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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13th February, 2025

Date of decision:12th March, 2025

\+ **W.P.(C) 1919/2020**

JANKI NEWSPRINT LTD .....Petitioner

Through: Mr. Pradeep Jain and Mr. Sambhav Jain, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS NEW CUSTOMS HOUSE, AIR CARGO IGI AIRPORT, NEW DELHI .....Respondent

Through: Mr. Akshay Amritanshu, Sr. SC, CBIC with Ms. Drishti Saraf and Ms. Pragya Upadhyay, Advs. (M: 9931282222)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia,* challenging the impugned Final Order No. F-3479/CUS/2019-SC(PB) dated 23rd January, 2019 passed by the Customs, Central Excise & Service Tax Settlement Commission, Principal Bench, New Delhi (hereinafter "*the Settlement Commission*") under Section 127C(5) of the Customs Act, 1962 (hereinafter "*the Act*").

2. *Vide* the impugned Final Order, the Settlement Commission, *inter alia*¸ has rejected the claim of the Petitioner for CENVAT Credit of the 'countervailing duty' (hereinafter "*CVD*") paid on the imported capital goods.

I. Factual Background

3. The Petitioner is a company engaged in manufacturing and sale of craft paper. It was established in the year 2000 and started manufacturing activities in the year 2002. Until 2014-15, the Petitioner was engaged in manufacturing of writing and printing paper as also news print. However, thereafter it started manufacturing craft paper. In respect of the said manufacturing, certain capital goods *i.e.*, plant and machinery were imported by the Petitioner during the years 2004-07 at a concessional rate of duty of only 5% in terms of the Customs Notification No. 97/2004-Cus dated 17th September, 2004.

4. In order to import the said capital goods, the Petitioner procured nine licenses/authorizations under the Export Promotion Capital Goods Scheme (hereinafter "*EPCG authorizations*"). The permission to import the said goods was on the condition that the Petitioner would utilize the imported plant and machinery and complete export obligations within a period of eight years, extendable by a further two years. The details of the said EPCG authorizations are as under:

Export Obligations Fulfilled

Sl. No.	***EPCG Authorization No.***	***Date***	***Status of license/authorization***
1.	*0530142266*	*31.10.2006*	*EO fulfilled. Applied for EODC*
2.	*0530143070*	*14.02.2007*	*EO fulfilled. Applied for EODC*
3.	*0530136780*	*12.08.2004*	*EO fulfilled. Applied for EODC*
4.	*0530138461*	*21.04.2005*	*EODC issued by DGFT*
5.	*0530138462*	*2104.2005*	*EODC issued by DGFT*

Export Obligations Not Fulfilled

Sl. No.	***EPCG Authorization No.***	***Date***	***Status of license/authorization***
1.	*0530139551*	*16.09.2005*	*Export obligation not fulfilled. However, duty and interest deposited after issuance of show cause notice.*
2.	*0530140224*	*05.01.2006*	*Export obligation not fulfilled. However, duty and interest deposited after issuance of show cause notice.*
3.	*0530140824*	*04.04.2006*	*Export obligation not fulfilled. However, duty and interest deposited after issuance of show cause notice.*
4.	*0530141233*	*02.06.2006*	*Export obligation not fulfilled. However, duty and interest deposited after issuance of show cause notice.*

5. Since the export obligations were not fulfilled *qua* four EPCG authorizations, as mentioned above, an investigation was commenced by the Directorate of Revenue Intelligence, Noida Regional Unit (hereinafter "*DRI*") and the Show Cause Notice (hereinafter "*SCN*") was issued on 28th February, 2018. In the said SCN, the Respondents sought to:

i) Confiscate the said capital goods under Section 111(o) of the Act;

ii) Raise a demand of the differential customs duty which was saved/foregone on the said capital goods for a sum of Rs. 49,43,666/- and Rs.31,71,143/- along with the interest and penalty for the imports made through Nhava Sheva and Air Cargo Delhi, respectively.

6. After the show cause notice was issued, the Petitioner approached the Settlement Commission by way of an application under Section 127B of the Act to have the case settled. In the said application, the Petitioner admitted and accepted that the duty payable for settlement is Rs.31,71,143/- and interest is to the tune of Rs.50,29,597/-. The Petitioner, in addition to praying for adjustment of the differential duty, also sought to avail the CENVAT Credit in respect of the CVD paid on the imported goods. The prayer in the said settlement application was as under:

> *"1. That the amount of Rs.82,01,100/- (31,71,143/- as duty + 50,29,957/- as interest) paid by the Applicant may be accepted as the full and final payment of duty and interest thereon.*
> *2. Applicant may be allowed to avail CENVAT Credit of Rs.23,18,633/- paid towards CVD against the import of capital goods.*
> *3. That the proposal for confiscation of imported goods under sections 111 (o) of Customs Act may be dropped.*
> *4. That the penal proceedings initiated under sections 112 (a) and 112(b) of the Customs Act may be dropped.*
> *5. That immunity from prosecution for offences, if any, committed under the Customs Act or under any*

other law for the time being in force may be provided.

6. That Hon'ble Commission may provide any other relief, deemed fit, in the facts and circumstances of the case."

7. The Settlement Commission *vide* the impugned Final Order, considered the settlement application of the Petitioner, and accepted the payment of differential duty as also the interest in respect of import of the capital goods. The Settlement Commission did not direct confiscation of the said capital goods, however, penalty of Rs. 4,00,000/- was imposed. Finally, the Commission also granted immunity to the Applicant from prosecution, in terms of Section 127H of the Act. The prayer for CENVAT Credit paid towards the CVD, was however rejected. The reasoning given for rejection of the same is as under:

"(iii) As regard the claim of CENVAT credit of CVD for the period 2004-2007 which the applicant claimed now at the time of filing Settlement Application on 15.10.2018, the Bench finds that there was restriction of 1 year under Rule 4(1) of Cenvat Credit Rules, 2002, which states that "the manufacturer or provider of output service shall not take Cenvat Credit after one year of the date of issue of any of the documents specified in sub rule (1) of Rule 9. The Bench finds that applicants claim of credit of CVD on 15.10.2018 i.e on date of filing the Settlement Application for the period 2004-2007 was barred by time. The Bench finds that vested rights of applicant for availing credit of CVD remained, what was restricted was time for availing such credit and relies upon case law of Hon'ble Supreme Court in case of Osram Surya (P) Ltd. V/s. CCE, Indore - 2002-TIOL-64-SC-CX."

8. The Petitioner being aggrieved by the impugned Final Order passed by the Settlement Commission has preferred the present petition, only to the limited extent of the rejection by the Settlement Commission of the claim of CENVAT credit for the CVD.

II. Submissions on behalf of the Parties

9. The submission of Mr. Pradeep Jain, ld. Counsel appearing for the Petitioner is that under Rule 4(2) of the CENVAT Credit Rules 2004 (hereinafter "*CENVAT Rules*"), the Petitioner is entitled to claim credit for the whole amount of duty paid, if the same is claimed in the same year as the year in which the said duty has been paid.

10. It is his submission that since the entire duty amount has been paid by the Petitioner, CENVAT Credit cannot be refused to the Petitioner. He further relies upon the decision of the Central Excise & Service Tax Appellate Tribunal, Mumbai (hereinafter "*CESTAT, Mumbai*") in ***Philips India Ltd. vs. Commissioner of Central Excise, Vadodara, 2005 (191) E.L.T. 1028 (Tri. – Mumbai)*** wherein under similar circumstances, the CENVAT Credit of the CVD was allowed. It is submitted by the ld. Counsel that the said decision of the CESTAT, Mumbai has been upheld by the Gujarat High Court in ***Commissioner of C. Ex. & Customs v. Philips India Ltd., 2006 SCC OnLine Guj 460***.

11. Reliance is also placed upon a Circular No. 199/33/96-CX dated 23rd April, 1996 issued by the Central Board of Excise & Customs (hereinafter "*CBIC*") as per which, it is clarified that the time limit of six months for claiming credit under the second proviso of Rule 57-G of the Central Excise Rules, 1944 would not apply to the availing of credit on capital goods under Rule 57T of the Central Excise Rules, 1944.

12. On the other hand, Mr. Akshay Amritanshu, ld. Senior Standing Council appearing for the CBIC submits that the Petitioner is not eligible to avail the CENVAT Credit for CVD as the differential customs duty was ultimately deposited along with interest in much later in 2018.

13. It is submitted that on the date when the differential duty was paid, Rule 4 of the CENVAT Rules stood amended *vide* notification dated 11th July, 2014 and credit could be claimed only within a period of one year from the date of issue of any documents mentioned in Rule 9(1) of the said Rules. The Settlement Commission is, therefore, right in rejecting the claim for CENVAT Credit as being time barred.

14. Reliance is also placed by the ld. Counsel upon the following decisions – (i) ***Osram Surya (P) Ltd. vs. Commissioner of Central Excise, Indore, (2002) 9 SCC 20,*** (ii) ***Supreme Petrochem Ltd. vs. Commr. of Central Tax & C. Ex., Chennai, 2019 (28) G.S.T.L. 564 (Mad.)***, (iii) ***Commissioner of Central Excise Chennai-I v. Amalgamations Valeo Clutch Pvt. Ltd., 2006 (206) E.L.T. 91 (Mad.)***, in support of his submissions.

15. It is his submission that under similar circumstances when the differential duty was paid before the Settlement Commission, the Madras High Court in ***Supreme Petrochem Ltd. (supra)*** has clearly held that credit could not be claimed under the CENVAT Rules by the concerned party, which had not, on its own, deposited the said duty.

16. In rejoinder, Mr. Jain, ld. Counsel for the Petitioner has placed reliance on the decision of a Co-ordinate Bench of this Court in ***Global Ceramics Pvt. Ltd. vs. The Principal Commissioner of Central Excise, Delhi -1, 2019:DHC:2832-DB,*** wherein it was held that the amendment to Rule 4(1) of the CENVAT Rules prescribing a time limit for claiming CENVAT Credit

will not apply to consignments where import took place prior to the date of amendment.

III. Analysis and Findings

17. The short question in this case is whether the Petitioner can avail CENVAT Credit for the CVD *qua* the imported capital goods in terms of Rule 4 of the CENVAT Credit Rules, 2004.

18. A perusal of the impugned Final Order would show that the Settlement Commission has applied Rule 4(1) of the CENVAT Rules and held that the prayer for the said credit was barred by time. The capital goods were imported by the Petitioner between the year 2004 and 2007. However, the differential duty applicable to the said imports was paid only in 2018 *i.e.*, after approaching the Settlement Commission post the issuance of the SCN. The relevant provisions of the Rule 4 of CENVAT Rules which deals with the conditions for allowing of CENVAT Credit read as under:

> *"**RULE 4. Conditions for allowing CENVAT credit. —** (1) […]*
>
> ***Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of rule 9**.*
>
> *(2)(a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service or outside the factory of the manufacturer of final products for generation of electricity for captive use within the factory or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be, at any point of time in a given financial*

year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

PROVIDED that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in such financial year;

PROVIDED FURTHER that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer:

PROVIDED ALSO that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year:

PROVIDED ALSO that the CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

Explanation: For the removal of doubts, it is hereby clarified that an assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs."

19. The third proviso to Rule 4(1) imposing the period of limitation was introduced *vide* ***Notification No. 21/2014-Central Excise (N.T.)*** dated 11th July 2014 which came into effect on the same date. The period of limitation of six months was later extended to one year *vide Notification No. 6/2015-Central Excise (N.T)* dated 1st March, 2015 which came into effect on the same date.

20. The above provision relating to claim of CENVAT Credit has been considered in a number of decisions by different forums. The cases laws referred by the parties in this regard are discussed hereinafter.

21. In ***Osram Surya (Supra)***, the Supreme Court was seized with the question whether manufacturers who had imported goods prior to the amendment to Rule 57-G of the Central Excise Rules, 1944, (hereinafter "*1944 Rules*") could claim MODVAT credit post the said amendment. *Vide* the amendment to Rule 57-G, the manufacturers could avail credit only within a period of six months from the date of issuance of documents mentioned in the proviso to the said Rule. Relying on the said amendment, the claims of the Appellants therein were rejected by the revenue authorities as being time barred. The Appellants challenged the said decision. In the said challenge, the Supreme Court held that credit cannot be sought beyond the period of six months, though the import was made prior to the amendment. Further, the manufacturers' vested rights prior to the amendment in claiming the credit was held not to be affected by the amendment. However, the said amendment did limit the time within which the same could be claimed. The relevant portions of the said judgment are extracted herein below:

> *"6. At the outset, we must note that none of the appellants has challenged d the validity of the said*

proviso, therefore, we will have to proceed on the basis that the proviso in question is a valid one. In that background, the sole question that we will have to consider will be: whether the proviso to the Rule in question is applicable to the cases of manufacturers who had received their inputs prior to the introduction of the said proviso and are seeking to take credit in regard to the said inputs beyond the period of six months.

7. Having heard the arguments of the parties and after considering the Rule in question, ***we think that by introducing the limitation in the said proviso to the Rule, the statute has not taken away any of the vested rights which had accrued to the manufacturers under the Scheme of MODVAT. That vested right continues to be in existence and what is restricted is the time within which the manufacturer has to enforce that right.*** *The appellants, however, contended that imposition of a limitation is as good as taking away the vested right. In support of their argument, they have placed reliance on a judgment of this Court in Eicher Motors Ltd. v. Union of India [(1999) 2 SCC 361] wherein this Court had held that a right accrued to an assessee on the date when it paid the tax on the raw materials or the inputs would continue until the facility available thereto gets worked out or until those goods existed. In that background, this Court held that by Section 37 of the Act, the authorities concerned cannot make a rule which could take away the said right on goods manufactured prior to the date specified in the rule concerned. In the facts of Eicher case [(1999) 2 SCC 361] it is seen that by introduction of Rule 57-F(4-A) to the Rules, a credit which was lying unutilized on 16-3-1995 with the manufacturer was held to have lapsed. Therefore, that was a case wherein by introduction of the Rule a credit which was in the account of the manufacturer was held not to be available on the coming into force of that Rule, by that*

the right to credit itself was taken away, whereas in the instant case by the introduction of the second proviso to Rule 57-G, the credit in the account of a manufacturer was not taken away but only the manner and the time within which the said credit was to be taken or utilized alone was stipulated. ***It is to be noted at this juncture that the substantive right has not been taken away by the introduction of the proviso to the Rule in question but a procedural restriction was introduced which, in our opinion, is permissible in law****. Therefore, in our opinion, the law laid down by this Court in Eicher case [(1999) 2 SCC 361 : (1999) 106 ELT 3] does not apply to the facts of these cases. This is also the position with regard to the judgment of this Court in CCE v. Dai Ichi Karkaria Ltd. [(1999) 7 SCC 448]*

8. It is vehemently argued on behalf of the appellants that in effect by introduction of this Rule, a manufacturer in whose account certain credit existed, would be denied of the right to take such credit consequently, as in the case of Eicher [(1999) 2 SCC 361] a manufacturer's vested right is taken away, therefore, the Rule in question should be interpreted in such a manner that it did not apply to cases where the credit in question had accrued prior to the date of introduction of this proviso. ***In our opinion, this argument is not available to the appellants because none has questioned the legality or the validity of the Rule in question, therefore, any argument which in effect questions the validity of the Rule, cannot be permitted to be raised****. The argument of the appellants that there was no time whatsoever given to some of the manufacturers to avail the credit after the introduction of the Rule also is based on arbitrariness of the Rule, and the same also will have to be rejected on the ground that there is no challenge to the validity of the Rule.*

9. Without such a challenge, the appellants want us to interpret the Rule to mean that the Rule in question is not applicable in regard to credits acquired by a manufacturer prior to the coming into force of the Rule. This we find difficult because in our opinion the language of the proviso concerned is unambiguous. It specifically states that a manufacturer cannot take credit after six months from the date of issue of any of the documents specified in the first proviso to the said sub-rule. A plain reading of this sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the Rule and to cases where the manufacturer is seeking to do so after a period of six months from the date when the manufacturer received the inputs. ***This sub-rule (sic proviso) does not operate retrospectively in the sense it does not cancel the credits nor does it in any manner affect the rights of those persons who have already taken the credit before coming into force of the Rule in question. It operates prospectively in regard to those manufacturers who seek to take credit after the coming into force of this Rule****. Therefore, in our opinion, the Tribunal was justified in holding that the Rule in question only restricts the right of a manufacturer to take the credit beyond the stipulated period of six months under the Rule. Therefore, this appeal will have to fail."*

22. The Supreme Court also clarified the retrospective and prospective effect of the said amended proviso to Rule 57-G of the 1944 Rules. Thus, as per the Supreme Court the limitation introduced via amendment to the Rule 57G would be applicable against any manufacturer claiming credits after the said amendment came into force.

23. In ***Philips India (supra)*** the CESTAT, Mumbai was dealing with similar facts wherein the Appellant therein had imported certain capital goods

under the EPCG Scheme and failed to fulfill the export obligations under the said scheme. The goods were exported in the year 1994-1995 and the applicable duty was paid only after the order of the Settlement Commission. Thereafter, a claim was raised for CENVAT Credit in May, 2003 which was rejected by the Commissioner of Customs *inter alia* on the ground that the same is time barred. The said order of the Commissioner was appealed before the CESTAT, Mumbai. The findings of the Tribunal are reproduced hereunder:

> *"(g) We find that there is no provisions under the Central Excise Act or the Rules which prescribes a period within which credit of duty paid on the capital goods should be entered as taken in the register maintained. The intention of the Commissioner therefore for denying this credit cannot be upheld. In fact, it is found that Circular No. 199/33/96-CX, dated 23-4-1996 clarifies that time limit of six months prescribed in 2nd proviso to Rule 57G will not apply to availment of credit on capital goods under Rule 57-I and these instructions have been issued by the Board in consultation with the Ministry of Law. The Tribunal in the case of Surya Prabha Mills Limited v. Commissioner of Central Excise, Coimbatore reported in 2002 (149) E.L.T. 929* ***has held that no restriction in time limit, fixed for taking credit in respect of capital goods could be found by them****. The reliance of the Commissioner upon the decision of the Hon'ble Tribunal in the case of MRF Ltd. v. CCE, Madras reported in 1996 (88) E.L.T. 222 and associated Flexible & Wires Pvt. Ltd. v. Commissioner of Central Excise and Customs, Pune reported in 1995 (78) E.L.T. 292 is misplaced since these decisions appear to relate to credit on inputs and not on capital goods, as is the case herein. The decision in the case of Surya Prabha Mills Ltd. v. CCE, Coimbatore (supra) was therefore required to be followed by the Commissioner. The*

Commissioner's findings in this regard are therefore to be set aside.

[...]

(k) The appellants have pleaded that the impugned order traverse beyond the Show Cause Notice inasmuch as the Commissioner has held that the appellants have not mentioned anywhere in the reply during the personal hearing that the imported plant installed are in use and that the appellants have not claimed the benefit of the depreciation. A perusal of the Show Cause Notice does not reveal any such allegation as regards depreciation. The Chartered Accountant's certificate has been produced and we find therefore no reasons to uphold the order on the ground of depreciation having been claimed. The plea of the order traverse beyond the Show Cause Notice is upheld and the order is also required to be set aside on this account."

24. Thus, the CESTAT was of the view that the Appellant therein was entitled to receive CENVAT Credit since the rules at the time of the import of the concerned capital goods would be applicable. The decision of the CESTAT has been upheld in appeal by the Gujarat High Court in ***Commissioner of C. Ex. & Customs v. Philips India Ltd (supra).***

25. At this stage it would be apposite to refer to the Circular dated 23rd April, 1996 issued by CBIC which has been relied upon by the Petitioner, which reads as under:

"Notification No. 28/95-C.E. (N.T.), dated 29-6-1995 was issued whereby Rule 57G was amended providing that the manufacturer is allowed to take credit of duty paid on inputs within six months of the date of issuance of any of the duty paying documents as prescribed under Rule 57G of the Central Excise Rules.

> *2. Representations have been received from the Trade as to whether the aforesaid time limit of six months will also apply with respect of MOD- VAT credit to be availed on capital goods, as in the case of capital goods it may not be always possible to avail the credit within six months from the date of issuance of the documents.*
>
> *3. The matter has been examined by the Board in consultation with Ministry of Law* ***and it is hereby clarified that the time limit of six months as prescribed under second proviso to Rule 57G will not apply to availment of credit on capital goods under Rule 57T of the Central Excise Rules, 1944****.*
>
> *4. Trade and field formations may be advised accordingly.*
>
> *5. Receipt of this Circular may please be acknowledged."*

26. In ***Amalgamations Valeo Clutch (supra)*** the High Court of Madras was considering a case wherein MODVAT was claimed by the importer after the period of limitation under Rule 57G of the 1944 Rules. The High Court relied on the decision of the Supreme Court in ***Osram Surya (supra)*** and the six months period for availing of credit under Rule 57G was held to be applicable and accordingly the credit was refused.

27. In ***Global Ceramics Pvt. Ltd. (supra)*** a Co-ordinate Bench of this Court was considering a case where certain ceramic tiles had been imported and due to the products being sold higher than the MRP, a show cause notice was issued demanding differential duty and penalty. At the time of the import, the company had paid the basic customs duty, the CVD and Education Cess. The

company preferred an application before the Settlement Commission and at that stage, the company admitted duty liability along with interest. The company also sought adjustment of CVD paid at the time of import and CENVAT Credit paid as service tax. The Settlement Commission remanded the issue relating to CENVAT Credit to the Jurisdictional Commissioner. This was challenged by the company before this Court. The Court followed the earlier decision in the case of same company wherein the Settlement Commission had taken a contrary view and held that a substantive right could not be denied due to procedural irregularities. Accordingly, the Settlement Commission had permitted CENVAT Credit adjustment of the CVD amount paid. The Court held that the right to CENVAT Credit accrues on the same day when the inputs are received and the tax is paid on the same. It also held that Rule 4(1) of the CENVAT Credit Rules prescribing time limit would not apply to consignments where the imports took place prior to the date of the amendment. The observations of the Court are as under:

> *"15. In the present case, we are concerned with the amendment to the rule 4 of the CCRs with effect from July 11, 2014, which reads thus :*
>
> > *"Provided also that the manufacturer or the provider of output services shall not take Cenvat credit after six months of the date of issue of any of the documents in sub-rule (1) of rule 9."*
>
> *16. It is in terms of this amendment that it was provided that the Cenvat credit must be taken within one year of the issue of invoice for input goods or input services.*
>
> *17. There is substance in the contention of the learned counsel for the assesses in both the cases*

that the above amended provision cannot be given retrospective effect. As explained in Eicher Motors Ltd. v. Union of India (supra) the rule of lapse of credit lying with it unutilized on the date of amendment, cannot be applied to the goods manufactured prior to the date of the amendment. This is based on the principle that the right to adjustment of tax on final products accrues to an assessee on the date when they paid the tax on the raw materials and that right would continue until the facility available thereto gets worked out. In fact, the judgment in Osram Surya (P.) Ltd. v. CCE (supra) approvingly refers to the judgment in Eicher Motors Ltd. v. Union of India (supra).

[…]

22. Consequently, in the present case, the Court is satisfied that the Amendment to Rule 4(1) CCRs prescribing a time limit for claiming Cenvat Credit will not apply to the consignments in the present case where the import took place prior to the date of the amendment and the deemed manufacture took place when the MRP was altered, which also happened prior to the amendment. In other words, the CVD paid by the BRCPL will have to be permitted to be adjusted against the CE duty settled as will the service tax paid on the input services."

28. In ***Supreme Petrochem Ltd. (supra)*** the Appellant concerned had imported certain goods from South Korea and declared an assessable value. The Department found that the said goods were undervalued, and the show cause notice was served demanding additional customs duty. At that stage, the Petitioner approached the Settlement Commission. The Commission imposed the duty liability and granted immunity from prosecution and

penalty. After paying the duty, the Petitioner claimed the amount as CENVAT Credit. The Department took the position that no credit is available when there was wilful misstatement of facts under Rule 9(1)(b) of the Rules. The CENVAT Credit was finally disallowed by the adjudicating authority and interest was also imposed. The appeals before Commissioner and the CESTAT were dismissed and the order of the Adjudicating Authority was upheld. The Appellant therein appealed before the Madras High Court which in these facts observed as under:

> *"16. The provision of Chapter XIVA of the Customs Act, 1962, providing for settlement of disputes by the Settlement Commission is an independent Code and while it is provided to enact a remedial forum for putting an end to disputes in a quicker and more peaceful manner, it gives several advantages to the Assessees and the disputing parties mainly in the form of immunity from penalty and prosecution, which rigor of law would have been otherwise applicable to the Assessee besides the determination of disputed amount of duty under the provisions of the Act. The impermissibility of reopening of the order passed by the Settlement Commission in any proceeding under the Customs Act itself or under any other law does not only mean Assessment or other legal proceedings, but the said provision is intended to put an end to any possibility of later on tinkering, modification, adjustment or disturbance of what has been achieved by that order.*
>
> *17. The novel argument of the Learned Counsel for the Assessee that the customs duty paid under the orders of the Settlement Commission is nothing but CVD, which, per se, is allowable as Cenvat Credit is oversimplification. What is not provided in law cannot be granted. The initial proceedings initiated*

against the Assessee in the present case itself proceeded on the basis of the allegation against the Assessee that the Assessee had undervalued the value of the imported goods, which were shown to have been imported as 'free of cost' from a related party in South Korea and, therefore, there was a purported evasion of Customs Duty by the Assessee. Sooner the Show Cause Notice with these allegations was served upon the Assessee, the Assessee took shelter before the Settlement Commission for avoiding the rigmarole of all these assessment and penalty proceedings before the regular authorities of the Act, namely, the Assessment or the Appellate proceedings. Once the Assessee obtained a favourable order from the Settlement Commission and paid the Customs Duty determined to the tune of Rs. 18,01,115/, there was no scope left for the Assessee to claim such amount in the form of refund or adjustment either under the Customs Act itself or under any other law, including the Central Excise Act and the Cenvat Credit Rules.

18. Giving a finality and conclusiveness to the orders of the Settlement Commission has to be taken to its logical end and the position inter se between the parties flowing from the order of the Settlement Commission cannot be allowed to be disturbed in any manner, much less any indirect gain or duty paid can be allowed to be taken back by the Assessee under the provisions of any other law, including the Central Excise Act and the Cenvat Credit Rules. Therefore, we do not find any merit in the said contention of the Assessee and the same is liable to be rejected, which is, accordingly, rejected.

19. The case of the Revenue that even Rule 9(1)(b) of the Cenvat Credit Rules, 2004, prohibits the credit of excise duty or customs duty in case the same has

been paid and recovered from the Assessee on account of earlier non-levy or short-levy, by reason of fraud, collusion, wilful misstatement or suppression of facts, also has considerable force.

20. The contents of the Show Cause Notice in the present case, would clearly reveal that the case of the Revenue against the Assessee in the said Show Cause Notice was that of misstatement of facts and suppression of facts as well as misrepresentation of the assessable value of the goods to the extent of Rs. 49,02,861/-, which was declared only at Rs. 13,93,827/-. Merely because the said Show Cause Notice did not result in any Final Order at the instance of the Assessee itself, it does not mean that there was no case of fraud or misrepresentation or wrong declaration on the part of the Assessee. Therefore, even on the applicability of Rule 9(1)(b) of the Cenvat Credit Rules, 2004, we find that the denial of Cenvat Credit to the Assessee in the present case independently was also justified.

21. Viewed from any angle, we do not find any merit in the contention raised by the Learned Counsel for the Assessee that the Assessee was independently entitled to Cenvat Credit in respect of the CVD paid by it under the orders of the Customs (sic) Settlement Commission in the present case under the provisions of Cenvat Credit Rules, 2004. Thus, the present Appeal of the Assessee is liable to be dismissed."

29. The Madras High Court thus came to the conclusion that the proceedings before the Settlement Commission had resulted in immunity from prosecution and penalty for the Appellant therein. It was only after the show cause notice was issued alleging misstatement of facts and suppression that the duty amount was paid. Further, it was held that once the proceedings

have attained finality the same cannot be re-opened or modified for either imposition of liability or for claiming any benefit including under the CENVAT Credit Rules. Thus, the claim for CENVAT Credit was rejected rightly by the Madras High Court.

30. In ***Global Ceramics (supra)***, the Court was dealing with CENVAT Credit in respect of inputs for the domestic market which is governed by Rule 4(1) of the CENVAT Credit Rules. In the present case, the Court is dealing with CENVAT Credit in respect of capital goods under Rule 4(2) of the CENVAT Credit Rules. Further, it is noted that the Court did not discuss the decision of the Supreme Court in ***Osram Surya (supra)*** wherein it is clearly held that the second proviso to Rules 57-G of the 1944 Rules (which is identical to the third proviso to Rule 4 of the CENVAT Credit Rules) would be applicable *qua* manufacturers claiming credit after introduction of the said proviso. Thus, the limitation introduced via the amendment would affect any claim raised after the amendment came into effect.

31. In the facts of the present case, the Petitioner did not by itself voluntarily deposit the duty and penalty. The admitted position is that out of nine EPCGs, *qua* four EPCGs, the export obligation was not fulfilled. A substantial period of time *i.e.*, 8 years was given to the Petitioner for fulfilling its export obligations. Extension of two years was also given *qua* certain EPCGs. After the said extended period had also expired, the show cause notice was issued. The DRI then started investigation in respect of the unfulfilled export obligation. Even at that stage, the customs duty along with interest was not paid by the Petitioner. Only after the investigation was started, the Petitioner tendered the said amount in order to avoid prosecution and approach the Settlement Commission. The confiscation of goods also could

not also take place as the goods were no longer available for confiscation which is clearly captured in the order of the Settlement Commission. The relevant paragraph of the order is set out below:

> *"**Fine:** As the goods in respect of past imports to which confiscation has been proposed in the SCN, are not available for confiscation, the Bench refrains from ordering confiscation of the same or imposing any fine in lieu of confiscation in accordance with law."*

32. Further, it is noted that the Settlement Commission has clearly observed that had the investigation not been initiated the fraud on part of the Petitioner would never have been detected. Accordingly, the Settlement Commission has found the Petitioner liable for penal action under the provisions of the Act invoked in the SCN. The relevant portion of the impugned order is as under:

> *"(ii) The Bench finds Customs Notification 97/2004-Cus dated 17.09.2004 as amended is a conditional Notification and condition no (4) of the said Notification required an importer to produce evidence of discharge of export obligation within stipulated time period of 8 years from the date of issue of the Authorization, unless extended by Directorate General of Foreign Trade. The Bench further finds that para 5.8.3 of the Hand Book of Procedures (2004-09), required that if export obligation was not fulfilled in any particular block, the authorization holder shall pay to Custom Authorities, proportionate Customs duty on the unfulfilled portion of export obligation along with interest, however the applicant did not pay the Customs duty along with interest, and the same was paid only after the investigation was initiated by DRI. The Bench finds that Shri Sumit Garg, Director of the applicant firm in his statements dated 9.9.2016, 4.5.2017, 16.11.2017 admitted that they have neither fulfilled the export*

obligation mandated in the said EPCG Authorization nor deposited Customs duty saved/foregone along with interest on the Capital goods imported against the said EPCG Authorization. ***Had the investigations not initiated against the DRI, this fraud would not have been detected. In view of above, the Bench finds that applicant is liable to penal action under the provisions invoked in the show cause notice.****"*

33. The above observations have not been challenged by the Petitioner.

34. The purpose of approaching the Settlement Commission is to ensure that there is a finality to the determination by the Settlement Commission. Under Section 127(j) of the Act, the order passed by the Settlement Commission is conclusive.

35. The decision in ***Osram Surya (supra)*** followed by the recent decision of the Madras High Court in ***Supreme Petrochem Ltd. (supra)*** is clear to the effect that under such circumstances, credit cannot be given to a party which has deliberately not complied with the law. The Settlement Commission is right in holding that if the DRI had not started the investigation, the irregularity would have gone completely unnoticed and unchecked. The Petitioner had sufficient time to complete its export obligation and upon failure to do so, it ought to have voluntarily deposit the duty with interest, which he did not do. After having flagrantly violated and not complied with its export obligation, the Petitioner cannot be seen to derive double advantage by seeking CENVAT Credit for the CVD.

36. In the opinion of this Court, the Settlement Commission's order does not warrant any interference.

37. The petition is accordingly dismissed. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

MARCH 12, 2025
Rahul/msh