

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**EXCISE APPEAL NO: 85883 OF 2016**

[Arising out of Order-in-Original No: PUN-EXCUS-002-PR.COM-012-15-16 dated 8<sup>th</sup> January 2016 passed by the Commissioner of Central Excise & Service Tax, Pune – II.]

**Nitin Gupta**

Gate No. 428, Building B4-B/C  
Indospace Rohan Industrial Park, Mahalunge  
Ingale, Pune - 410501

*... Appellant*

*versus*

**Commissioner of Central Excise**

ICE House, 41/A Sassoon Road, Pune - 411001

*...Respondent*

**WITH**

**EXCISE APPEAL NO: 85887 OF 2016**

[Arising out of Order-in-Original No: PUN-EXCUS-002-PR.COM-012-15-16 dated 8<sup>th</sup> January 2016 passed by the Commissioner of Central Excise & Service Tax, Pune – II.]

**Dream Plast India Pvt Ltd**

Gate No. 428, Building B4-B/C  
Indospace Rohan Industrial Park, Mahalunge  
Ingale, Pune - 410501

*... Appellant*

*versus*

**Commissioner of Central Excise**

ICE House, 41/A Sassoon Road, Pune - 411001

*...Respondent*

APPEARANCE:

Shri Bharat Riachandani, Advocate for the appellant

Shri Xavier PM Mascarenhas, Superintendent (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)  
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: 86954-86955/2025**

DATE OF HEARING: 26/06/2025  
DATE OF DECISION: 04/12/2025

PER: C J MATHEW

M/s Dream Plast India Pvt Ltd had taken credit of ₹ 82,51,693 on 'inputs' and 'capital goods', procured by them for manufacture their factory, in their CENVAT credit account under rule 3 of CENVAT Credit Rules, 2004 between May 2010 and July 2011. A portion of this credit, amounting to ₹ 27,57,673, was utilized for discharge of liabilities of duties of central excise on clearance of goods between May 2010 and October 2010 even as 'plastic toys' manufactured by them, and cleared to their customer for collating along with confectionery sold under the name and style of 'KINDER', was patently exempted owing to notification no. 10/2006-CE dated 1<sup>st</sup> March 2006 issued under section 5A of Central Excise Act, 1944. It is on record that appellant had ceased to avail such credit after July 2011 and that ₹ 37,18,970 had been availed between May 2010 and October 2010 on inputs and capital goods procured by them; it is also recorded that credit, to the extent of ₹ 41,12,387 had been reversed in December 2012 and September 2013 of which ₹ 33,87,395 was acknowledgedly that pertaining to 'capital goods' procured by them, and towards which interest of ₹ 17,26,358 had been made good, just as duty discharged on

scrap to the extent of ₹ 5,18,510, along with interest of ₹ 1,11,565 by utilizing credit was made good on conceding erroneous utilization. Nonetheless, on the ground that eligibility for procedural option to discharge liability and chargeability is not a factor of convenience to assessee, steps were initiated to deny the entitlement to credit concomitant with recovery of erroneous availment thereof and, in addition, for recourse to forcible deprivation stemming from obligation, under section 11D of Central Excise Act, 1944, to deposit duties purportedly collected as liability with the exchequer; the presumption being that the appellant herein, though not liable to discharge liability on clearance, had debited the CENVAT credit account to such extent as evidenced by inclusion of such duties in the invoice against which clearance had been affected with appendant obligation devolving on the buyer to pay such amount to the seller.

2. In all, ₹ 46,40,897, that had been abated or paid, and ₹ 18,37,922, discharged towards interest, were appropriated in order<sup>1</sup> of Principal Commissioner of Central Excise & Service Tax, Pune-II while disallowing the purportedly ineligible credit also ordered for recovery under rule 14 of CENVAT Credit Rules, 2004 and imposing penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 even as the purported liability discharged erroneously on exempted goods was confirmed as recoverable under section 11D of Central Excise Act,

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<sup>1</sup> [order-in-original no. PUN-EXCUS-002-PR.COM-012-15-16 dated 8<sup>th</sup> January 2016]

1944 from the appellant herein. In addition, several other penalties were imposed on the assessee as well as on the individual-appellant, the Chief Executive Officer (CEO) of the assessee.

3. It would appear that the appellant had also, for a while, been manufacturing 'parts of shoes' that were being cleared on payment of duty in 2010-11 using the same 'capital goods' as for the impugned toys. From the records, it appears that, despite being asked for, the appellant was unable, or unwilling, to furnish details of utilisation of the several machines in support of their claim that these had been used interchangeably.

4. The essence of the case made out by central excise authorities is that the appellant, during the relevant period of availment of credit of duties discharged on 'capital goods' and 'inputs' procured them, was manufacturing only 'exempted goods' and, hence, the availment thereof barred to them under rule 3 of CENVAT Credit Rules, 2004 and that the duty liability discharged erroneously on exempted goods, by debit of accumulated credit, was monetised through recovery from buyers rendering the appellant herein obliged to surrender such to the Central Government. We pause here to wonder at the motive for such availment contrived to be entitled only from discharge of duty liability, even if it be by recourse to the very same credit, on an exempted final product. It is also cause for pause to wonder about the proposition in

the impugned order that credit, in relation to procured 'capital goods', could be taken only if used in the manufacture of dutiable final product/taxable output service. Moreover, we cannot but also pause to dwell upon the scheme of reversal in rule 6 of CENVAT Credit Rules, 2004 which, in addition to barring credit of duty paid on 'capital goods' used exclusively in manufacture of 'exempted goods', mandate ineligibility to retain credit attributable to deployment in manufacture/rendering of 'exempted goods/services' subject to certain restitutory mechanisms prescribed therein; among these are maintenance of separate accounts or debit of credit at prescribed rate on value of 'exempted goods/services' which is tantamount to payment of duty liability, to some extent, on clearances. Our impression of the scheme of CENVAT credit is that of template for 'bridging the gap between the charging section and valuation section' in the applicable tax statute and that the specifics, as also prescriptions, being integral to this template, requires us to adjudge the recoveries ordered and penalties imposed in the adjudication order by the yardstick of the very template.

5. We have heard Learned Counsel for the appellants and Learned Authorized Representative at length. The genesis, and the root, of the dispute is, clearly, the purported stipulation of

*'(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable*

*goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods....'*

in section 5A of Central Excise Act, 1944, concatenated with exemption in notification no. 10/2006-CE dated 1<sup>st</sup> March 2006, purportedly extended to the final product of the appellant herein. The grant of authority to Central Government to exempt duties of central excise, through notification issued under section 5A of Central Excise Act, 1944, was made operational from 1<sup>st</sup> July 1988 substituting for rule 8 of Central Excise Rules, 1944 and the mandate of deprivation of option *supra* was incorporated in 2005. The mandate is unqualified and absolute but there is no detriment attached to non-compliance thereof; except that such payment would be deemed as not having authority of law and, thereby, not duty levied under Central Excise Act, 1944. There is no reference to the said restriction insofar as the provisions of CENVAT Credit Rules, 2004 is concerned.

6. The adjudicating authority has proceeded on the assumption that the discharge of such amount does not constitute duties leviable and, therefore, have no effect insofar as the definition of 'exempted goods' in rule 2 of CENVAT Credit Rules, 2004 is concerned. The issue of taxability being raised in conjunction with proposal under rule 14 of CENVAT Credit Rules 2004 for recovery of ineligible credit has been the subject of dispute for a long time and the decision of the Hon'ble

High Court of Gujarat, according finality thereto, in *Commissioner of Central Excise, Surat-III v. Creative Enterprises [2009 (235) ELT 785 (Guj)]*, was affirmed by the Hon'ble Supreme Court. Likewise, the Hon'ble High Court of Bombay held so in *Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises [2013 (294) ELT 203 (Bom)]*. Following these, the Tribunal, in *Foam Techniques Mfg (I) Pvt Ltd v. Commissioner of Central Excise, Thane-I [2015-TIOL-156-CESTAT-MUM]*, held that denial of CENVAT credit on the ground that the activity for producing the final goods is not manufacture is not valid once duty of central excise had been accepted; here, it is not 'manufacture' that is in question but that the output of 'manufacture' is not dutiable. There being no doubt that the 'inputs' had suffered duty liability in the hands of the manufacturer and the produce of deployment of the 'inputs' had discharged duty liability, the stand taken by the adjudicating authority is contrary to settled law and has been founded *de hors* judicial decisions *supra*.

7. Furthermore, section 11D of Central Excise Act, 1944, invoked by the adjudicating authority for recovery of duties of central excise allegedly recovered from buyers for the purpose of availing CENVAT credit but not credited to the Central Government, was incorporated by The Central Excises and Customs Laws (Amendment) Act, 1991 with effect from 20<sup>th</sup> September 1991 coinciding with the provisioning for 'unjust enrichment' in taxing statutes. Even so, the obligation was

limited to excess collection and obligation in relation to duties charged on exempted goods was enabled only with effect from enactment of Finance Act, 2008 with same intention. The adjudication order has not examined the scope of recovery enabled in the context of obligation to pay duty being permitted to be complied with by debit of CENVAT credit account.

8. The impugned credit stems from duties discharged on 'inputs' and 'capital goods' - both of which are eligible to be taken in terms of rule 3 of CENVAT Credit Rules, 2004 - and unqualified by any restriction pertaining to 'final product' being 'exempted' as defined in rule 2 of CENVAT Credit Rules, 2004; consequently, the test of entitlement at that stage is limited to the goods having arrived at the factory of manufacture with duty liability duly discharged. There is no allegation of any dereliction on either count for either source. Continued retention of credit is governed by rule 6 of CENVAT Credit Rules, 2004 and merit different treatment according to source of credit. Insofar as 'input' is concerned, credit attributable to deployment and manufacture of 'exempted goods' is to be reversed but the whole of it condonable to the extent provided for in rule 6 (2) and 6 (3) therein. In any event, the effective compliance with the last from having discharged duty liability on purportedly 'exempted goods' has not been considered by the adjudicating authority.

9. In proceedings before the original authority, the appellants had claimed to have deployed the 'capital goods' for manufacture of dutiable goods during the disputed period. Despite assurance that the records of usage of machinery would be made available, that was not and the adjudicating authority proceeded to decide against the appellant herein without ascertaining alternative mode of evidencing. This is not consistent with the principles of natural justice.

10. The entitlement to credit under rule 3 of CENVAT Credit Rules, 2004 is not in dispute. The continued retention of credit and utilisation thereof for clearance of final product rest upon facts in the context of the framework to the extent underscored by judicial determination. The implications of the decisions referred to *supra* had not been considered in the adjudication process; the factual matrix was also not drawn up for testing fitment within the normative framework. To remedy these wants in the adjudication, it would be appropriate to set-aside the impugned order and remand the matter back to the original authority for a fresh decision contingent upon the submissions made by the appellants herein.

11. Appeals allowed by way of remand.

*(Order pronounced in the open court on 04/12/2025)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***