

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12251 of 2014-DB

[Arising out of Order-in-Original/Appeal No DMN-EXCUS-000-COM-030-13-14 dated 27.02.2014 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Welspun India Limited

Survey O. 76,87,110,260 & 74,
Village : Morai, Vapi, VALSAD, GUJARAT

.... Appellant

VERSUS

Commissioner of CGST & Central Excise, Daman Respondent

3rd Floor, Adarsh Dham Building, Vapi-Daman Road,
Opp.Vapi Town Police Station, Vapi, Gujarat-396191

APPEARANCE :

Shri S. Suryanarayanan, Advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 20.07.2023

DATE OF DECISION: 02.08.2023

FINAL ORDER NO. 11634/2023

RAMESH NAIR :

Brief facts of the case are that appellant are engaged in the manufacture of Cotton Terry Towels falling under Chapter heading No. 63 of the Central Excise Tariff Act, 1985. The appellant are availing the facility of Cenvat credit under the Cenvat Credit Rules, 2004. The appellant's raw material was attracting Additional Duty of Excise (Textile & Textile Articles) in terms of Section 3 of Additional Duties of Excise (Textile & Textile Articles) Act, 1978. Accordingly, they have been availing Cenvat credit on this ADE(T&TA). Subsequently, vide Notification No. 31/2004-CE dated 09.07.2004, the ADE(T&TA) such raw materials was exempted whole of the additional duty of excise (T&TA)leviable thereon under the said Act. However, the Cenvat credit availed before that was lying accumulated/unutilized which had been carried forward from time to time. The case of

the department is that the appellant is liable to reverse the Cenvat credit lying unutilized in respect of ADE(T&TA) in terms of transitional provision of Rule 11(3)(ii) of the Cenvat Credit Rules, 2004. Accordingly, show cause notice dated 26.11.2012 was issued proposing recovery of the said accumulated Cenvat credit of ADE(T&TA). The show cause notice was adjudicated by the Commissioner, Daman vide impugned order dated 27.02.2014 therefore, the present appeal.

2. Shri S. Suryanarayanan, learned Counsel appearing on behalf of the appellant submits that Cenvat credit of ADE(T&TA) was legally availed as per the Rule prevailing at the time of receipt of the raw material and thereafter the same has been carried forward. The department demanded the said unutilized Cenvat credit of ADE(T&TA) only on the ground that as per Rule 11(3) of Cenvat Credit Rules, 2004 the assessee is required to reverse the credit. It is his submission that at the time of taking credit and even thereafter when the credit was carried forward there was no provision for recovery or reversal of Cenvat credit. Rule 11(3) was inserted in Cenvat Credit Rules, 2004 only with effect from 01.03.2007. Therefore, the exemption notification issued prior to this date and Cenvat credit earned much before this date of insertion of Rule 11(3), the provision of Rule 11(3) cannot be applied retrospectively. He placed reliance on the following judgments:-

(a) Modern Denim vs. CCE, Ahmd - 2018 (5) TMI 812- CESTAT AHMEDABAD

(b) CCE Bangalore vs. Gokaldas Intimate Wear - 2011 SCC Online Kar 4260 : (2011) 270 ELT 351

(c) Tractor and Farm Equipment Limited vs. CCE, Madurai - 2014 SCC Online Mad 11549

(d) Ramco International & Ors vs. CCE, Jalandhar – 2014 SCC Online CESTAT 618

(e) IBM India Private Limited vs. CCE, Pondicherry - 2019 SCC Online CESTAT 6717

3. He further submits that entire demand is time-barred as the appellant's action of taking credit and carrying forward was declared in ST-3 returns since a long time i.e. from 2004 that ADE(T&TA) was made exempted. The show cause notice was issued on 26.11.2012 in respect of the credit lying unutilized as on 09.07.2004 when the ADE(T&TA) was exempted vide Notification No. 31/2004-CE and thereafter the same was carried forward. Therefore, there is no suppression of facts on the part of the appellant. Hence, extended period is not invocable.

4. Shri P. Ganesan, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. On careful consideration of the submissions made by both the sides and perusal of the record, we find that in the present case, the Revenue has sought to demand Cenvat credit of ADE(T&TA) lying unutilized and carried forward since 2004 onward by invoking Rule 11(3) of Cenvat Credit Rules, 2004 which is effective from 01.03.2007. We find that appellant has earned the Cenvat credit of ADE(T&TA) during the period before 09.07.2004 and the said duty was exempted from 09.07.2004 vide Notification No. 31/2004-CE. Since then appellant have been carrying forward the unutilized credit of ADE(T&TA). On that relevant time there was no mechanism to recover the unutilized Cenvat credit in case the final product of the appellant is exempted, particularly when credit was taken and the final product was dutiable. The sole ground of department to demand Cenvat credit of

accumulated ADE(T&TA) is invocation of Rule 11(3) of Cenvat Credit Rules. The said Rule 11(3) has come into effect only with effect from 01.03.2007 therefore any credit availed prior to that and carried forward the same cannot be recovered by invoking Rule 11(3) as the said Rule does not have retrospective effect. It shall be applicable only in a case when any exemption notification is availed on or after 01.03.2007 when the Rule 11(3) came into effect. In the present case, the appellant's final product was exempted as well as credit of ADE(T&TA) was lying during the period much before the insertion of Rule 11(3) in Cenvat Credit Rules. Therefore the said Rule cannot be applied and consequently ADE(T&TA) cannot be demanded. The very same issue has been considered by this Tribunal in the case of IBM India Private Limited (supra), wherein the Tribunal has passed the following order:-

“19. As far as the first question of reversal of Cenvat credit availed on inputs lying unutilized in the Cenvat credit account or contained in the inputs lying in stock or final products lying in stock on the day when the final products becomes fully exempt is concerned, we find that Rule 11(3) of CCR 2004 specifically provides for such a reversal. This sub rule was inserted from 1.3.2007. There is nothing on record for us to believe that this sub rule had retrospective application. In the absence of any specific provision, fiscal statutes are only presumed to have prospective application. We also find that in respect of exemptions based on the value or quantity of clearances in a financial year sub rule (2) of Rule 11 had always provided for such reversal. The present case does not pertain to exemption based on value of clearances. Therefore, we find that the demand for reversal of the Cenvat credit is without any authority of law applicable during the relevant period. We have considered the order of the Tribunal Delhi in the case of Albert David (supra) upheld by the Supreme Court, which was issued in the context of erstwhile Modvat Credit Rules. We also note that the Jurisdictional High Court of Madras in the case of TAFE (India) (supra), has considered the case law of Albert David also in the context of the introduction of Rule 11(3) of CCR 2004 and held that this sub-rule had only prospective application and not retrospective application.

20. We also find that after the introduction of Rule 11(3) by Notification No. 10/2007 dt. 01.03.2007 the Tax Research Unit of CBEC has issued Circular No. 334/1/2007-TRU dt. 28.02.2007 clarifying that it will come into effect immediately. The letter does not suggest that Rule 11(3) was supposed to have retrospective effect. Therefore, we find that it has never been the intention to give retrospective application to Rule 11(3). In consequence, demand on this count along with interest and penalties on this account needs to be set aside and we do so,

21. As far as the demand on account of transfer of Cenvat credit is concerned, it is clear from the details narrated in the SCN and the impugned order that all assets and liabilities of the previous entity have been passed on to the successor entity. Under

these circumstances, the allegation that there is no evidence to satisfy the Asst. Commissioner or Deputy Commissioner of Central Excise that stock of inputs as such or in process or the capital goods have also been transferred to the successor entity is, at best, far fetched. The satisfaction of AC or DC or otherwise should also be based on same cogent reasons. We find no reasons or evidence because of which the Asst. Commissioner or Deputy Commissioner has come to the conclusion that the inputs or capital goods have not been transferred to the successor unit when the entire business itself has been transferred at the very same premises to the successor entity. In view of the above, we find that demand on this account also must fail.

22. In view of the above, appeal is allowed and the impugned order is set aside with consequential benefits, if any.”

The issue in hand has been addressed by the Tribunal in the above decision whereby it was held that Rule 11(3) of Cenvat Credit Rules, 2004 though provides for reversal of unutilized Cenvat credit but the same cannot be applied retrospectively in the absence of specific provision under the statute.

6. The Hon'ble Karnataka High Court also considered the similar issue in the case of *CCE, Bangalore vs. Gokuldas Intimate Wear (supra)* wherein the Hon'ble High Court has taken following view after framing substantial question of law:-

“4. This appeal was admitted to consider the following substantial questions of law:

(i) Whether the CESTAT is correct in holding that once the input credit is taken legally, then the same cannot be denied after the issue of exemption notification on the final product?

(ii) Is not the assessee who has taken credit on the input lying in the stock and those contained in semi-finished and finished goods required to be reversed when final product is exempted?

(iii) Whether the CESTAT was justified in passing the impugned order without discussing the facts of the case alleged to be covered and its application to the case on hand?

5. This Court in the case of the Commissioner Central Excise v. TAFE Limited (Tractor Division) disposed off on 1st March 2011 [2011 (268) E.L.T. 49 (Kar.)] after referring to the various judgments held that once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently. Only if any products are purchased subsequent to the said

exemption and if any tax is paid on such inputs, as the final product is exempted from payment of tax, the assessee would not be entitled to avail the Cenvat credit on such inputs. But the Cenvat credit availed on such inputs till the date of exemption, they vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the same. Therefore, the authorities taking advantage of the notification exempting the final product cannot claim reversal of Cenvat credit either in respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in progress and finished products. Therefore, the judgment in the aforesaid case squarely applies to the case on hand and the Tribunal was justified in granting benefit,

6. It was pointed out to us that in the year 2008 (sic) sub-rule (3) was inserted by a Notification No. 10/2007 with effect from 1-3-2007, which reads as under:-

(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the Said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."

7. Therefore, it is clear from the aforesaid, Rule that till 1-3-2007, the assessee was entitled to benefit, of the Cenvat credit in respect of inputs contained in the work in progress and semi finished products. The said amendment is prospective in nature. It comes into effect from only 1-3-2007. In the instant case, the period is anterior to 1-3 - 2007, which has no application. Therefore, the substantial questions of law raised in this appeal are answered in favour of the assessee and against the revenue."

7. In view of above decisions and the findings given above, we are of the view that the appellant is neither liable to reverse the accumulated Cenvat credit of ADE (T&TA) nor the demand of the same is sustainable. Accordingly, we set-aside the impugned order and allow the appeal.

(Pronounced in the open court on 02.08.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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