

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
SZB, CHENNAI

COURT : No. III - DB

**APPEAL No. E/40310 of 2021-DB**

(Arising out of Order-in-Original No. 07/2021 dated 27.02.2021 passed by the Commissioner of CGST & CE (Appeals), Chennai).

**M/s. Heavy Vehicles Factory**

Near Head Post Office,  
Avadi Camp, HVF Estate,  
Chennai-600 054.

**Appellant**

Vs.

**The Commissioner of GST & CE**  
**Respondent**

Chennai Outer Commissionerate,  
Newry Towers, Plot No. 2054, I Block,  
12<sup>th</sup> Main Road, 2<sup>nd</sup> Avenue,  
Anna Nagar West, Chennai 600 040.

APPEARANCE

FOR APPELLANT : Shri G. Natarajan, Advocate

FOR RESPONDENT : Ms. K. Komathi, ADC, Authorized Representative

**CORAM**

**Hon'ble Ms. Sulekha Beevi, Member (Judicial)**  
**Hon'ble Shri P. Anjani Kumar, Member (Technical)**

Date of Hearing: **24.01.2022**

Date of Pronouncement: **31.01.2022**

**FINAL ORDER No. 40013/2022**

**Per: Anjani Kumar**

Appellants, M/s. Heavy Vehicles Factory are engaged in the manufacture of battle tank, armoured fighting vehicles,

etc., and are availing exemption contained in Notification No. 62/1995-CE dated 16.03.1995. On rescinding of the said Notification, the appellant obtained Central Excise Registration with effect from 01.06.2015 and have availed Cenvat Credit of Rs. 34,72,54,650/- paid on inputs in stock, work in progress and finished goods. A Show Cause Notice was issued and was followed by an Order-in-Original No. 7/2021 dated 27.02.2021, holding that the credit, availed by the appellants, is not admissible to them in terms of proviso to Rule 4 (1) of the Cenvat Credit Rules,2004 (CCR,2004 in short), as the credit can be availed only within one year from the date of invoice. Hence, this appeal.

**2.1** Learned Counsel for the appellant submits that as per Rule 4 (1) of CCR, 2004, credit can be availed on receipt of inputs; it has been clarified by CBEC vide F. No. 345/2/2000TRU dated 29.08,2000, in respect of the earlier provisions of Rule 57 AC that

*Rule 57AC provides that Cenvat Credit may be taken immediately on receipt of inputs in the factory. Some apprehensions have been expressed that if the Cenvat credit is not taken "immediately" like within 24 hours or so, the field officers may deny the Cenvat credit. The idea is that if the manufacturer desires, he can take the Cenvat credit at the earliest opportunity when the inputs are received in the factory. This, however, does not mean, nor is it even intended that if the manufacturer does not take credit as soon as the inputs are received in the factory, he would be denied the benefit of Cenvat credit. Such an interpretation is not tenable.*

**2.2.** Learned Counsel submits that an outer time limit for availing the credit was introduced in sub-rule (1) and sub-rule (7) of Rule 4 with effect from 01.09.2014; Rule 3 (2) of CCR, 2004, enables a manufacturer to avail credit in respect of inputs lying in stock and contained in work in progress and in finished goods when the final product ceases to be exempted; this provision has been brought into the statute with the intention that the inputs lying in stock would be used for manufacture of final products that will be cleared on payment of duty. He submits that the provision of Rule 3 (2) of CCR, 2004 has a *Non-obstante* clause and thus takes precedence over other rules; once the provisions of Rule 4 (1) are not applicable for availment of credit under Rule 3 (2), the proviso to Rule 4 (1) is also not applicable. Learned Counsel further submits that wherever the legislature intended to cast the time limit in allowing transitional credit, it is then specifically. He submits that Section 140 (3) of the CGST Act, which allows availment of transitional credit in respect of the erstwhile duties paid on inputs lying in stock, contained in work in progress and in finished goods, which was not entitled under the legacy laws, but entitled under GST law allows such credit only in respect of the purchases made prior to one year from 01.07.2017. He submits that Rule 3 (2) of CCR, 2004, did not prescribe any time limit. The time limit prescribed by way of proviso under Rule 4 (1) would apply to only in cases where the credit has to be availed in regular course; in the instant case, the transitional credit availed upon withdrawal of

exemption could not at all have been availed immediately on receipt of inputs; as the goods were exempted at the time of receipt of inputs, credit can be taken only on withdrawal of exemption; hence, the time limit prescribed in proviso to Rule 4 (!) cannot be read into Rule 3 (2).

**2.3.** Learned Counsel further submits that in the following cases it was held that the time limit of six months (w.e.f. 01.09.2014) and one year (w.e.f. 01.03.2015) is not applicable for the invoices issued prior to 01.09.2014.

1. *Sanghvi Marmo Pvt. Ltd. – 2020 (33) GSTL 232 Tri-Del.*
2. *Neon News Pvt. Ltd. – 2019 (26) GSTL 241 Tri.-All.*
3. *Ripple Fragrances Exports Pvt. Ltd.-2018 (363) ELT 1062 Tri-Bang.*

**2.4.** Learned Counsel further submits that the issue is also hit by limitation; the appellants have sought permission from the department vide letter dated 29.04.2016 to avail the impugned credit. They have also reflected the credit in their ER-1 returns filed for the month of September, 2016; the show cause notice was issued on 27.06.2019, beyond the permissible period; he submits that the appellant being a company under the Ministry of Defence, no intention to evade payment of duty can be alleged. He relies upon the Commissioner of CCE, Hyderabad IV Vs. National Remote Sensing Agency – 2021-TIOL-1343-HC-Telangana-ST.

**2.5.** He also filed a compilation containing copies of judgements in the following cases in support of his arguments.

1	<i>Kedarnath Jute Manufacturing Co. Ltd Vs. CTO</i>	AIR 1966 SC 12
2	<i>Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subhash Chandra Yograj Sinha</i>	AIR 1961 SC 1596
3	<i>Dwaraka Prasad Vs. Dwarka Das Saraf</i>	AIR 1975 SC 1758
4	<i>Ram Narain Sons Ltd, Vs. ACST</i>	AIR 1955 SC 765
5	<i>Abdul Jabbar Butt Vs. State of J &amp; K</i>	AIR 1957 SC 281
6	<i>Voss Exotech Automotive Pvt. Ltd. Vs. CCE</i>	2018 (363) ELT 1141 Tri-Mum.
7	<i>Industrial Filters &amp; Fabrics Pvt. Ltd. Vs. CGST &amp; CE, Indore</i>	2019 (1) TMI 1426 Cestat-New Delhi
8	<i>Umesh Engineering Works Vs. CCT, Bengaluru West</i>	2019 (1) TMI 1158 Cestat-Bangalore
9	<i>Suryadev Alloys and Power Pvt. Ltd. Vs. CCE</i>	2018 (11) TMI 1019 Cestat-Chennai
10	<i>Indian Potash Ltd. Vs. CGST</i>	1018 (10) TMI 1367 Cestat-All.
11	<i>Hariprabha Chemicals Vs. CGST</i>	2018 (9) TMI 19 Cestat-Mum.
12	<i>Industrial Cables Vs. CCE</i>	2009 (236) ELT 658 P & H
13	<i>Global Ceramics Pvt. Ltd. Vs. CCE</i>	2019 (26) GSTL 470 Del.
14	<i>Bridal Jewellery Mfg. Co. Vs. CCE, Noida</i>	2018 (10) GSTL 70 (Tri.-All.)
15	<i>Uni cast Pvt. Ltd. Vs. Meerut</i>	2016 (331)ELT 369 (All.)
16	<i>Global Sugar Ltd. Vs. CCE Kanpur</i>	2016 (334) ELT 604 (All.)
17	<i>CGST Vs. Rajasthan Tourism Development Corporation</i>	2018 (28) GSTL 225 Tri.-Chen.
18	<i>TNSTC Vs. CCE &amp; ST</i>	2019 (28) GSTL 225 Tri.-Chen.
19	<i>UOI Vs. Rajasthan Spinning &amp; Weaving Mills</i>	2009 (238) ELT 3 SC
20	<i>Sanghvi Marmo Pvt. Ltd.</i>	2020 (33) GSTL 232 Tri-Del.
21	<i>Neon News Pvt. Ltd.</i>	2019 (26) GSTL 241 Tri.-All.
22	<i>Ripple Fragrances Exports Pvt. Ltd.</i>	2018 (363) ELT 1062 Tri.-Bang
23	<i>CCE, Hyderabad IV Vs. National Remote Sensing Agency</i>	2021-TIOL-1343-HC-Telangana-ST

**3.** Learned AR for the department reiterated the findings of the Order-in-Original.

**4.** Heard both sides and perused the records of the case.

**5.1** Brief issue that requires consideration in the instant case is that as to whether the appellants are entitled for credit on inputs lying in stock, work in progress and finished goods as on the date of rescinding of the exemption notification in terms of sub-rule 2 (3) of CCR, 2004, or the credit needs to be restricted to the invoices issued within a period of one year in terms of Rule 4 of CCR, 2004. For ease of reference we would like to reproduce the relevant provisions of law:-

“Rule 4. Conditions for allowing Cenvat Credit.

.....  
.....  
*Provided also that the manufacturer or the provider of output service shall not take Cenvat credit after [one year] of the date of issue of any of the documents specified in sub-rule (1) of Rule 9.”*

“Rule 3. CENVAT CREDIT

.....  
.....  
*(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take Cenvat credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.”*

**5.2.** We find that the provisions of Rule 4 are very clear as regards the time limit for availment of Cenvat credit. We find that the provisions of Rules cannot be read in isolation. The

entire set of Rules covering availment/utilization of credit i.e., CCR, 2004, has to be read in a holistic manner and interpreted in a harmonious manner. We also find that the *non obstante clause* in Rule 3 (2) is not with reference to the entire Cenvat Credit Rules but, with respect to sub-rule 1 of Rule 3 alone. It means to say that the provisions of other Rules will have to be followed and the only relaxation given is with respect to availment of credit in transition from manufacture of exempted goods to manufacture of dutiable goods. We find that Learned Commissioner has rightly observed, in the impugned order, that

*"4.5.3. Now taking into consideration the arguments of the assessee with regard to applicability of proviso to Rule 4 (1), I intend to take upon the contextual legal meaning of 'Proviso'. A proviso is a clause which is added to the statute to accept something from enacting clause or to limit its applicability. As such, the function of a proviso is to qualify something or to exclude, something from what is provided in the enactment which, but for proviso, would be within the purview of enactment. A proviso may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable and thus acquire the tenor and colour of the substantive enactment itself."*

Therefore, we are of the concerned opinion that even the transitional credit will be subjected to the provisions of Rule 4 (1) of CCR, 2004. As the position of law is crystal clear, reference to the cases cited by the appellant would be of no avail.

**5.3.** Coming to the issue of limitation, we find that the appellants have vide letter dated 29.04.2016, have intimated

the department about their intent to avail Cenvat credit. In fact, they have sought permission and approval to avail Cenvat credit in terms of Rule 3 (2) of CCR, 2004, even though the said rule does not contemplate any permission to be obtained in this regard. The department vide letter 18.07.2016, have communicated that there was no provision for seeking permission and approval; that the appellants should go through the provisions of the said Rules and satisfy themselves as to the eligibility to credit and that all the documents and records relating to the impugned capital goods, inputs and input services on which Cenvat credit was availed should be made available to the departmental officers for verification as and when required. We also find that the appellants have reflected in their ER-1 returns dated 08.12.2016 filed for the month of September, 2016. It is abundantly clear that the appellants have put the department to notice vide their letter dated 29.04.2016 and ER-1 Returns. Therefore, it was not open for the department to issue SCN dated 27.06.2019 after the lapse of more than two years there too alleging suppression of facts with intent to evade payment of duty etc. We find that there is not even an iota of truth in the allegation of the department as per the records of the case. Moreover, looking into the fact that the appellants are a company under the Ministry of Defence intention to evade payment of duty cannot be alleged. We are of the considered opinion that under the facts and circumstances of the case, even any other company could not have been charged with



suppression of facts with an intention to evade payment of duty. In view of the same, we find that the appellants have though not made out a case on merits of the issue, have certainly made out a strong case in their favour on limitation and succeed on this count.

**6.** In view of the above, we hold that the SCN is time barred and hence the appeal is liable to be allowed on this count. Accordingly, we allow the appeal with consequential reliefs, if any, as per law.

(Order pronounced in the Open Court on **31.01.2022**)

**(SULEKHA BEEVI C.S.)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**