IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.41950 of 2017

(Arising out of Order in Appeal No. 72/2017 dated 29.5.2017 passed by the Commissioner (Appeals), LTU, Chennai)

GE T&D Ltd. **Appellant**
(formerly Alstom T&D India Ltd.)
FSSC Building
19/1, GST Road, Pallavaram
Chennai – 600 043.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri Joseph Prabhakar, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41020/2026

Date of Hearing : 31.07.2026
Date of Decision: 16.09.2026

This appeal is filed by the appellant against Order-in-Appeal No. 72/2017 dated 29.5.2017 passed by the Commissioner (Appeals), LTU, Chennai.

Factual Matrix

2. The appellant is a manufacturer of electrical transformers, relays, switchgears and control panels. During audit, it was noticed that the appellant had made provisions for write-off of raw materials for 2010–11 and 2011–12 but had not reversed the CENVAT credit attributable thereto as required under Rule 3(5B) of the CENVAT Credit

Rules, 2004. Although the appellant claimed that the provisions were proportionately released as the materials were consumed, it reversed credit only on the revised provision amounting to Rs. 69,38,000/-, under protest. As the appellant failed to substantiate the subsequent consumption of the written-off materials with supporting evidence, a Show Cause Notice dated 09.12.2015 was issued proposing recovery of the balance CENVAT credit, along with interest and penalty. After adjudication, an amount of Rs. 8,57,537/- was confirmed under Section 11A(1) and the proviso to Section 11A(4) of the Central Excise Act, 1944, along with applicable interest and penalty under Rule 14 and Rule 15 of the CCR, 2004 read with the relevant provisions of the Act. The appeal before the Commissioner (Appeals) was rejected. Hence, the present appeal.

3. The Ld. Counsel Shri Joseph Prabhakar appeared for the Appellant and Shri M. Selvakumar, Ld. Authorized Representative appeared for the Department.

Submissions made by the Appellant

3.1 Shri Joseph Prabhakar the Ld. Counsel for the appellant submitted that:

A. As a matter of financial principle and in terms of the accounting standard issued by the Chartered Accountants of India, the Appellant had the practice of creating provision for inventory based on age of the inventory and excess inventory considering the consumption pattern.

B. The Appellant created accounting provisions of 30%, 50% or 90% for slow-moving or excess inventory based on age and consumption patterns. The provision created was only in the books of accounts and the items concerned or the goods concerned were not removed physically from the factory.

C. Whenever the inventory was used for which provision was originally created, the appellant followed a uniform practice of releasing the provision to the extent of use of the material. Thus, the petitioner had created provision for the year 2010-11 and 2011-12 and had reversed the CENVAT credit to the extent of the value of the inventory. Thus, the Appellant had correctly reversed the credit since the extent of inventory which was not used. After accounting for the actual obsolete inventory, the Appellant reversed the appropriate CENVAT credit for 2010–11 and 2011–12, as recorded at page 3 of the Order-in-Original dated 23.06.2016.

D. The Department nevertheless demanded reversal of ₹8,57,537 under Rule 3(5B) in respect of amounts shown as release of provision. The demand is unsustainable because the materials were neither written off nor removed and the provision was reversed upon use. Further, Rule 3(5B) was amended by Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011, to cover partial write-offs/provisions only prospectively; therefore, no reversal was required for partial provisions made before the amendment became effective.

E. The show cause notice dated 09.12.2015, covering 2010–11 and 2011–12, is also time-barred. As the dispute concerns interpretation of the rule and its amendment, suppression of facts under the proviso to Section 11A of the Central Excise Act, 1944 cannot be invoked. Accordingly, the demand should be set aside and the appeal allowed.

Submissions made by the Respondent – Revenue

3.2 Shri M. Selvakumar, Ld. Authorized Representative, took us through the OIO and OIA and submitted on behalf of Revenue that:

A. Under Rule 3(5B) of the CCR, 2004, the legal obligation to reverse CENVAT credit triggers immediately upon writing off or creating a provision for inputs in the books of account. The Appellant failed to reverse this credit, rendering it ineligible.

B. Although the Appellant claimed that the provisioned inputs were subsequently released and used in manufacturing, they failed to submit documentary evidence to substantiate this claim. Under Rule 9(6) of CCR, 2004, the burden of proof regarding credit admissibility lies squarely on the assessee.

C. The Appellant was addressed by letter dated 19.05.2015 and requested to provide a point wise reply and to submit certificate from the Auditor. No response was received even after three reminders.

D. The Appellant admitted that individual tracking of addition/release of provisions against specific materials was not feasible. By failing to maintain appropriate itemized stores/inventory records linking released provisions to actual physical usage, the claim of "subsequent use" remains unproven and defeats the statutory purpose of Rule 3(5B).

E. The Appellants reliance on the supplementary instructions of the CBEC Central Excise Manual—asserting that partial write-downs do not attract CENVAT credit reversal if inputs remain usable—is misplaced. Prior to Notification No. 3/2011-CE (N.T.) dated 01.03.2011, reversal under Rule 3(5B) of the CENVAT Credit Rules, 2004 was attracted only upon a full write-off of inputs. However, following the amendment effective from 01.03.2011, Rule 3(5B) explicitly mandates credit reversal even where input values are written off partially.

F. In a self-assessment regime, the Appellant suppressed the fact of non-reversal, which was uncovered only during departmental internal audit. This intentional non-disclosure warrants the invocation of the extended period of limitation to demand duty and sustains the imposition of penalty.

The ld. A.R. prayed that the appeal may be rejected.

4. Heard the parties to the dispute and have gone through the appeal papers carefully. The issue under dispute is that the appellant had made provisions for write-off of raw materials for 2010–11 and 2011–12 but had not reversed the CENVAT credit attributable thereto as required under Rule 3(5B) of the CENVAT Credit Rules, 2004.

Statutory Framework:

5. It would be apposite at this stage to examine the statutory requirements. Accordingly, Rule 3(5B) of the CENVAT Credit Rules, 2004 is reproduced below:

> **Rule 3(5B) of the CENVAT Credit Rules, 2004**
>
> If the value of any,
>
> (i) input, or
>
> (ii) capital goods before being put to use on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT Credit taken in respect of the said input or capital goods:
>
> Provided that if the said input or capital goods is subsequently used in the manufacture of final products or

> the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules.

Analysis

6. I find that the period of demand covers the Financial Years 2010-11 and 2011-12. Prior to 1st March 2011, Rule 3(5B) applied strictly to instances where raw material values were written off fully or where provision was made to write off fully in the books of account. Reversal of CENVAT credit was not legally required for partial write-offs or partial provisions made prior to 01.03.2011. Rule 3(5B) was amended via Notification No. 3/2011-CE (N.T.) dated 01.03.2011, inserting the word "partially" into the provision. Hence from 01.03.2011 onwards, a manufacturer was legally required to reverse CENVAT credit equivalent to the provision created, even for partial write-offs. If the raw materials for which a provision was created (and CENVAT credit reversed) were subsequently used in the manufacture of final products, Rule 3(5B) explicitly allowed the manufacturer to re-avail / take back the CENVAT credit corresponding to the used inventory.

7. In the present case from 01.03.2011, creating an accounting provision triggers an immediate legal obligation on the appellant to reverse the corresponding CENVAT credit, which it has failed to do. Under the proviso to Rule 3(5B), had the appellant reversed the credit initially, they would have been statutory entitled to re-avail the same upon subsequent use of the materials in manufacturing.

8. The Appellants plea that financial provision for raw materials in the books of account is not equivalent to a write-off under Rule 3(5B)

of the CCR, 2004, as the materials remained physically intact and usable in manufacturing, is not sufficient. The Apex Court in the case of **Competent Authority Vs. Barangore Jute Factory** [(2005) 13 SCC 477], held that where a statute requires an act to be done in a particular manner, the act has to be done in that manner alone (Para 5). Similar views have been expressed in the case of **A.K. Roy Vs. State of Punjab** [(1986) 4 SCC 326] and **CIT Vs. Anjum M.H. Ghaswala** [(2002) 1 SCC 633].

9. I find that in spite of ample opportunities being given the appellant failed to furnish the requisite documents or the Auditors certificate either at the time of the audit or subsequently to justify their submissions. The Appellant has stated that individual tracking of addition/release of provisions against specific materials was not feasible. By failing to maintain appropriate itemized stores/inventory records linking released provisions to actual physical usage, the claim of "subsequent use" remains unproven and defeats the statutory purpose of Rule 3(5B).

10. In the absence of documentary evidence demonstrating actual subsequent usage, the taxpayer’s contention that credit was not reversed because the raw materials remained usable cannot be accepted. As held by the Hon’ble High Court of Delhi in **Lally Automobiles Pvt. Ltd. Vs Commissioner (Adjudication), C. Ex.** [2018) 17 G.S.T.L. 422 (Del.)], a taxpayer may structure its business efficiently, but not in a way that obscures tax liabilities. Further in **Commissioner of Income Tax, Madras Vs Best & Co.** [(1966) 2 S.C.R. 480 / 1966 AIR 1325], the Supreme Court held that once the

Revenue discloses sufficient direct or circumstantial evidence, the burden shifts to the assessee. Failure by the assessee to produce material within its exclusive possession justifies drawing an adverse inference against it.

11. The question which arises is whether the show cause notice dated 09.12.2015, covering 2010–11 and 2011–12, is time-barred, being beyond the normal period. While it is true that the dispute concerns interpretation of the rule and its amendment, but that itself will not restrict the demand to the normal period.

12. The Supreme Court in **Easland Combines, Coimbatore Vs Collector of Central Excise, Coimbatore** [(2003) 3 SCC 410 / 2003 (152) E.L.T. 39 (S.C.)), clarified that mere non-payment of duty or failure to obtain registration, absent of fraud, suppression, or willful misstatement, is insufficient to attract the extended limitation period. This principle was reaffirmed in **Uniworth Textiles Ltd. Vs Commissioner of Central Excise, Raipur** [2013 (288) E.L.T. 161 (S.C.)] wherein the Apex Court citing **Easland Combines** (supra), held that the Act contemplates a positive action which betrays a negative intention of willful default.

13. I find that Silence may be treated as deception when there is a duty on the part of the Appellant to provide information to the department enquiring into a matter pertaining to the appellant. It is a settled legal principle, enshrined in the maxim *'nullus commodum capere potest de injuria sua propria'*, that no person can take advantage of their own wrong. Consequently, the appellant cannot plead limitation when the delay was caused by its own non-cooperation

and suppression of facts. Hence the criteria laid down by the Hon'ble Supreme Court in Uniworth Textiles and Easland Combines stand satisfied. No purpose will be served in remanding the matter to the Original Authority to verify the facts at this distant date, when the Appellant has not shown willingness to provide the information as required by the Original Authority and has based its arguments on law only.

Conclusion

14. Considering the facts as discussed above the appeal merits to be rejected and is so ordered. The appeal is disposed of accordingly.

(Pronounced in open court on 16.09.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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