Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 02

Excise Appeal No. 11111 of 2019

[Arising Out of Order-in-Appeal No. KCH-EXCUS-000-APP-049-2019 Dated-02/04/2019 passed by the Pr. Commissioner (Appeals), GST & Central Excise, Rajkot)

Panasonic Life Solutions India Private Limited **.....Appellant**
Unit-I, Electrical Division, Survey No. 234-236, Bhuj-Bhachau Road,
Village Lakhond, Taluka Bhuj, Kutch-Gujarat

VERSUS

Commissioner of CGST & and Central Excise (Gandhidham) **...Respondent**
Central Excise Bhavan, Plot No. 82, Sector 8,
Gandhidam (Kutch), Kachchh, Gujarat, 370201

APPEARANCE:
Shri Kevin Gogri, Advocate for the Appellant
Shri R. R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10574/2026

DATE OF HEARING:26.02.2026
DATE OF DECISION:24.08.2026

SATENDRA VIKRAM SINGH

M/s. Panasonic Life Solutions India Private Limited Kutch (Appellant) are engaged in the manufacture of Glass Shell, Wires & Cables, Ceiling Fan, Switch Gear, etc. They are availing benefit of Notification No. 39/2001-CE dated 31 July, 2001 as amended from time to time which grants exemption to specified goods from so much of the duty of excise or additional duty of excise as was equivalent to the duty payable on value addition undertaken by the manufacturer. The duty payable of value addition was calculable as certain percentage of the total duty payable on excisable goods as specified for different commodity groups as per table in Para 2 of the notification. Para

2C of this notification gives them option subject to several conditions, to take credit of monthly refundable amount calculated in the manner as specified in Para 2 of the notification, in the account current, instead of disbursement of cash refund as per Para 2B.

1.1 It was noticed during audit that the appellant had taken *suo moto* credit of Rs. 54,00,034 in account current in April, 2010 by endorsing as "Re-credit (08-09 annual)" in violation of the provisions of above notification. A show cause notice dated 29.02.2016 was issued to the appellant proposing recovery of above credit under Section 11A read with Notification No. 39/2001 along with interest under Section 11AA and penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules 2002. During adjudication, Joint Commissioner vide order dated 25.01.2018 confirmed the recovery of credit of Rs. 54,00,034/- along with interest and also imposed equal penalty under Section 11AC read with Rule 25 of the Central Excise Rules, 2002.

1.2 Aggrieved with this order, appellant filed appeal before Commissioner (Appeals), on the ground that:(a) Re-credit for financial year 2008-09 was taken in April 2010 and therefore, show cause notice issued on 29.02.2016 for recovery after 6 years is hit by limitation. (b)They submitted application to the Jurisdictional Assistant Commissioner for re-credit of duty in their PLA on 11.05.2009 which has not been decided by the authority. The Learned Commissioner (Appeals) after considering various submissions, rejected their appeal and upheld the order of the lower authority. Hence, this appeal before the Tribunal.

2. In their appeal, appellant took the following grounds and pleaded to allow appeal by setting aside impugned order:

a) The show cause notice for recovery is hit by limitation as *suo moto* credit was taken in April 2010 but show cause notice has been issued on 29.02.2016. They rely on the decision of CESTAT Ahmedabad in the case of Parle Product Pvt. Ltd. vs. Commissioner of Central Excise, Rajkot reported in 2009 (237) E.L.T 579 (Tri.-Ahmd.) which has also been affirmed by Hon'ble Gujarat High Court as reported in 2010 (20) STR 179 (Guj.).

b) Hon'ble Supreme Court in the case of Government of India Vs. Citedal Fine Pharmaceuticals (Mad.), AIR 1989 SC 1771 has held that in absence of any period of limitation, every authority should exercise the power within a reasonable period. The show cause notice issued to them after 7 years from the date of their letter to the Assistant Commissioner, cannot be said to be a reasonable period. They also rely on the decision of Hon'ble Gujarat High Court in the case of Valley Valvet P. Ltd Vs. Union of India reported in 2008 (222) ELT 352 (Guj.).

c) The notification No. 16/2008-CE dated 27.03.2008 & 33/2008-CE dated 10.06.2008 which restricted refund amount have been set aside by Hon'ble Gujarat High Court in the case of SAL Steels Limited reported at 2010 (260) ELT 185 (Guj.) which held that these notifications are bad in law and the eligible units are entitled to benefit as per the original notification. Similar view has been taken in the case of Sun Pharma Laboratories Ltd Vs. UOI 2018 (360) ELT 609 (Sikkim) and Reckitt Benckiser Vs. UOI 2011 (269) ELT 194 (J&K).

d) The Appellate Authority has wrongly observed that there is no provision in the notification to take *suo moto* credit of differential duty on annual basis which was to be granted only by way of refund. This interpretation will make para 2.2 of the Notification redundant as the refund of annual differential amount in terms of this Para will not be available where a unit opts for re-credit facility in terms of Para 2C of the notification.

e) They submitted the detailed working of annual differential amount in terms of Para 2.2 of the notification with the Assistant/Deputy Commissioner of Central Excise on 11.05.2009 which was to be decided in a time bound manner, but same is still pending for disposal. By submitting the said application, they had complied with the provisions of the notification and it was on the department to have decided the eligible amount of refund.

f) They had intimated the Jurisdictional Assistant Commissioner about re-credit of differential amount vide letter dated 11.05.2009 and hence, there cannot be any allegation of collusion or wilful mis-statement or suppression of facts or fraud. Therefore, no penalty is imposable on them under Section 11AC/Rule 25 of the Central Excise Rules, 2002. They rely on the following decisions: -

   (i) Saurashtra Cement Ltd reported in 2010 (260) ELT 71 (Guj.)

   (ii) Amrit Foods Vs, Commissioner of Central Excise-2005 (190) ELT 433 (S.C).

3. During arguments, learned advocate Shri. Gogri pleaded that they are entitled to avail annual differential refund under Para 2.2 of the Notification No. 39/2001-CE through *suo moto* credit even though, they had opted for *suo moto* monthly re-credit under Para 2C of the said Notification. He argued that the appellant had filed application/statement for permitting refund of annual differential duty for financial year 2008-09 with the Jurisdictional Assistant Commissioner on 11.05.2009 which as per Para 2.2(2) of the notification, was supposed to be decided not later than 15th May, 2009. However, even as on date, appellant has no clue about outcome of their above application. He submits that no decision has so far been taken in re-credit application filed by them which as per notification, should have been decided by 15th May 2009. He submits that they were sanctioned re-credit of Rs. 2,04,40,788/- only vide re-credit Orders No. 58-76/2010-11 against total duty of Rs. 2,58,40,826/- paid other than by way of utilization of cenvat credit during 2008-09, hence, as per notification, they were entitled to credit of the differential duty of Rs. 54,00,038/-.

3.1 Learned advocate further argued that as per para 2A(g) of the Notification, excess credit shall be recoverable as if, it is a recovery of the duty of the excise erroneously refunded. Therefore, provisions of Section 11A which deal with recovery of duty automatically get attracted which provide maximum time period of 5 years from the relevant date for any recovery proceedings. The demand notice issued on 29.02.2016 for recovery of credit taken *suo moto* in April 2010 is therefore, beyond the limitation period. Learned Counsel also highlighted various decisions supporting their contention on extended period and prayed that the demand confirmed by the impugned order be set aside along with interest and penalty.

4. Opposing the prayer, Learned AR Shri R R Kurup reiterated the findings of the lower authorities and mentioned that taking *suo moto* credit of duty without waiting for the order of the Assistant Commissioner amounts to violation of the conditions of the notification which tantamounts to suppression of facts. Learned AR justified invocation of extended period on the ground that conditions of the notification were violated which was noticed by the department only during audit and thus, show cause notice has correctly been issued in this case for recovery of credit after a period of 5 years from the date of taking credit

4.1 He placed reliance on the decision of this Tribunal in the case of Garden Silk Mills Ltd Vs. C.C.E, Surat reported in 2017 (350) ELT 302(Tri. Ahmd.) to plead that refund by way of *suo moto* credit of duty debited from Cenvat account was not permissible. He also relies on the decision of Larger Bench of the Tribunal in the case of BDH Industries Ltd Vs. Commissioner of Central Excise (Appeals), Mumbai-I reported in 2008 (229) ELT 364 which held that there is no provision under the Central Excise Act, 1944 and the Rules made thereunder, to allow *suo moto* taking of credit or refund without sanction by the proper officer. In a different context which involved refund of differential duty due to price variation, CESTAT Delhi in the case of Krishna Electrical Industries Ltd Vs. CCE, Indore reported in 2017 (352) ELT 67 held that Central Excise law provides procedure for claiming refund of Central Excise duty paid in excess subject to various conditions prescribed under Section 11B. Adjustment of excess duty paid with short paid duty is not permissible under law.

4.2 With reference to query of the Bench regarding present status of pending refund application filed by the appellant on 11.05.2009, Learned AR submits that as per letter dated 25.02.2026 of the office of Commissioner, CGST and CE, Kutch "*status of the refund claim could not be ascertained and efforts were being made to locate the relevant records*".

5. We have heard both sides. The issues involved in this case are- (a) whether the appellant by taking *suo moto* credit of the refund amount has violated the provision of Notification No. 39/2001-CE; and (b) Whether action of the department to issue show cause notice for recovery of credit, after 6 years from the date of credit, is legally correct?

5.1 The Notification No. 39/2001-CE dated 31.07.2001 as amended, exempts the goods (other than those specified in the annexure to the notification) manufactured and cleared from a unit located in Kutch district of Gujarat from so much of the duty of excise or the additional duty of excise, as the case may be, leviable therein under any of the said Acts as is equivalent to the amount of duty payable by the manufacturer of goods, other than the amount of duty paid by utilization of Cenvat Credit. The relevant para 2, 2A, 2B, 2C, 2.1 and para 2.2(1) & 2.2(2) of the said notification are reproduced below:-

> [1]["2. *The duty payable on value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the description specified in column (3) of the Table below (hereinafter referred to as the said Table) and falling within the Chapter of the said First Schedule as are given in the corresponding entry in column (2) of the said Table,* [2][*when manufactured starting from inputs specified in the corresponding entry in column (5) of the said Table in the same factory,*] *at the rates specified in the corresponding entry in column (4) of the said Table:*

[3][Table

Sr. No.	Chapter of the First Schedule	Description of goods	Rate	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)
1.	29	All goods	29	Any goods
2.	30	All goods	56	Any goods
3.	33	All goods	56	Any goods
4.	34	All goods	38	Any goods
5.	38	All goods	34	Any goods
6.	39	All goods	26	Any goods
7.	40	Tyre, tubes and flaps	41	Any goods
8.	72 or73	All goods	39	Any goods, other than iron ore
9.	74	All goods	15	Any goods
10	76	All goods	36	Any goods
11	85	Electric motors and generators, electric generating sets and parts thereof	31	Any goods
[4][12	25	Cement	75	Lime stone and gypsum
12A	25	Cement clinker	75	Lime stone] Cocoa beans
[5][13	17 or 35	Modified starch or Glucose	75	Maize, maize starch or tapioca starch]
14.	18	Cocoa butter or powder	75	Cocoa beans
15.	72 or 73	Iron and steel products	75	Iron ore
[6][15A	29 or 38	Fatty acids or Glycerine	75	Crude palm kernel, coconut, mustard or rapeseed oil
15B	72	Ferro alloys, namely, ferro chrome, ferro manganese or silico manganese	75	Chrome ore or manganese ore]
16.	Any chapter	Goods other than those mentioned above in S.Nos. 1 to 15	36	Any goods

Provided *that where the duty payable on value addition exceeds the duty paid by the manufacturer on the said excisable goods, other than the amount paid by utilization of CENVAT credit during the month, the duty payable on value addition, shall be deemed to be equal to the duty so paid other than by CENVAT credit.*

"2A In cases where all the goods produced by a manufacturer are eligible for exemption under this notification, the exemption contained in this notification shall be subject to the condition that the manufacturer first utilizes whole of the CENVAT credit available to him on the last day of the month under consideration for payment of duty on goods cleared during such month and pays only the balance amount in cash.

2B The exemption contained in this notification shall be given effect to in the following manner, namely:-

(a) the manufacturer shall submit a statement of the total duty paid and that paid by utilization of CENVAT credit, on each category of goods specified in the said Table and cleared under this notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid,

(b) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification as may be deemed necessary, shall refund the duty

payable on value addition, computed in the manner asspecified in paragraph 2 to the manufacturer by the 15th of the month following the one in which the statement as at clause(a) above has been submitted

2C Notwithstanding anything contained in sub-paragraph 2B above-

(a) the manufacturer ***at his own option****, may take credit of the amount calculated in the manner specified in paragraph 2 in his account current, maintained in terms of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by the manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2004 in subsequent months, and such payment shall be deemed to be payment in cash,*

(b) the credit of the refund amount may be taken by the manufacturer in his account current, by the 7th of the month following the month under consideration

(c) a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year,

(d) the manufacturer shall submit a statement of the total duty payable as well as the duty paid by utilization of CENVAT credit or otherwise and the credit taken as per clause (a), on each category of goods manufactured and cleared under the notification and specified in the said Table, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 15th of the month in which the credit has been so taken;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate to the manufacturer by the 15th day of the next month to the month in which the statement under clause (d) has been submitted. ***In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the intimation, reverse the said excess credit from the account current maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount.***

(f) in case the manufacturer fails to comply with the provisions of clauses (a) to (e), he shall forfeit the option, to take credit of the amount calculated in the manner specified in sub-paragraph 2 in his account current on his own, as provided for in clauses (a) to (c);

(g) the amount of the credit availed irregularly or availed of in excess of the amount determined correctly refundable under clause (e) and ***not reversed by the manufacturer within the period specified therein, shall be recoverable as if it is a recovery of duty of excise erroneously refunded.*** *In case such irregular or excess credit is utilised for payment of excise duty on clearances of excisable goods,*

the said goods shall be considered to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit

***Explanation**. For the purposes of this paragraph, duty paid by utilisation of the amount credited in the account current, shall be taken as payment of duty by way other than utilisation of CENVAT credit under the CENVAT Credit Rules, 2004.*

2.1 (1) Notwithstanding anything contained in paragraph 2. the manufacturer shall have the option not to avail the rates specified in the said Table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, If the manufacturer finds that the actual value addition in the production or manufacture of the said goods is at least 115 per cent of the rate specified in the said Table and for the said purpose, the manufacturer may make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, not later than the 30th day of September in a financial year for determination of such special rate, stating all relevant facts including the proportion in which the material or components are used in the production or manufacture of goods:

***Provided** that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days;*

***Provided further** that the manufacturer supports his claim for a special rate with a certificate from his statutory Auditor containing a calculation of value addition in the case of goods for which a claim is made, based on the audited balance sheet of the unit for the preceding financial year;*

(1A)...................

(2) On receipt of the application referred to in sub-paragraph (1), the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be, after making or causing to be made such inquiry as he deems fit, shall fix the special rate within a period of three months of such application

(3) Where the manufacturer desires that he may be granted refund provisionally till the time the special rate is fixed, he may. while making the application, apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, in writing for grant of provisional refund at the rate specified in column (4) of the said Table for the goods of description specified in column (3) of the said Table and falling in Chapter of the First Schedule of the Central Excise Tariff Act, 1985 (5 of 1986) as in corresponding entry in column (2) of the said Table, and on finalization of the special rate, necessary adjustments be made in the subsequent refunds admissible

to the manufacturer in the month following the fixation of such special rate.

(4) Where the Central Government considers it necessary so to do, it may-

(a) revoke the special rate or amount of refund as determined under sub-paragraph (2) by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, and

(b) direct the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to withdraw the rate so fixed.

***Explanation**: For the purpose of this paragraph, the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account the following:*

(i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods,

(ii) Less: Cost of raw materials and packing matenal consumed in the said goods,

(iii) Less Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;

(iv) Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year,

(v) Less: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration,

Special rate would be the ratio of actual value addition in the production or manufacture of the said goods to the sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods.

[7](5) The manufacturer shall be entitled to refund at the special rate fixed under sub-paragraph (2) in respect of all clearances of excisable goods manufactured and cleared under this notification with effect from the 1st day of April of the year in which the application referred to at sub-paragraph (1) was filed with the Commissioner of Central Excise or Commissioner of Central Excise and Customs, as the case may be

***Provided** that in cases where the application referred to in sub-paragraph (1) had already been filed prior to the 10th day of June, 2008, the manufacturer shall be entitled to refund at the special rate fixed under sub-paragraph (2) in respect of all clearances of excisable good manufacturer and cleared under this notification with effect from the 1st day of April, 2008*

[8][(6) Where a special rate is fixed under sub-paragraph (2), the refund payable in a month shall be equivalent to the amount calculated as a percentage of the total duty payable on such excisable goods, at the rate so finxed:

***Provided** that the refund shall not exceed the amount of duty paid on such goods, other than by utilization of CENVAT credit."*

> [9][2.2(1) *In case the total amount of refund paid or payable to a manufacturer in respect of goods cleared from a unit during a financial year is less than the total duty paid by him on the said goods, other than the amount paid by utilization of GENVAT credit, for the year, the differential amount, if any, shall be refunded to him subject to the condition that the total refund made to him during the year, including the aforesaid differential amount, does not exceed the total duty payable on value addition whether at the rate specified in the Table or at the special rate fixed under paragraph 2.1.*
>
> *(2) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, all refund the differential amount, if any, to the manufacturer not later than the 15th day of May in the subsequent financial year.*

1. vide Notification No. 16/2008-CE., dated 27.03.2008
2. Vide Notification No. 33/2008-CE dated 10.06.2008
3. Substituted vide Notification No. 33/2008-CE dated 10.06.2008.

4. 5. 6. 7. substituted by Notification No. 51/2008-CE dated 3.10.2008

8. 9. substituted by Notification No. 33/2008-CE dated 10.06.2008

5.2 As per Para 2C of above Notification, where a manufacturer intends to avail option to take *suo-moto* credit of the amount calculated in the manner as specified in Para 2, in his account current, he has to give his option in writing before effecting first clearance in any financial year which shall be effective from the date of exercise of the option till end of financial year and cannot be withdrawn during the remaining part of the financial year. He shall also submit a statement of the total duty payable as well as duty paid from credit account or otherwise and credit taken as per Clause (a) on each category of goods manufactured and cleared under the notification, to the Assistant Commissioner by the 15th of the month in which the credit has been so taken. After verification, the Assistant Commissioner shall determine the amount correctly refundable to the manufacturer and intimate him by the 15th day of the next month to the month in which the statement in Clause (d) has been submitted. In case, excess credit has been taken than what has been determined by the Assistant Commissioner, the manufacturer shall, within 5 days from the receipt of the intimation, reverse the same from the account current. Likewise, he may take the balance credit if initially less credit was taken. As per Para 2.2 (1) effective from 16.08.2008, where total amount of refund paid or payable to the manufacturer in respect of goods cleared from the unit during a financial year is less than the total duty paid by him on the said goods, other than from Cenvat Credit, the differential duty, if any, shall be refunded to him subject to the condition that the total refund made to him during the year, including the aforesaid differential amount does not exceed the total duty payable on value addition whether at the rate specified in the table or at the special rate fixed by the Commissioner. On such application, the Assistant Commissioner shall refund the differential amount, if any, to the manufacturer not later than 15th day of May in the subsequent year.

5.3 We find that the lower authorities have confirmed recovery of credit under Section 11A(4) along with interest under Section 11AA of the Central Excise Act, 1944, mainly on the ground that the Notification No. 39/2001-CE as amended, does not prescribe annual adjustment in refund amount on *suo moto* basis. He also imposed penalty under Section 11AC read with Rule 25 of the Central Excise Rules, 2002 for violation of the conditions of the notifications.

5.4 On limitation, we find that Para 2C(g) of the notification prescribes that any excess amount of credit availed by the manufacturer shall be reversed within 5 days from the receipt of intimation.In case, it is not reversed within the above time period, it shall be recoverable as if it is a recovery of duty of excise erroneously refunded. Section 11A of the Central Excise Act, 1944 provides for issuance of show cause notices for recovery of duties not levied or not paid or short levided or short paid or erroneously refunded within one year from the relevant date. However, if elements of fraud; or collusion; or any wilful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act or of the rules made thereunder, with intent to evade payment of duty are involved, then notice for recovery may be issued within 5 year from the relevant date which for recovery of erroneous refund, has been defined under explanation 1(b)(v) to Section 11A, **to be the date of such refund**. A combined reading of notification No. 39/2001-CE and Section 11A of the Central Excise Act, 1944 clearly reveals that show cause notice for recovery of refund granted erroneously to a manufacturer, can be issued within 5 years from the date of refund. In the present matter, appellant had availed *suo moto* credit of duty in April 2010 but notice for it's recovery has been issued on 29.02.2016 i.e. after a period of 5 years from the date of taking credit. We therefore, hold that the entire proceedings emanating from a time barred show cause notice, are not sustainable. Therefore, impugned order can be set aside on limitation itself without going into merits of the case.

5.5 On merits, we observe that the appellant had filed application for refund of differential duty amount for financial year 2008-2009, with the Jurisdictional Assistant Commissioner in May 2009 which has not been decided by the concerned officer. Even at the time of issue of show cause notice in 29th Feb, 2026 disposal of this application was pending. During hearing of the matter, the Bench enquired about current status of the refund application filed by appellant which was intimated by the Commissionerate vide letter dated 04.11.2025 as under:-

> *"As per the available office records, the refund claim of Rs. 54,00,034/- filed by M/s. Anchor Electricals Pvt. Ltd. on 11.05.2009 is not pending with this office as on date".*

When this Bench vide order dated 18.12.2025 sought for categorical report on disposal of pending application, the Commissionerate vide letter dated 25.02.2026 reported as under:-

> *"4. It has been reported by CGST Bhuj Division having jurisdiction over the issue that it cannot be categorically stated whether the refund claim of ₹54,00,034/- filed by M/s Anchor Electricals Pvt. Ltd. is pending with Bhuj Division or has been disposed of."*

Above report does not speak well of the functioning of the Division Office. Instead of timely disposal of refund application submitted by the appellant, the division Assistant Commissioner kept quiet for several years and when the issue was raised by audit, they proceeded to issue show cause notice after 6 years to save themselves. The Jurisdictional Chief Commissioner should enquire in to the matter to ascertain reasons for inaction on the part of departmental officers and take corrective measures.

5.6 We find that the appellant submitted statement for annual differential duty for financial year 2008-09 on 11.05.2009 with hope to get the decision/permission of the Jurisdictional Assistant Commissioner. When no decision was communicated for almost one year, the appellant took *suo-moto* credit of duty in April 2010. Therefore, appellant has acted as per provisions of the notification and hence, cannot be faulted with. The case laws relied by revenue are on different facts and so, are not applicable. In Krishna Electrical Industries Ltd case, issue was *suo-moto* adjustment of excess paid differential duty with short paid duty. In BDH case, issue was *suo-moto* refund of excess/twice paid duty. In Garden Silk Mills Ltd case, issue was *suo-moto* re-credit of duty debited during investigation, while adjudication of the case was pending. In the present matter, notification 39/2001-CE provided option to the manufacturer to credit of duty in account current subject to submission of a statement of duty paid with the divisional officer who was to permit adjustment of such credit of duty. I rely on the decision of this Tribunal in the case of Parle Product Pvt Ltd-2009(237) ELT 579 (Tri-Ahm.) which at para 18 held as under:-

> *"18. I find that the entire case of the Revenue is on the premise that the appellants committed breach of conditions of Notification No. 39/01-C.E. and hence they should pay back the entire amount of duty, of which credit had been taken in PLA under para 2A of the Notification. This case of the Revenue can hardly be sustained inasmuch as the assessee's breach, if any, was occasioned by the breach of procedure committed by the Central Excise Officer".*

The above decision has also been affirmed by the Hon'ble Gujarat High Court as reported vide 2010 (20) STR 179 (Guj.)

5.7 We therefore find that the demand does not survive on limitation. We also observe that the Divisional Assistant Commissioner did not verify correctness of the refund claim filed by the appellant with his office on 11th

May 2009, which should have been decided by him by 15th May as per Para 2.2 (2) of the Notification No. 39/2001-CE as amended . The impugned order therefore, is not sustainable on merits also. Consequently, it is set aside and appeal is allowed.

6. Appeal is allowed.

(Pronounced in the open court on 24.08.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi