CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Excise Appeal No. 41350 of 2017

(Arising out of Order-in-Original No.03/2017-Commr Audit Cbe. dated 15.03.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Audit), 6/7, ATD Street, Race Course Road, Coimbatore 641 018)

M/s.GlaxoSmithKline Consumer Healthcare Ltd. **.... Appellant**
S.F. No.507/1, Appanaickenpatti Village,
Coimbatore 641 407.

VERSUS

The Commissioner of GST & Central Excise (Audit) **... Respondent**
6/7, ATD Street, Race Course Road,
Coimbatore 641 018.

WITH

(2) Excise Appeal No.41351 of 2017

(Arising out of Order-in-Original No.03/2017-Commr Audit Cbe. dated 15.03.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Audit), 6/7, ATD Street, Race Course Road, Coimbatore 641 018)

M/s.Avlon Cosmetics Private Ltd. **.... Appellant**
S.F. No.507/1, Appanaickenpatti Village,
Sulur Taluk,
Coimbatore 641 407.

VERSUS

The Commissioner of GST & Central Excise (Audit) **... Respondent**
6/7, ATD Street, Race Course Road,
Coimbatore 641 018.

AND

(3) Excise Appeal No.41699 of 2019

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-118-19 dated 17.07.2019 passed by Commissioner of GST & Central Excise (Appeals), 6/7, ATD Street, Race Course Road, Coimbatore 641 018)

M/s.Avlon Cosmetics Private Ltd. .... Appellant
S.F. No.507/1, Appanaickenpatti Village,
Sulur Taluk,
Coimbatore 641 407.

VERSUS

The Commissioner of GST &
Central Excise ... Respondent
6/7, ATD Street, Race Course Road,
Coimbatore 641 018.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate for the Appellant
Shri M. Selvakumar Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.40450-40452/2026

DATE OF HEARING : 23.01.2026
DATE OF DECISION :30.03.2026

Per: Shri P. Dinesha

These Appeals though filed by different entities, arising out of two impugned orders, but since the issue involved in these Appeals is common, hence, they are heard together and taken up for common disposal.

2. Heard Shri Raghavan Ramabadran, ld. Advocate for the Appellants and Shri M. Selvakumar, ld. Assistant Commissioner for the Revenue-Commissioner.

3. Brief and undisputed facts that emerge from the impugned orders are that M/s.Glaxo SmithKline Consumer Healthcare Ltd. – Appellant in Appeal No.**E/41350/2017** [**Glaxo**, for short] has entered into an Agreement with M/s.Avlon Cosmetics Private Ltd. (Appellant in Appeal Nos.**E/41351/2017 & E/41699/2019)** [**ACPL**, for short] in terms of which, ACPL would receive Horlicks and Boost in various quantities, to be packed into pouches of 18 gms. and 15 gms. Revenue appears to have found during the course of Audit in respect of ACPL that the finished goods were exclusively cleared / sold back to Glaxo under payment of duty on abated MRP value, ACPL did not undertake any other job work, they received conversion charges from Glaxco in terms of the Agreement for the job work done, in

terms of the same Agreement, Glaxo was to provide ACPL with capital assets, install the same in the ACPL premises for use in the manufacture of end-products. It thus appeared to the Revenue-Audit party that Glaxo had purchased the required plant and machinery which was capitalized in their books of accounts, which were installed in the premises of ACPL thereby enabling ACPL to avail cenvat credit.

4. It is also an undisputed fact on record that Glaxco had been purchasing the finished goods from ACPL on payment of duty and, insofar as the capital goods like plant and machinery was concerned, it was noticed by the Audit team that ACPL had availed cenvat credit of duty paid on such capital goods though the documents like invoices revealed that the they were raised in favour of Glaxco while the consignment was delivered at the premises of ACPL. This appeared to the Revenue that ACPL had wrongly availed credit on the capital goods which were purchased by Glaxco based on ineligible documents since the invoice was not issued to ACPL and also since ACPL never paid for the said goods and nor were the goods owned by ACPL. This prompted the Revenue to assume that the said availment of cenvat credit was wrong, to be recovered since ACPL had contravened provisions of Rule 9 (1), Rules 3, 3 (5), 3 (5A)

and 4 (4) of Cenvat Credit Rules, 2004, apart from Rule 10 *ibid*. The above resulted in the issuance of a show cause notice dt. 19.01.2016 *inter alia* proposing to recover wrongly availed cenvat credit including credit availed on Basic Customs Duty (BCD) along with applicable interest and penalties.

5. It appears that the other Appellant-Glaxco was also served the same notice as a co-noticee thereby proposing impose penalty under Rule 15A of CCR. The above SCN for the period April 2012 to May 2014 apparently was issued by invoking the extended period of limitation and the reason in the SCN is that the Appellant did not inform the Department the fact of availing ineligible capital goods credit which was also, according to the Revenue, not explicitly shown in their R.R.1 returns, which came to the knowledge of the Department only at the time of a detailed verification of their accounts.

6. Both the Appellants appear to have filed their explanations/replies to the above SCN which were considered during adjudication by the Commissioner of Customs, Central Excise & Service Tax (Audit), Coimbatore and after affording an opportunity of being heard, vide impugned Order-in-Original No.03/2017-Commr. Audit Cbe.

dt. 15.03.2017, the Commissioner confirmed the proposals made in the SCN against both the Appellants and hence, the Appeal Nos. **E/41350/2017 (by Glaxco) & E/41351/2017 (by ACPL)** before us. A Statement of Demand dt. 16.03.2018 in respect of the very same SCN was issued to both Glaxco and ACPL for the period April 2016 to June 2017 which was adjudicated vide Order-in-Original No.02/2019-DC dated 26.02.2019 which was upheld vide Order-in-Appeal Nos.118 & 119/2019 by Commissioner (Appeals). Aggrieved by the order of First Appellate Authority, M/s.ACPL has filed Appeal No.**E/41699/2019** against Order-in-Appeal No.118/2019 dt. 17.07.2019 before the Tribunal.

7. We have carefully perused the impugned orders and also the documents, case law and statutory provisions referred to and relied upon during the course of arguments before us and after going through the same, we find that the following issues arise for our consideration :

(i) whether the extended period of limitation was rightly invoked by the Commissioner ?

(ii) whether there was an violation to Rule 9 of CCR as held in the impugned order and

(iii) whether the imposition of penalties under Section 11AC and Rule 15 A is justified ?

8. We find that the crux of the Revenue's case is that the Appellant viz. ACPL had availed cenvat credit based on ineligible documents and in this regard it appears that the Revenue entertained a doubt that the invoice contemplated in rule 9 *ibid* is issued only to a buyer . Rule 9 reads as under :

> **"RULE 9. Documents and accounts -** (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-
>
> **.... ....**
>
> (2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :
>
> **Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have

been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.

... ...

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit."

9. We find that the essential conditions as per CCR for availment of cenvat credit on the capital goods by a manufacturer are essentially that such capital goods are classifiable under the specific Chapter Heading of CETA; in terms of Rule 2 (a) of the CCR, such capital goods received are duty paid, such capital goods are received in the factory on or after 10.09.2004, cenvat credit is availed on the basis of document mentioned in Rule 9 *ibid*. It is an undisputed fact that the Appellant-ACPL has availed the credit on the basis of invoices though not issued to them but, however, a perusal of same which is part of the Appeal Memorandum reveals that ACPL's name and address do figure in the invoices and, ACPL has been mentioned as 'consignee' in all

the excise invoices. Even the shipping address also mentioned the address of ACPL and in respect of the imported goods the endorsement on the Bill of Entry also clearly reveals that the said machines were to be delivered at the premises of ACPL under the instructions of Glaxco. It is also an undisputed fact on record that Glaxco had not availed any cenvat credit in respect of the goods in question. The reliance placed by the Appellant on CBEC's Circular No.146/57/95-CX. dt. 12.09.1995 throws light in this regard, wherein the Board has clearly issued instructions that where inputs are supplied to a job worker's premises under the instruction of the manufacturer, the consignee is the job worker and the invoice reveals the consignee's name and address along with the name and address of the manufacturer under whose instructions the goods have been despatched, the duplicate copy of the invoice under Rule 52A of the erstwhile Modvat regime would serve as a cover for transport and for availment of Modvat by the job worker. In this regard, we find that the Hon'ble Allahabad High Court in the case of **Uni Cast Pvt. Ltd. CCE Meerut** [2016 (331) ELT 369 (All.) has clearly held that a job worker is entitled to avail credit on the basis of invoices endorsed by the

principal as long as the goods are received, utilized in the manufacturing process and cleared upon payment of duty.

10. We also find that the above view has been reiterated in the decisions / orders relied upon by the Appellants.

11. In view of the above discussions, we are of the view that the allegation of the Revenue that ACPL had availed ineligible cenvat credit is clearly unsustainable and is also not supported by any statutory provision and hence, the demand in the impugned orders cannot sustain. For these very same reasons, penalties imposed on both the Appellants lack merit and hence, same are also liable to be set aside.

12. In the result, we set aside the impugned orders and allow the Appeals with consequential benefits, if any, as per law.

(Order pronounced in open court on 30.03.2026)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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