

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 1996 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No

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INDUCTOTHERM INDIA PVT LTD & ANR.

Versus

UNION OF INDIA THROUGH SECRETARY & ANR.

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Appearance:

MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2

MR CB GUPTA(1685) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

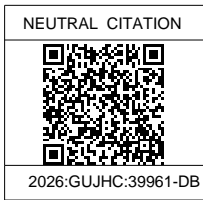
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 24/06/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present petition the petitioners have prayed for quashing and setting aside the communication dated 13.01.2014 issued by the Assistant Commissioner, Central Excise rejecting the request of the petitioner for re-credit of Rs.1,68,99,531/- and Rs.2,05,33,931/- and further direction is



for directing the respondent No.2 to allow re-credit of Rs.3,74,33,462/- in the petitioners' Cenvat Register.

2. The petitioner - Company is a manufacturing excisable goods like induction, melting / heating furnace, welder and parts etc., and has been discharging liability of payment of excise duties on the goods manufactured and cleared from the factory as prescribed under the Central Excise Act, 1944 (for short 'the Act').

3. A show cause notice dated 05.10.2006 was issued by the respondent authority proposing to recover an aggregate amount of Rs1,69,04,271/- by invoking Section 11D of the Act the ground that the petitioner - Company had paid the above amount as excess duty in excess compared to the Cenvat credit which was required to be reversed. Another show cause notice for the period from 01.01.2006 to 30.06.2006 demanding an aggregate amount of Rs.36,29,660/- was also issued. It appears that thereafter with a common original order dated 27.02.2007 the Commissioner confirmed the excise duty demand raised in both the notices and imposed a consolidated penalty of Rs.5,00,000/- covering both the show cause notices and ordered recovery of total sum of Rs.2,05,33,931/- under Section 11DD of the Act.

4. The petitioners challenged the order of Commissioner before the Customs, Excise and Service Tax Appellate Tribunal (for short 'the Tribunal') and the Tribunal by the order dated 14.05.2007 allowed the assessee's appeal, which was subject matter of challenge before this Court in Tax Appeal No.1744 of 2007.



5. This court, by the judgment and order dated 28.06.2012 [2012 Volume-283 ELT 359 (Gujarat) Commissioner of Central Excise, Ahmedabad II Vs Inductotherm (I) Pvt. Ltd.] allowed the Tax Appeal filed by the Revenue by holding that, the petitioner had collected certain amount from the purchasers representing the same as excise duty and such amount was required to be paid to the Central Government in terms of Section 11D of the Act and the same not having been done the Department was within its right to seek recovery thereof. This court had also noted Rule 5 of the Cenvat Credit Rules, 2004 (for short 'the Rules') which permits refund of Cenvat credit under certain circumstances and the utilization of Cenvat credit by the petitioner company for the purpose of payment of unauthorizedly collected excise duty was impermissible under the Rules. After the aforesaid judgment, the petitioner deposited the amount of excise duty of Rs.2,05,33,931/- on 22.02.2013 and thereafter an amount of Rs.1,68,99,531/- on 14.11.2013.

6. After such deposit of the excise duty, the petitioner vide communication dated 08.01.2014 requested the respondent Department that since the dispute between the company and the Department no longer survives from February, 2008 and as they have been paying amount from Personal Ledger Account (for short 'PLA') on the enhanced price of such units, the petitioner requested to re-credit of such amount which was paid in cash pursuant to the decision of this Court and hence, as a natural corollary, the amounts debited from Cenvat credit cannot be retained by the Department and therefore corresponding re-credit would be necessary so as to regularize the situation.

7. By the impugned communication dated 13.01.2014, the Assistant



Commissioner, Central Excise rejected the request of the petitioner for re-credit of the amount paid in cash towards duty by recording that there is no provision in the Central Excise Act or Rules permitting an assessee to take re-credit *suo motu* of Cenvat already paid or debited from the Cenvat account and the only recourse left is to apply for refund of the said Cenvat credit. The petitioner vide communication dated 21.1.2014 again reiterated the request and pointed out that there is no bar or prohibition under any provision of the Act or Rules against regularization by way of re-credit when the assessee has deposited the same amount through PLA pursuant to the judgment of the High Court. It was reiterated that if the petitioners are not allowed to take re-credit of the amounts, it would be double payment for the same subject matter. By the communication dated 23.1.2014, the respondent authority again re-rejected the request by assigning the same reasons.

8. Such action of the respondents is challenged in the present writ petition.

9. Learned counsel Mr. Paresh M. Dave, appearing for the petitioner, has submitted that the petitioner is not seeking *suo motu* re-credit of the amount, but the amount which has been deposited from PLA pursuant to the judgment of this Court and equal amount debited from Cenvat account when the inputs and bought outs were cleared, and the credit was utilized by the petitioner company, the same is now required to be re-credited in the Cenvat Account.

9.1 Learned counsel Mr. Dave has placed reliance on the decision of the Madras High Court in the case of ICMC Corporation Ltd., Vs.

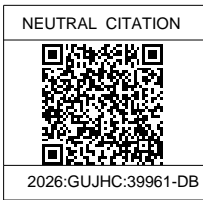


CESTAT, *Chennai*, 2014 (302) ELT 45 (Madras) and has submitted that the Madras High Court in case of assessee claiming the re-credit of Cenvat *suo-motu* has held that the process of re-credit is only an account entry reversal and factually there is no outflow of funds from the assessee to result in filing application under Section 11B of the Act claiming refund of duty. On same lines, reliance is placed on the decision of Allahabad High Court in the case of Krishnav Engineering Ltd., Vs. CESTAT, 2016 (Volume-331) ELT 391 (Allahabad).

9.2. It is submitted that thus the provisions of Section 11B of the Act claiming refund would not apply in the particular set of facts, more particularly, in view of the Clause (7) of the Excise Manual, which permits that the payment of refund is required to be paid by a cheque on the authorized bank and the petitioner is not claiming the amount, but re-credit of the excise duty, which was already paid by the petitioner from his Cenvat Account in the first instance. Thus, it is urged that the action of the respondents may be quashed and set aside.

10. In response to the aforesaid submissions and objecting to the present writ petition, learned Senior Standing Counsel, Mr.C.B.Gupta, has submitted that the petitioner can file a refund application under Section 11B of the Act claiming refund of the duty. It is submitted that the *suo motu* re-credit of the Cenvat amount is impermissible, as there is no provision provided in the Act or the Rules permitting the assessee re-crediting the amount *suo motu*.

10.1 In support of his submission, he has placed reliance on the decision of the Larger Bench of this CESTAT, Mumbai, in case of BDH.



Industries Ltd., Vs. Commissioner of Central Excise (Appeals) Mumbai-1.

11. We have heard the learned advocates appearing for the respective parties at length. The facts which are established from the pleadings and record are that the petitioner was subjected to the recovery proceedings by issuance of show cause notice dated 05.10.2006 alleging that the aforesaid amount which was debited from the Cenvat credit was *dehors* the provisions of the Act and the Rules. Ultimately, the dispute landed before this Court in Tax Appeal No.1744 of 2007. By the judgment and order dated 28.6.2012 the Coordinate Bench of this Court set aside the order of the Tribunal which was in the favour of the petitioner company by upholding the action of the Department to seek recovery of the amount collected towards excise duty and encashing the unutilized credit in the Cenvat Account. The Coordinate Bench held that Rule 5 of the Rules, 2004 permitted refund of Cenvat credit under certain circumstances and the utilization of Cenvat credit by the petitioner for the purpose of payment of unauthorizedly collected so-called excise duty was impermissible under the Rules. Ultimately the action of the respondent Department in imposing the penalty was upheld by this court. Accordingly, the petitioner paid the amount in cash from PLA. The petitioner thereafter sought recredit of amount of Rs.1,68,99,531/- and Rs.2,05,33,931/- for the reason that at the relevant time i.e. before the dispute had arisen the corresponding amounts were debited and paid from the Cenvat credit. The petitioner sought recredit of such amount towards its Cenvat Account which has been denied by the respondents by recording that there is no provision in the Act or Rules to recredit the Cenvat *suo motu*. Accordingly, he was advised to file an appropriate application for refund of the Cenvat credit.



12. It is not the case of the petitioner that they are seeking *suo motu* of the re-credit of the Cenvat already paid, but they have requested the respondent Department to deposit the equal amount deposited by them in cash through PLA. It was thus urged that the aforesaid amount may be regularized by way of re-credit in their Cenvat Account. The petitioner had categorically in their representation informed the Department that the refund of the Cenvat credit would not be in accordance with the Act or Rules because refund of this Cenvat credit would result in a situation as they have to receive the same amount in cash, and the such action would not be permissible. Thus, it is not in dispute that there has been a double payment made by the petitioner. Initially, by utilizing his credit from his Cenvat Account, which is found to be impermissible by this Court, and secondly, by paying cash from his PLA account.

13. In our considered opinion, the respondent Department, on receipt of the excise duty paid by the petitioner through cash from PLA, ought to have re-credited the amount which was utilized by the petitioner by availing the credit from his Cenvat Account. As on today, there is no credit in the Cenvat Account of the petitioner which the Department was supposed to deposit after acceptance of cash through PLA. The petitioner company indubitably debited a total amount of Rs.3,74,33,462/- from legally availed Cenvat credit on the inputs and bought outs removed, and since the petitioner has now paid the said amount again from PLA in view of the judgment of the High Court, the re-credit of the amount debited from the Cenvat Register is the only plausible way to get the amount adjusted, or else there would be double recovery. The coordinate bench in tax appeal has held the claim of refund of such credit illegal, and



thereafter asking the petitioner to again avail the credit by refund through cash, would result in the same situation. If the department's submission is accepted and refund under Section 11B of the Act is sanctioned, then it would result in the same scenario which was not countenanced by this court while allowing the revenue's tax appeal since the payment of refund would in cash. The action of petitioner of collecting duty cash after paying duty in Cenvat has been set aside by this Court by allowing tax appeal of the revenue. Thus, the Department is required to re-credit the amount and cannot keep with itself and compel the petitioner to file the refund application by invoking the provisions of Section 11B of the Act in peculiar facts of the case.

14. As reflected from the impugned communication, the request of the petitioner for re-credit has been mistakenly treated as if the petitioner wanted to resort to the *suo motu re-credit*. On the contrary, the respondent Department after the deposit of the amount of duty from PLA should have *suo motu* sanctioned and re-credited the amount. Hence the writ petition succeeds, the impugned communication dated 13.1.2014 is hereby quashed and set aside. The respondents are directed to sanction and re-credit the amount of Rs.3,74,33,462 in the electronic credit ledger maintained under the GST law in view of the change in tax regime. The present direction shall be complied within a period of six weeks from date of receipt of the present order.

Sd/-
](A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI, J)

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