

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI  
REGIONAL BENCH,**

COURT NO. IV

**Excise Appeal No. 85879 OF 2021**

(Arising out of Order-In-Appeal No. AJV/243-44/RGD APP/2020-21 dated 12.02.2021  
passed by Commissioner of CGST (Appeals), Navi Mumbai)

**M/s. Thermo Fisher Scientific India Pvt. Ltd.**

403-404, Delphi, B-wing,  
Hiranandani Business Park, Powai, Mumbai,  
Maharashtra – 400 076.

**Appellant**

Vs.

**Commissioner of CGST & Central Excise,  
Belapur**

CGO Complex, 10, CBD Belapur,  
Navi Mumbai,  
Maharashtra – 400 614.

**Respondent**

**AND**

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Navi Mumbai,  
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**Respondent**

**Appearance:**

Shri Mohan V. Paranjape, Consultant for the Appellant.

Shri Rajiv Ranjan, Assistant Commissioner, Authorized Representative for the  
Respondent.

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

Date of Hearing: 06.04.2026

Date of Decision: 05.05.2026

**PER : DR. SUVENDU KUMAR PATI**

**FINAL ORDER NO :- A/85627-85628/2026**

Confirmation of demand alongwith interest and equal penalty, invoking extended period by the adjudicating authority against non-reversal of Cenvat credit taken on SAD component to the tune of Rs. 4,77,073/- and 1,13,366/, while transferring input 'as such' from one unit of appellant's firm to its other unit, as mandated under Rule 3 (5) of the Cenvat Credit Rules, 2004, that received approval of Commissioner (Appeals) vide his above noted order, is assailed before this Tribunal.

2. Fact of the case, in a nutshell, is that Appellant is a manufacturer of panel and apparatus belt converter and accessories etc., who had been availing Cenvat credit on inputs including imported goods. Appellant cleared certain imported input 'as such' from one of its factory unit at Navi Mumbai to another unit during the period from 25.03.2016 to 31.01.2017 against 18 bills of entry and from June, 2016 to January, 2017 against 10 bills of entry. During such transfer, Appellant had reversed Cenvat credit taken on CVD and education cess but not on SAD, which lapse was dictated during Special Audit by the DG Audit team and on refusal in writing to make such payment/reversal of credit taken, show cause cum demand notice were issued invoking Section 11A (4) for recovery of duty with interest and penalty that was adjudicated and confirmed by the adjudicating authority and upheld by the Commissioner (Appeals) by way of rejection of assessee Appellant's appeals filed before him. In these two appeals, legality of the order passed by the Commissioner (Appeals) is assailed before this Tribunal.

3. During the course of hearing of the appeals, learned consultant for the appellants Mr. Mohan V. Paranjape submitted that due to lack of knowledge of their staff and such transfer was not being regularly made from one unit to another, they inadvertently failed to make reversal of SAD component which was not being pointed out during EA 2008 Audit conducted by the Department

in June, 2017 and they had no ill intention to suppress such fact or desire to not make any reversal, as reversal in one unit of appellant would have gone as a credit in the other unit of appellant, who received the goods namely raw materials. With reference to Orbit Fabric Ltd Vs. C.C.E, Vadodara order passed by this Tribunal as reported in 2009 (248) E.L.T. 359, he submitted that it was a bonafide error for which no demand should have been made by invoking extended period since the said Special Audit was made after the normal period of limitation was over. Further, when the credit was available at the other unit, the entire case was of Revenue neutrality, which is covered by precedent decisions of this Tribunal passed in the case of Mahindra & Mahindra Ltd Vs. C.C.E, Mumbai, 2019 (368) E.L.T. 105 and others. In citing further decisions of this Tribunal passed in other several cases including final orders passed in Pushpam Pharmaceuticals Company Vs. C.C.E Mumbai, 1995 (78) E.L.T. 401, Bengal Steel Industries Vs. C.C.E, Kolkata 2005 (192) E.L.T. 343 *viz-a-viz* CBEC circular dated 10.03.2017, he also argued that suppression to evade payment of duty is to be proved with concrete evidence by the department which they failed to discharge in the instant case since intention or the *mens rea* was found to be absent in the entire transaction for which the order passed by the Commissioner (Appeals) is required to be set aside.

4. *Per contra*, learned Authorized Representative Mr. Rajiv Ranjan, Assistant Commissioner strongly objected the arguments led by learned counsel for the appellants and argued in support of the reasoning and rationality by the order passed by the Commissioner (Appeals). Drawing attention of this Bench to the ER-1 return filed by the appellants, he pointed out that 12<sup>th</sup> row of the ER-1 return specifically provides column to make declaration of credit reversed on goods cleared 'as such' and such omission constitute willful suppression as has been held by Hon'ble Supreme Court in the case of Union Of India Vs. Dharmendra Textile Processors, 2008 (231) E.L.T. SC. His further argument, on the point of mistake made by the

staff/clerk is that assessee company is that it was under self-assessment for which legal obligation cannot be waived for its internal errors. On the point of Revenue neutrality, he argued that the same is completely inapplicable since no payment has been made that would have enabled the appellant to avail credit at the second Unit and it is a settled principle of law, as has been decided in several matters of this Tribunal and Hon'ble Supreme Court namely in the case of Commissioner of Central Excise, Pune Vs. Cardboard India Ltd, 2023 (4) CENTAX 257 (Tri- Mumbai), Star Industries Vs. Commissioner of Customs (Imports), Raigad reported in 2015 (324) E.L.T. 656 (SC) and Mahindra and Mahindra Ltd Vs. Commissioner of Customs, Central Excise Mumbai-IV reported in 2018 (362) E.L.T. 382 (Tri- Mumbai), such revenue neutrality cannot be justified for the reason that credit of duty paid would be available to some other unit or to its job-worker, for which order passed by the Commissioner (Appeals) need not be interfered with.

5. In rebuttal, learned counsel for the appellant tried to distinguish the above three judgments referred by learned Authorized Representative in stating that in all those cases extended periods were not invoked and since Rule 9 of the Cenvat credit Rules under paragraph 4 clearly stipulates that if duty becomes recoverable from the manufacturer or importer on inputs or capital goods on account of any non-levy, short levy etc by reason of fraud, collusion or any willful mis-statement or suppression of facts etc., then Cenvat credit cannot be taken on those inputs. Further, he placed reliance on the decision of this Tribunal rendered by the Larger Bench in the case of Jay Yushin Ltd. Vs. C.C.E. New Delhi as reported in 2000 (119) E.L.T. 718 (Tri- LB) to justify that Section 11A (4) of the Central Excise Act is invocable, where no legal infirmity in invoking the provision of Section 11A (1) is shown to exist.

6. I have carefully gone through the appeal paper book, submissions made by the adversaries and relied upon decisions on the issue. At the outset, it is required to be placed on record that there is admission by the appellant that

such reversal of SAD component on imported inputs was required to be made but because of inadequate knowledge of their staff, it was not given effect to and if it was paid they would have been entitled to receive back the same amount as input in their other unit to which goods were transferred but when the matter was brought to the appellants knowledge by the Special Audit, they refused in writing to reverse the credit or refund the amount on the ground that more than two years have passed for which differential duty cannot be demanded under Section 11A (1) of the Central Excise Act, 1994, as barred by limitation and provision of Section 11A (4) cannot be invoked against them in the instant case in view of binding precedent developed through various judicial decisions that it was a revenue neutral situation without having any ill intention to evade payment of duty. As revealed from their letter dated 13.09.2019, marked as Exhibit E that has been annexed to appeal paper book at page no. 26, in respect of other two components namely payment of Service Tax on excess recovery of freight etc. they had discharged the Service Tax so as to avoid future litigation. This being so, it can only be said that though revenue neutrality plea has been taken in the said letter, as revealed from the argument led by the learned counsel for the appellants, any payment made by appellants after the normal period since not be covered under Section 11A (2) of the Central Excise Act, 1994 to restrict service of notice upon payment of the duty before issue of show cause within two years and allegation of suppression etc. has made in the show cause, it would preclude the appellant from getting the benefit of Cenvat credit as being hit under Rule 9(1)(b) of the Cenvat Credit Rules, 2004, for which Appellant choose to restrain itself from making such payment or reversal as it would not be entitled to Cenvat credit for the said amount. Therefore, the Revenue neutrality plea taken by the appellant is not at all applicable in the instant case.

7. As could be seen from the written submission and index of case law compilation filed by learned Authorized Representative, in the case of Star

Industries cited supra, Hon'ble Supreme Court dealt with the aspect of Revenue neutrality and confirmed this Tribunal's decisions passed in the case of Cardboard India Limited (Respondent), cited supra. It would be worthwhile to reproduced paragraph 35 of the said judgment of Hon'ble Supreme Court for the better clarity.

*"35. It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit."*

In addition to the above observation, I would also be tempted to note here that the ratio of the Larger Bench decision of this Tribunal passed in the case Jay Yushin Ltd., cited supra also goes against the appellant since in clear and un-ambiguous term, it has been observed in the same decision that Revenue neutrality being a question of fact, the same is to be established in respect of facts of the case and not by merely showing the availability of an alternative scheme and that the credit should be available to the assessee itself and not to its buyer or job worker etc.

7.1 In the instant case, Appellant claims that the other unit is its own manufacturing unit located at another place but the fact that availment of credit by the receiving unit had ceased to exist by the time appellant was subjected to show cause cum demand notice with invocation of extended period and therefore the possibility of availment of the reversal of SAD made at one unit by its another unit is completely ruled out since it is hit by Rule 9(1)(b) of the Cenvat Credit Rules, 2004 and invocation of extended period in this case seems to have been quite justified for the reason that after being pointed out for such payment, Appellant refused to pay for the reason that

department won't have the option to recover the same and if recovery is made by the invoking extended period, it would seek recourse to judicial precedent on the issue but the factual aspect itself would justify that with full knowledge and consciousness appellant had, infact, evaded payment of duty that would attribute to its intention, apart from the fact that such transfer has not been acknowledged in its ER-1 returns at its appropriate column (12<sup>th</sup> row). Hence, the order.

### **The Order**

8. Both the appeals are dismissed and the order passed by the Commissioner (Appeals) vide order no. AJV/243-44/RGD APP/2020-21 dated 12.02.2021 is hereby confirmed.

(Order pronounced in open court on 05.05.2026.)

**(Dr. SUVENDU KUMAR PATI)**  
**MEMBER (JUDICIAL)**

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