

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

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**CEA No.12 of 2017 (O&M)  
Date of Decision: 02.02.2023**

Commissioner of Central Excise,  
Rohtak

... Appellant

Versus

SPL Ltd. (Now M/s Somany  
Ceramics Ltd.)

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI  
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Sourabh Goel, Advocate,  
Mr. Tej Bahadur, Advocate and  
Ms. Shivani Shani, Advocate,  
for the appellant.

Mr. Amrinder Singh, Advocate,  
for the respondent.

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**MANISHA BATRA, J.**

**CM-6820-CII-2017**

For the reasons mentioned in the application, the same is  
allowed and the delay of 180 days in re-filing the appeal is condoned.

**CM-6819-CII-2017**

The application is allowed, as prayed for subject to just  
exceptions.

**Main Case**

1. The present appeal has been filed under Section 35-G of the  
Central Excise Act, 1944 (for short 'the Act, 1944') against the order

dated 12.08.2015 (Annexure A-3) passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter to be mentioned as 'the Tribunal') in Excise Appeal No.E/108/2007.

2. The brief matrix of the case is given hereunder:-

The respondent-Company which is engaged in the manufacture of ceramic glazed tiles (wall and floor tiles) and unglazed ceramic vitrified porcelain tiles and is having two separate registration certificates from the Central Excise Department for their manufacture, had been paying duty @16% ad valorem after availing the abatement of 45% under Notification No.13/2002-CE (NT) dated 01.03.2002 and had also availed cenvat credit on inputs, capital goods used in manufacture of its final products under Rule 3 of Cenvat Credit Rules, 2002 (for short 'Rules, 2002'). On scrutiny of its record, the department found that w.e.f. 07.08.2003, the respondent had also started availing benefit of amended notifications dated 14.05.2003 and 29.07.2003 and had started paying duty @8% ad valorem without availing the facility of cenvat credit on the inputs. It had, however, neither debited nor reversed any amount in its cenvat credit account and PLA from 06.08.2003 though it was required to do so after starting making payment of duty @8% ad valorem.

3. It was further submitted that on being apprised of this fact by the officers of the department, the Senior Manager (Excise) and General Manager (Finance) of the respondent-Company debited certain amounts of money in its cenvat credit and PLA accounts. However, on verification of record and data provided by the respondent, it was observed that it had made short payment of the reversed cenvat credit to the extent of Rs.21,32,778/-. Consequently, a show cause notice was served upon the

respondent on 17.08.2004 for explaining as to why the aforementioned amount be not demanded and recovered from it along with interest under Rule 12 of the Rules, 2002 and other provisions of the Act, 1944 and as to why penalty should not be imposed upon its officials/officers and itself for acts of omission and commission. The appellant then passed an order dated 18.10.2006 of assessment thereby raising demand of a sum of Rs.21,32,778/- after depositing an amount of Rs.1,45,00,289/- by the petitioner out of the amount of Rs.1,66,33,067/- which was equivalent to cenvat credit taken by the respondent on inputs in stock, in process or in its final products. Penalty amount of Rs.20 lacs under Rule 25 of the Rules, 2002 and Rs.50,000/- each on its General Manager (Finance) and Senior Manager (Excise) was also assessed.

4. Feeling aggrieved, the respondent preferred an appeal before the Tribunal which was allowed vide order dated 12.08.2015.

5. Dissatisfied, the appellant-revenue has preferred the instant appeal mainly on the ground that once the respondent-Company had availed exemption as granted vide notifications dated 01.03.2002, 14.05.2003 and 29.07.2003 respectively, then it was required to follow the conditions prescribed thereunder, in letter and spirit. It was required to pay an amount equivalent to cenvat credit taken on the inputs lying in stock or in process or inputs contained in the final products on 07.08.2003 before opting for payment of concessional rate of duty @8% ad valorem under notification dated 29.07.2003 and without paying the said amount, it was ineligible to pay 8% ad valorem cenvat duty, but less duty had been paid thereby evading payment of tax. While submitting that the Tribunal had wrongly set aside the order imposing interest on the balance amount of Rs.21,32,778/- and

penalty, it was prayed that the impugned order as passed by the Tribunal was liable to be set aside.

6. The following substantial questions of law have been framed in this case:-

“(i) Whether, the Tribunal was correct in setting aside the demand of Rs.1,66,33,067/- (Rupees One Crore Sixty Six Lakh Thirty Three Thousand Sixty Seven) equivalent to Cenvat Credit taken by the Company on inputs in stock, in process or inputs contained in their final products and required to have been paid before effecting clearance under Notification No.60/2003-CE dated 29.07.2003 under Rule 12 of the Cenvat Credit Rules, 2002 read with proviso to Section 11A(1) by invoking the extended period?

(ii) Whether, the Tribunal was correct in setting aside the interest on the Rs.1,66,33,067/- (Rupees One Crore Sixty Six Lakh Thirty Three Thousand Sixty Seven) recoverable from the Company from the date of the amount becoming recoverable i.e. 07.08.2003 to the date of actual payment under Rule 12 of the Rules read with Section 11AB of the Act?

(iii) Whether, the Tribunal was correct in setting aside the Penalty of Rs.20,00,000/- (Rupees Twenty Lakhs Only) imposed on the Company under Rule 25 of Central Excise Rules, 2002 as well as the penalty of Rs.50,000/- (Rupees Fifty Thousand Only) each

imposed on Sh. R.K. Lakhotia, General Manager (Finance) and on Sh. K.Shankaranlyer, Senior Manager (Excise) of the party under Rule 26 of the Central Excise Rules, 2002?”

7. Learned counsel for the appellant-revenue argued that the Tribunal had committed an error in setting aside the orders passed by the assessing authority and by exempting the respondent from payment of interest and penalty since as per Rule 6 of the Rules, 2002, the respondent was not entitled to avail the benefit of cenvat credit without complying with the conditions contained in amended notifications and Rules, 2002. Therefore, he urged that the impugned order was liable to be set aside.

8. Per contra, learned counsel for the respondent submitted that the order passed by the Tribunal deserved to be upheld as it was well reasoned and based on proper appreciation of the material placed on record as well as position of law. The respondent had already availed the cenvat credit on the inputs used in manufacturing of final products when the rules were amended in pursuance of notifications dated 14.05.2003 and 29.07.2003 and the benefit of the cenvat credit once given could not be reversed due to subsequent exemption of the final products from duty. He argued that the right to avail credit was taken legally at the time when the final product was exigible to duty and credit of duty on inputs could not be utilized in any other manner. In support of his argument, learned counsel for the respondent placed reliance upon authorities cited as **Commissioner of Central Excise, Panchkula v. HMT (TD) Ltd.**, 2015 (322) E.L.T. 342 (P&H), wherein a Coordinate Bench of this Court which was dealing with a similar matter, had observed that it was not in dispute that the assessee had

paid the duty on inputs used in the indicated manufacturing of final goods, he had maintained separate accounts/record, duly entered credit of duty paid on the inputs in the manufacture of final goods and validly availed the cenvat credit. It was held that the same could not be reversed on the ground that the final products which were agricultural tractors, were subsequently exempted from tax; **Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd.**, 1999 (112) E.L.T. 353 (S.C.), wherein, the manufacturer had obtained credit for excise duty paid on raw material to be used by him in the production of an excisable product. Immediately thereafter it had made the requisite declaration and had obtained acknowledgement thereof. The Hon'ble Apex Court observed that once the credit had been validly taken, then the manufacturer was entitled to use the same at any time thereafter. It was observed that there was no provision in the rules which provided for reversal of credit by the authorities except where it had been illegally or irregularly taken; **Tractor and Farm Equipment Ltd. v. Commissioner of Central Excise, Madurai-II**, 2015 (320) E.L.T. 357 (Mad.), wherein, the credit was taken at the time when final products were exigible to duty. It was held by Hon'ble Apex Court that the same was not liable to be reversed as there was neither statutory provision to do so nor exemption to finished goods was subject to such condition nor there was any co-relation between raw material and final product and; **Commissioner of Central Excise, Chandigarh v. Saboo Alloys Pvt. Ltd.**, 2010 (249) E.L.T. 519 (H.P.), wherein, the question which had fallen for consideration was whether a manufacturer was required to reverse the cenvat credit taken by him in respect of inputs proved to have used in the manufacture of goods which were exempted from excise duty in view of provisions of Rule 6 (1)

of Cenvat Credit Rules, 2004 which provided that no credit could be taken in respect of inputs which were used in the manufacture of exempted goods. The High Court of Himachal Pradesh observed that the assessee could be asked to reverse the modvat credit already taken by it even though the final product might be exempted from payment of excise subsequently.

9. On applying the ratio of law as laid down in the authorities cited above to the present case, it is crystal clear that the cenvat credit had been taken by the respondent-department when the final products were exigible to duty. It was availed on inputs till the date of exemption vested in assessee. The respondent could not be divested of that credit as there was no statutory provision to do so. The right to avail credit is indefeasible and there cannot be stated to be any co-relation between the raw material and the final product; that is say, it is not as if the credit could be taken only on final product that was manufactured due to the particular raw material to which the credit was related. It is nobody's case that credit of duty on inputs was taken by the respondent illegally or irregularly. As such, in our opinion, the subsequent exemption of final products manufactured by the respondent from excise duty did not make the respondent assessee liable to reverse the cenvat credit availed as the same was given to it on the date when the final product was not exempted.

10. In view of the discussion as made above, it is held that the respondent was certainly entitled to benefit of cenvat credit in the obtaining circumstances of the case and, therefore, the question of payment of any interest or penalty by the respondent or its officers did not arise. The substantial questions of law are answered accordingly in favour of the respondent and against the appellant.

11. For the reasons recorded above, it is held that there is no merit in the appeal filed by the revenue. Accordingly, the same is hereby dismissed.

(RITU BAHRI)  
JUDGE

(MANISHA BATRA)  
JUDGE

02.02.2023  
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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |