 3(b)(ii) in the said Notification dated 11.07.2014, the proviso clause was inserted by giving effect from 01.09.2014, with regard to the time limit within which the CENVAT credit has to be taken. Therefore, the restriction placed in terms of time limit of six months from the date of issue of invoice under the said notification can only apply prospectively and is not retrospectively applicable. On perusal of invoices in five cases, where the credit was availed beyond the period of one year, we find that all those invoices were issued prior to the date of coming into force of the notification dated 11.07.2014 (supra). Further, since the Notification dated 01.03.2015 (supra) has extended the period of six months to one year, the benefit of such notification should be available to the appellants, in respect of all the disputed invoices. Since the CENVAT credit was availed within the stipulated time frame of one year, in our considered view, the credit availed by them cannot be denied. We find that this Bench of the Tribunal in the case of *EM Services (I) Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Nagpur – 2018 (10) TMI 1066 – CESTAT MUMBAI* has allowed the appeal, holding as under: -

> *"6. It is an admitted fact that the invoices were issued by the service provider to the appellant during the month of February / March 2013 and June 2014 and that the appellant had availed Cenvat Credit in November 2014 and January 2015. Since the invoices were issued by the service providers prior to the date of amendment of Rule 4(7) of the Rules, the provisions of unamended Rule 4(7) will be applicable for consideration of the dispute under the rule (effective upto 31.08.2014), there were no restrictions/stipulations contained that the assessee should avail the Credit within six months from the date of invoice / payment of service tax. Such embargo brought out in the statute at later date will not snatch away the statutory right of the assessee to avail Cenvat Credit upon compliance of the condition that it had received the taxable service and paid service tax thereon. Denial of credit under such facts and circumstances of the case is against the statute. I find that in an identical case, under MODVAT regime, this Tribunal in the case of Ashok Leyland Ltd. (supra) has held that any restrictions, which deprive the assessee of a valuable right can be only perspective and not retrospectively applicable."*

5. In view of the above, we do not find any merits in the impugned order insofar as it has denied the CENVAT benefit amounting to Rs.43,23,742/- to the appellants and the said order dropping the CENVAT Credit demand of Rs. 1,21,37,918/- cannot be intervened at this juncture in view of the settled position of law (supra), relied upon by the learned Advocate for the appellant.

6. In the result, the appeal filed by the assessee-appellant is allowed and appeal filed by Revenue is dismissed.

(Dictated and pronounced in open court)

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

Sinha