



CEA No. 88 of 2013 (O & M) & CEA No. 26 of 2011 (O & M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Date of decision: 26.08.2026

1. **CEA No. 88 of 2013 (O & M)**

M/S KUANTUM PAPERS LTD.

....Appellant

Versus

COMMISSIONER OF CENTRAL EXCISE, JALANDHAR ..Respondent

2. **CEA No. 26 of 2011 (O & M)**

COMMISSIONER CGST & CE COMMISSIONERATE JALANDHAR

....Appellant

Versus

M/S ABC PAPER, SHAILA KHURAD, HOSHIARPUR ...Respondent

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Viraj Gandhi, Advocate and
Mr. Adarsh Kumar Dubey, Advocate
for the appellant in CEA-88-2013 &
for the respondent in CEA-26-2011.

Mr. Ajay Kalra, Senior Standing Counsel with
Ms. Isha Janjua, Advocate
for the respondent in CEA-88-2013 &
for the appellant in CEA-26-2011.

ASHWANI KUMAR MISHRA, A.C.J. (Oral)

1. Since both the appeal(s) involve common questions of facts and law, therefore, they are being decided through a common order.

2. The appeal (**CEA No. 88 of 2013**) is preferred under Section 35G of the Central Excise Act, 1944 challenging an order passed by the Customs,



Excise and Service Tax Appellate Tribunal (hereinafter for short called as 'the Tribunal') dated 22.07.2013 contained in Annexure A-1, whereby the petitioner's claim for benefit of the provisions introduced vide Finance Act, 2010 has been declined.

3. The facts relating to the present appeal lie within a narrow compass. It transpires that show cause notices dated 31.05.2004, 17.05.2005, 24.02.2006, 06.10.2006 and 06.12.2007 were issued to the appellant for violation of Rule 6 of the CENVAT Credit Rules, 2001, 2002 & 2004 for the period May, 2003 to August, 2007. The show cause notices were adjudicated against the appellant. The final orders in that regard, upholding the show cause notices were passed by the Tribunal on 02.02.2010. In terms of the statutory scheme, an appeal could be filed by the appellant against such order within a period of 180 days from the date of receipt of order passed by the Tribunal. During the pendency of period within which an appeal could be filed, the Finance Act, 2010 introduced amendment in Rule 57 AD of the Central Excise Rules, 1944 pursuant to which the dispute could be settled on terms indicated in the scheme itself.

4. The appellant invoked the beneficial provisions introduced vide Finance Act, 2010 notified on 08.05.2010, and requested for a fresh consideration of its claim in light of the amended provisions introduced in the Finance Act, 2010. It transpires that the correspondence continued between the department and the appellant with various queries made from time to time. Ultimately, the claim under the Finance Act, 2010 was rejected by the Additional Commissioner, Central Excise Commissionerate, Ludhiana on 16.05.2012 (Annexure A-29).

5. This order was assailed before the Tribunal which took the view



vide its order dated 22.07.2013, that grant of benefit under the Finance Act, 2010 would amount to review of the earlier order passed on 02.02.2010, and therefore, the benefit of Finance Act, 2010 cannot be extended to the appellant. Thus, aggrieved the appellant is before us.

6. Learned counsel for the appellant contend that the beneficial provision introduced vide Finance Act, 2010 i.e amendment to Rule 57 AD of Central Excise Rules, 1944, intended to settle the pending disputes in respect of grant of CENVAT Credit under Rule 6, and therefore, an independent right came to be acquired by the appellant for seeking settlement of its pending dispute on the basis of provisions introduced in amendment of Rule 57 AD of Central Excise Rules, 1944.

7. It is submitted that though no appeal was preferred, but existence of the dispute ought to be presumed in the facts of the present case, as the period for filing of the appeal had not expired and much before such period, the appellant had claimed benefit under the amended provisions of the Finance Act, 2010.

8. Learned counsel for the Revenue, however, opposes the claim relying upon the reasoning contained in the order of the Tribunal.

9. At the outset, we deem it appropriate to refer to the amended provisions introduced in the Finance Act, 2010, benefit of which is claimed by the appellant. The provisions reads as under :-

“Section 70. Amendment of Rule 57AD of Central Excise Rules, 1944. -

(1) In the Central Excise Rules, 1944, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 57D, as substituted by rule 2 of the Central Excise (Second Amendment) Rules, 2000, published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 203(E), dated the 1st March, 2000, and subsequently



substituted as rule 57AD by rule 5 of the Central Excise [Second Amendment (Amendment)] Rules, 2000, published in the Gazette of India, vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 298(E), dated the 31st March, 2000, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Fifth Schedule, on and from and up to the corresponding date specified in column (4) of that Schedule against the rules specified in column (2) of that Schedule.

(2) Where a person opts to pay the amount in accordance with the provisions as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of the final products, which are exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

(3) The Commissioner of Central Excise shall, on receipt of an application under sub-section (2), verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid is found to be less than the amount payable, he shall call upon the applicant to pay the differential amount along with interest, which shall be paid within a period of ten days from the date of receipt of the communication from the Commissioner in this regard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 1st day of April, 2000 and ending with the 30th day of June, 2001 relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(5) Notwithstanding the supersession of the Central Excise Rules, 1944, for the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation. For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this section not come into force.

Section 71. Amendment of Rule of CENVAT Credit Rules, 2001.

(1) In the CENVAT Credit Rules, 2001, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act and published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 445(E), dated the 21st June, 2001, rule 6 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Sixth Schedule, on and from and up to the corresponding date specified in



column (4) of that Schedule against the rules specified in column (2) of that Schedule.

(2) Where a person opts to pay the amount in accordance with the provisions as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of exempted goods within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

(3) The Commissioner of Central Excise shall, on receipt of an application under sub-section (2), verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid is found to be less than the amount payable, he shall call upon the applicant to pay the differential amount along with interest, which shall be paid within a period of ten days from the date of receipt of the communication from the Commissioner in this regard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 1st day of July, 2001 and ending with the 28th day of February, 2002, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(5) Notwithstanding the supersession of the CENVAT Credit Rules, 2001, for the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable

Section 72. Amendment of rule 6 of CENVAT Credit Rules, 2002. -

(1) In the CENVAT Credit Rules, 2002, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, and published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 144(E), dated the 1st March, 2002, rule 6 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Seventh Schedule, on and from and up to the corresponding date specified in column (4) of that Schedule, against the rule specified in column (2) of that Schedule.

(2) Where a person opts to pay the amount in accordance with the provisions as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of



exempted goods within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

(3) The Commissioner of Central Excise shall, on receipt of an application under sub-section (2), verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid is found to be less than the amount payable, he shall call upon the applicant to pay the differential amount along with interest, which shall be paid within a period of ten days from the date of receipt of the communication from the Commissioner in this regard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 1st day of March, 2002 and ending with the 9th day of September, 2004, relating to the provisions as amended by sub-section (1), shall be deemed to be, and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(5) Notwithstanding the supersession of the CENVAT Credit (5) Rules, 2002, for the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation. For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this section not come into force.

Section 73. Amendment of rule 6 of CENVAT Credit Rules, 2004. -

(1) In the CENVAT Credit Rules, 2004, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, as published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 600(E), dated the 10th September, 2004, rule 6 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Eighth Schedule, on and from and up to the corresponding date specified in column (4) of that Schedule against the rule specified in column (2) of that Schedule.

(2) Where a person opts to pay the amount in accordance with the provisions as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant, certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of exempted goods, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

(3) The Commissioner of Central Excise shall, on receipt of an application under sub-section (2), verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid is found to be less than the amount payable, he shall call upon the applicant to pay the differential amount along with interest, which shall be



paid within a period of ten days from the date of receipt of the communication from the Commissioner in this regard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 10th day of September, 2004 and ending with the 31st day of March, 2008, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(5) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this section not come into force.”

10. The amended Rule introduced vide the Finance Act, 2010 is essentially a scheme for resolving pending disputes relating to claim of CENVAT credit. The intent guiding the expression ‘dispute’ essentially falls for determination in the facts of the present case.

11. The undisputed facts of the case are that the show cause notices issued to the petitioner-appellant came to be decided against it on 02.02.2010. The limitation period prescribed for filing the appeal was 180 days. It is during the subsistence of limitation period for filing of the appeal, that the amendment in the Finance Act, 2010 came to be made on 08.05.2010. The appellant was well within its right, either to have preferred an appeal, or to have availed the benefit of the amended provisions introduced vide the Finance Act, 2010. The mere fact that an appeal, was not filed would not, by itself, be determinative of whether a ‘dispute’ existed for the purposes of the amended provision, inasmuch as, the period within which the appeal could be filed could well be construed as the period within which a dispute with regard to the correctness of the order of



the Tribunal could be raised. Since the amended provision was introduced before the expiry of period of limitation itself, it was open for the appellant to have taken benefit of the beneficial provisions introduced in the amending Act, 2010 and resolve the dispute accordingly.

12. The mere fact that the dispute was not carried in appeal would not mean that there was no dispute in existence. The revenue otherwise does not dispute the fact that soon after the introduction of the amended provisions of the Finance Act, 2010 the appellant had applied for settlement of its dues.

13. The Constitutional Bench of the Hon'ble Supreme Court in the case '**Mafatlal Industries and Others Versus Union of India and Others**', reported in (1997) 5 SCC 536, while interpreting the provisions contained in Section 11 (B) of the Central Excises and Salt Act, relating to claims of refund, has examined a similar question and has laid down its conclusions in paragraph No. 108 of the judgment. Paragraph No. 108 (xi) provides that the benefit of refund would not be available in cases where the period of filing appeal has expired. The relevant extract of the judgment contained in paragraph No. 108 (xi) is reproduced as under :-

"108. The discussion in the judgment yields the following propositions.

We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i) to (x) xxxxx

(xi) Section 11-B applies to all pending proceedings notwithstanding the fact that the duty may have been refunded to the petitioner/plaintiff pending the proceedings or under the orders of the Court/Tribunal/Authority or otherwise. It must be held that Union of India v. Jain Spinners [30 (1992) 4 SCC 389] and Union of India v. I.T.C. [1993] Supp. 4 S.C.C. 326 have been correctly decided. It is, of course, obvious that where the refund proceedings have finally terminated - in the sense that the appeal period has also expired - before the commencement



of the 1991 (Amendment) Act (September 19, 1991), they cannot be re-opened and/or governed by Section 11-B(3) (as amended by the 1991 (Amendment) Act). This, however, does not mean that the power of the appellate authorities to condone delay in appropriate cases is affected in any manner by this clarification made by us.

xxxxxx"

14. Taking note of what is observed by the Hon'ble Supreme Court in the above judgment, it can be safely inferred/concluded that where period of limitation for filing of appeal subsisted, the existence of a dispute, for availing the benefit of the amended provisions of the Finance Act, 2010 cannot be declined only on the ground that an appeal in fact has not been filed by the appellant.

15. In such view of the matter, we are of the considered view that the benefit claimed by the appellant relying upon the provisions of the Finance Act, 2010 was required to be extended to the appellant, and mere fact that an appeal by them by the time the amendment was introduced, had not been filed, would not be fatal to the claim of the appellant.

16. The Tribunal, therefore has, not correctly applied the law to the facts of the case. The appeal (**CEA No. 88 of 2013**) consequently succeeds, and is, allowed. The order dated 22.07.2013 of the learned Tribunal (Annexure A-1), as well as the order dated 16.05.2012 (Annexure A-29) of Additional Commissioner (Tech.) are set aside. The authorities are directed to consider the claim of appellant for grant of benefit under the Finance Act, 2010.

17. In view of the discussion above, the connected appeal (**CEA No. 26 of 2011**) filed by the Revenue **fails**, and is accordingly dismissed.

18. Pending applications, if any, shall stand disposed of accordingly.



19. Photocopy of this order be placed on the file of connected case.

(ASHWANI KUMAR MISHRA)
ACTING CHIEF JUSTICE

26.08.2026 <i>kavneet singh</i>		(ROHIT KAPOOR) JUDGE
Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No