

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**

**NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**EXCISE APPEAL NO. 51623 OF 2022**

[Arising out of Order-in-Original No. 01/COMMR/IND/CEX/2022 dated 28.02.2022 passed by the Commissioner, CGST and Central Excise, Indore]

**Navin Fluorine International Limited**

**...Appellant**

Versus

**Commissioner, CGST and Central Excise,**

**...Respondent**

Manik Bagh Palace, Post Box No. 10,  
Indore-452014

**APPEARANCE:**

Shri Udayan Choksi, Advocate for the Appellant

Shri Ratnesh Kumar Mishra, Authorised Representative of the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**DATE OF HEARING: 06.05.2025**

**DATE OF DECISION: 06.11.2025**

**FINAL ORDER NO. 51676/2025**

**JUSTICE DILIP GUPTA:**

This appeal has been filed by Navin Fluorine International Limited<sup>1</sup> for quashing the order dated 28.02.2022 passed by the Commissioner of CGST and Central Excise, Indore<sup>2</sup> confirming the demand raised in the show cause notice dated 07.09.2020 under section 11A of the Central Excise Act, 1944<sup>3</sup> with applicable interest under section 11AA of the Central Excise Act and penalty under section 11AC of the Central Excise Act for the period from 18.08.2015 to 30.06.2017.

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1. the appellant
  2. the Commissioner
  3. the Central Excise Act

2. The two issues that arise for consideration in this appeal are:

- (i) Whether the products cleared as samples for testing purposes by the appellant were actually not samples but finished products cleared without payment of duty and, therefore, whether the appellant can be said to be engaged in clandestine removal of goods. The tax amount involved in this issue is Rs. 2,57,86,877/-; and
- (ii) Whether certain amount of CENVAT credit was availed and utilized wrongly as the same had been availed beyond the period of one year from the date of invoice. The amount involved in this issue is Rs. 46,43,061/-.

3. The appellant is registered as an Export Oriented Unit<sup>4</sup> under the Foreign Trade Policy and is engaged in the provision of Contract Research and Manufacturing Services<sup>5</sup> in relation to various fluoro chemical products. It is stated that for the purpose of this service, the appellant carries out research for and on behalf of its clients with the objective of developing new processes and products as per the objectives and specifications of the clients. To achieve this end, the appellant enters into contracts with the clients which have specific provisions under which the appellant is required to undertake process development/process familiarization/lab familiarization. Such contracts are essential for the provision of customised research services for development of processes, although in some cases the scope of work may also involve contract manufacture. The appellant also contends

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4. EOU

5. Contract Research Services

that the products for which the processes are developed by the appellant for its clients are customized products which are not available in the open market. It has also been stated that even if contract manufacturing is to be carried out, there is a marked difference in the pricing for the development activity and for contract manufacturing.

4. According to the appellant, the Contract Research Services activity is undertaken by the appellant in the product development laboratory at Dewas in the State of Madhya Pradesh. At various stages of the Contract Research Services process, samples of raw materials and intermediate products require multiple rounds of testing to determine whether they meet the desired specifications. The appellant claims that as it does not have the required equipment at its EOU facility at Dewas to undertake the said testing, small quantities of the samples are despatched to the laboratory at the in-house facility of the appellant at Surat in the State of Gujarat for testing/ research and development purposes. These samples are the subject matter of the allegation of clandestine removal.

5. A show cause notice dated 07.09.2020 was issued to the appellant for the period 18.08.2015 to 30.06.2017 alleging that:

- (i)** The finished products developed by the appellant were cleared without payment of duties because 'similar' products were seen in the list of finished products;
- (ii)** The goods despatched for testing were all finished goods;
- (iii)** For valuation purposes, the higher of the export value or a calculation of 110% of cost of manufacture (based on the company's profit and loss account) should be applied;

- (iv)** The appellant showed small quantities of goods despatches, but higher quantities in the courier invoices should be adopted;
- (v)** The appellant was, therefore, engaged in clandestine removal of goods; and
- (vi)** CENVAT credit had been wrongly availed and utilized by the appellant beyond the period of one year from the date of invoice.

6. The appellant filed a detailed reply to the show cause notice and contended:

- (i)** The goods that were cleared were not finished goods. All goods despatched to the laboratories were made-to-order and, therefore, needed testing and all the goods in question were testing samples sent to specialized testing facilities;
- (ii)** They were, therefore, in very small quantities and while there were numerous despatches for the same project, but they were duly accounted for;
- (iii)** The question of applying a 'selling price' did not arise as the appellant was undertaking Contract Research Services activity and, therefore, the appellant only provided the value of the raw materials used in the samples;
- (iv)** 'Similar' products were seen in the list of finished products because when the samples were sent, the name of the end product was only used to identify the products being synthesized, though the samples sent were mostly raw material or intermediate stage; and
- (v)** The question of clandestine removal, therefore, does not arise as only miniscule quantities were sent and the goods were not sent to any customers but to laboratories, which is an admitted fact. There is no

revenue earned by the appellant and the samples also had no commercial value.

7. The Commissioner, however, did not accept the submissions made by the appellant in the reply filed to the show cause notice and confirmed the demand. The relevant portions of the order passed by the Commissioner are reproduced below:

**"29(6).** From the above provisions of Rule 16(C), it is clear that, for removal of goods for testing purposes, without payment of duty, necessary permission is required from the Commissioner which will be issued in the form of an Order. In addition to this, the goods being sent for the testing purpose either to be returned back to the assessee or to be cleared on payment of the proper Central Excise duty. **It has been alleged in the impugned SCN that the Noticee has neither followed any of the procedural and statutory requirements for the removal of goods for testing purposes nor the goods were returned to them. Thus, it appears that there was never an intention of the Noticee to remove these goods for testing purposes but to remove the same clandestinely from their factory premises with sole intention to evade payment of Central Excise duties.**

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**29(16).** In the reply dated 08.03.2021 & additional reply dated 24.02.2022, the Noticee has argued that since all these products (of Annexure-F) in question are not saleable in the market, as these are custom developed material, it cannot be said that such goods are marketable. Since the goods are not marketable, it cannot be subjected to duty of excise, as for levy of the excise duty, the product should be marketable. The department has nowhere substantiated that the products which are sent out as a sample, is marketable in the form in which it is sent out for testing. It is well established law that the onus to

establish marketability is on the department and not on the assessee.

**Here, I find that the contention of the Noticee is incorrect, in as much as, the list of finished products along with quantity and price (which were exported from Noticee's factory-Annexure-I to the impugned SCN), provided by Shri Sheetal Sharma, in his statement dated 16.07.2020, most of the products mentioned in Annexure-I & Annexure-F are common products. Thus, it is well established that all the products cleared by the Noticee as mentioned in Annexure-F as 'sample for testing / intermediate products' are nothing but the finished products only and these finished products were cleared by them without payment of duty.**

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**29(21). Further on perusal of the ER-2 Returns for the period from April'2016 to June 2017 and Credit Ledger which were produced by the Noticee during the course of search, the officers observed that the Noticee have availed the Input Goods Credit of Rs. 35,11,453/- & Input Service Credit of Rs. 11,31,608/-, against those invoices which were older than one year. xxxxxxxxxx. Thus, the Noticee failed to follow the provisions of Rule (4) of Cenvat Credit Rules'2004 in as much as they have availed the Input Goods Credit of Rs. 35,11,453/- & Input Service Credit of Rs. 11,31,608/-, beyond the prescribed time limit of 'one year' from issue date of their respective documents, as prescribed under Notification No. 06/2015-Central Excise (N.T.) dated 01.03.2015. Therefore such Credit stands inadmissible and should be disallowed to them and to be recovered from them along with applicable interest and penalty.**

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**29(25). Further, since the Noticee failed to inform to the department about removal of Goods**

**[Organic Chemicals (FLUORO Finished Goods)] as mentioned in Annexure-F involving Central Excise duty amounting to R.2,57,86,877/-, and wrongly availed the inadmissible Cenvat Credit of Rs.46,43,061/- (Input Service Credit of Rs.11,31,608/- + Input Goods Credit of Rs.35,11,453/-) hence it is very much clear that the Noticee had suppressed the facts from the department and contravened the provisions of Section (3) of the Central Excise Act' 1944, Rule 6,8 and 11 of Central Excise Rules'2002, Rule 4 of the Cenvat Credit Rules'2004, and therefore, extended period is rightly invocable in the instant case in terms of the provisions of Section 11(A) of the Central Excise Act' 1944.** The Central Excise Duty amounting to R.2,57,86,877/- is recoverable from the Noticee under Section 11(A) of the Central Excise Act' 1944 read with Section 174 of the CGST Act, 2017 along with recovery of applicable interest under Section 11AA of the Central Excise Act' 1944 and Noticee also became liable for penalty under Section 11AC of the Central Excise Act' 1944 read with Rule 25 of the Central Excise Rules, 2002. Also, the inadmissible Cenvat credit of Rs. 46,43,061/- should be disallowed and recovered along with interest form them in terms of Rule 14 of Cenvat Credit Rules' 2004 read with Section 11(A) of the Central Excise Act' 1944 read with Section 174 of the CGST Act, 2017 and the Noticee are liable for imposition of penalty in terms of Rule 15(2) of the Cenvat Credit Rule' 2004 read with Section 11AC of the Central Excise Act' 1944. Finally, there is no option left for me except to confirm all the demands raised in the impugned SCN along with recovery of applicable interest and penalty."

**(emphasis supplied)**

8. Shri Udayan Choksi, learned counsel for the appellant, made the following submissions:

- (i) The impugned order erroneously confirms the allegation of clandestine removal of samples sent for testing by

assuming them to be finished products cleared without payment of duty;

- (ii)** The impugned order, while upholding that the appellant was engaged in the clandestine removal of goods, selectively relied upon documents without considering the factual aspects explained by the appellant;
- (iii)** The impugned order has compared Annexures F, H and I to the show cause notice and on the basis that the names in the list of samples sent for testing overlaps with the list of finished goods exported by the appellant, concluded that the appellant cleared finished goods disguised as testing samples, resulting in clandestine removal. Further investigation as to the nature of the samples was not undertaken nor was the explanation provided by the appellant contradicted by any evidence;
- (iv)** The impugned order erred in not applying paragraph 6.28 in the Handbook of Procedures under Foreign Trade Policy, which provides that export oriented units are permitted to transfer goods for quality testing/ research and development purpose to any laboratory/institution without payment of duty, and where goods have been consumed/destroyed in process of testing a certificate from laboratory/institution to this effect is required;
- (v)** The impugned order erroneously held that the quantity of goods cleared as mentioned in Annexure-F to the show cause notice is higher than what is mentioned thereunder based on the weight of the goods recorded

by the courier agencies. The impugned order conveniently ignored the fact that the invoices issued by the courier agencies are based on weight slabs and do not record the actual weight;

- (vi)** The department has not brought on record any evidence/document which may substantiate that the actual weight of the shipment was higher than the weight as mentioned by the appellant in the letter dated 11.11.2019;
- (vii)** The impugned order erroneously concluded that the appellant wrongly availed and utilized CENVAT credit;
- (viii)** In respect of CENVAT credit claimed on various input services beyond the prescribed one year period amounting to Rs. 11,31,608/-, the department fundamentally erred in alleging that the credit was availed beyond the stipulated time under rule 4 of the CENVAT Credit Rules, 2004<sup>6</sup>. During the course of investigation itself, Deepak Jaiswal, in his statement recorded on 14.10.2019, had categorically clarified that CENVAT credit in question had been availed in the books of accounts of the appellant well within the prescribed one-year period. The delay, if any, was only in disclosing such availment in the ER-2 returns of a later period. This crucial distinction between availment in books and disclosure in returns have been ignored in the impugned order;
- (ix)** Regarding reclaim of CENVAT credit previously reversed pertaining to refund claims withdrawn amounting to Rs.

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**6. the 2004 Credit Rules**

32,61,281/-, the appellant had initially claimed refund of accumulated CENVAT credit but subsequently, the appellant withdrew the refund claims and re-availed the earlier reversed credit during the month of June 2017. The time limit prescribed under rule 4 of the 2004 Credit Rules applies only to availment of credit on documents such as invoices and bills, and not to re-availment of credit that had earlier been reversed for the purpose of refund claims. Reliance has been placed on the letter submitted by the appellant to the department intimating the withdrawal of the refund claim and the corresponding recredit of the amount; and

- (x)** In respect of CENVAT credit claimed on the unavailed 50% portion of credit on capital goods amounting to Rs. 1,18,493/-, part of the credit alleged to have been taken belatedly pertains to the balance 50% portion of CENVAT credit on capital goods. As per rule 4(2)(a) of the 2004 Credit Rules, a manufacturer is permitted to avail only up to 50% of the credit on capital goods in the financial year of receipt, and the remaining 50% can be availed in any financial year subsequent to the year of receipt, without any time bar. Annexure-4 to the reply to the show cause notice clearly demonstrates that the relevant credits were availed in RG-23C, which pertains to the availment of credit on capital goods. The annexure contains a tabulated statement indicating the date of the invoice and the corresponding claim of the balance 50% credit in the financial year following the

date of the invoice. Thus, credit was validly claimed to the extent of claim of credit on such balance 50% portion of CENVAT credit on capital goods.

9. Shri Ratnesh Kumar Mishra, learned authorised representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

10. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

11. The first issue that arises for consideration is whether the products cleared as samples by the appellant for testing purposes were finished products cleared without payment of duty and, therefore, were removed in a clandestine removal by the appellant.

12. As noticed above, the appellant was engaged in Contract Research and Manufacturing Services in relation to various fluoro chemical products and for this purpose it carried out research on behalf of its clients so as to develop new processes as per the specifications of the clients. The appellant had, therefore, to undertake process development/ process familiarization/ lab familiarization. This process was undertaken by the appellant in the Product Development Laboratory at Dewas in the State of Madhya Pradesh. During the process of Contract Research Service, samples of raw materials and intermediate products required multiple rounds of testing to determine whether they meet the desired specifications. According to the appellant small quantities of the samples were despatched to its in-house laboratory at Surat in the State of Gujarat for testing purposes as it did not have the required equipments at its facility at Dewas.

13. The dispute in the present appeal is with respect to these samples, which according to the appellant, were sent to its in-house facility at Surat for testing/ research and development purposes.

14. The impugned order holds that the product despatched by the appellant to Surat for testing were actually finished goods which were cleared without payment of duty. For this purpose, the impugned order has placed reliance upon Annexures F, I and H to the show cause notice. Annexure – F is the list of goods cleared for testing by the appellant to its in-house facility at Surat. Annexure – I is the list of goods cleared by the appellant for export with the quantity and price. Annexure – H is the list of year-wise finished products developed by the appellant.

15. It is on a comparison of Annexures F, H and I to the show cause notice that the impugned order holds that the names in the list of samples sent for testing overlaps the list of finished goods exported by the appellant. An inference has, therefore, been drawn that the appellant cleared finished goods disguised as testing samples.

16. According to the appellant the names of the products were mentioned in Annexure – F so to enable the appellant to identify the testing samples and using the name of the final product was only for the purposes of record keeping.

17. The said reason given by the appellant in response to the show cause notice has not even been considered in the impugned order and only an inference has been drawn that since there is similarity in the names mentioned in Annexures- F and I to the show cause notice, the products which the appellant claims were sent by testing were final products. There is no other evidence on record which may lead to the aforesaid conclusion.

18. The contention of the appellant can be believed since the covering letters accompanying the despatches clearly show that raw material/ intermediate goods were being despatched and the details in Annexure – F to the show cause notice match the covering letters which were issued at the time of testing. The corresponding test reports were also issued by the laboratory in respect of each sample after the testing was completed. This is also evident from the fact that testing reports for all the samples have been placed on record. The corresponding certificates also confirm that the samples were consumed in the testing purposes. This would be clear from the following Chart in respect of the samples:

<b>S. No.</b>	<b>Sample Name</b>	<b>Project Code</b>	<b>Cover Letter</b>	<b>Test Reports</b>	<b>Certificates of Consumption</b>
1.	4-Bromo-1-fluoro-2-(trifluoromethyl) benzene	NCR221	The same sample named, which further specifies it as 'Crude'	The same sample named at Exhibit-4@	The same sample and the same quantity, referred to at S.No. 1 of Exhibit-5
2.	3 - (4-Chloro -1, 2, 5 - thiadiazol - yl) - pyridine A 10922	NCR223	The same sample and the same quantity at Exhibit - 3@, which further specifies it as 'Residual Solvent'	The same sample named at Exhibit-4@	The same sample and the same quantity, referred to at S.No. 3 of Exhibit-5
3.	6 - Aminopyridine-2 - sulfonamide	NCR225	The same sample named at Exhibit -3@, which further specifies it as 'Crude'	The same sample named at Exhibit-4@	The same sample and the same quantity, referred to at S.No. 12 of Exhibit-5
4.	3 - amino-5-fluoropyridine	NCR224 (AFP)	The same sample named at Exhibit-3	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 48 of Exhibit-5
5.	5-a-methoxy-a-thrifluoromethylphenylacetic acid/Moshers acid	NCR160	The same sample named at Exhibit-3	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 56 of Exhibit-5

6.	2-Chloro-5-(trifluoromethyl) pyrazine	NCR186	The same sample named at Exhibit-3, which further specifies it as 'GC Mass'	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 2 of Exhibit-5
7.	5-(difluoromethoxy) pyridine-2-carboxylic acid	NCR177	The same sample named at Exhibit-3, which further specifies it as 'ROI'	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 9 of Exhibit-5
8.	3-fluoropicolinimidamide	NCR228	The same sample named at Exhibit-3, which further specifies it as 'LCMS'	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 17 of Exhibit-5
9.	4, 4-Difluorodiphenyl sulphone	SFC0189	The same sample named at Exhibit-3	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 59 of Exhibit-5
10.	2-Aminopyrazolo (1, 5 - a) pyrimidine - 3 - carboxylic acid	NCR202 (APC)	The same sample named at Exhibit -3	The same sample named at Exhibit-4	The same sample and the same quantity, referred to at S.No. 47 of Exhibit-5

19. It is, therefore, clear from the covering letters, testing reports and consumption certificates that only testing samples were sent by the appellant to its in-house facility at Surat and not the finished products.

20. This is also clear from the contracts entered into between the parties which show that the scope of work was process familiarization and development/familiarization and development of analytical method/laboratory demonstration of optimised process, deliverable was report and in some case sample batch in relation to various chemicals.

21. The appellant had produced enough evidence to substantiate that only testing samples had been sent to the in-house facility at Surat, but the department did not produce any evidence to support its view.

22. In this view of the matter, it is not possible to accept the finding recorded in the impugned order that the samples that were sent were finished products which had been cleared without payment of excise duty and, therefore, were removed in a clandestine manner.

23. The second issue that arises for consideration is regarding the finding recorded in the impugned order that the quantity of goods shown to have been cleared in Annexure – F to the show cause notice was higher than what was actually cleared.

24. This finding has been arrived at in the impugned order on the basis of the weight of the goods recorded in the courier agencies.

25. The contention of the appellant is that the invoices issued by the courier agencies are based on weight slabs and do not record the actual weight. The statements of Purushottam Shiyani working with Shree Maruti Courier Services and Ashwini Jadhava working with Shree Anjani Courier Service have been completely mis-interpreted in the impugned order. Both these persons had clarified the courier billing practices and had stated that the courier charges are calculated based on fixed weight slabs and not actual weight. They specifically stated that any parcel weighing between 1 gm and 50 gms is recorded as 50 gms, and any parcel between 201 gms and 1000 gms is recorded as 1000 gms, regardless of the actual weight for billing purpose.

26. The department did not produce any evidence to substantiate that the weight mentioned in Annexure F was lesser than the actual weight of the products shipped.

27. The weights of the samples mentioned in Annexure – F, therefore, could not have been discarded merely because of a higher weight shown in the courier invoices.

28. The third issue that arises for consideration is regarding the finding recorded in the impugned order that the appellant had wrongly availed and utilized CENVAT credit.

29. This can be categorised under the following heads.

**(1)**

**Inputs services beyond the prescribed period of one year  
amounting to Rs. 11,31,608/-**

30. The impugned order holds that the appellant had availed credit beyond the stipulated period provided under rule 4 of the 2004 Credit Rules.

31. The contention of the appellant is that Deepak Jaiswal, in his statement recorded on 14.10.2019, during the course of investigation had clarified that the credit in question had been availed in the books of accounts of the appellant within one-year and the delay was only in disclosing such availment in the ER-2 returns of a later period. In this connection reliance has been placed by the learned counsel for the appellant on the decision of the Tribunal in **M/s. Origin Learning Solutions Pvt. Ltd. vs. Commissioner of Service Tax, Chennai<sup>7</sup>**.

32. From the ER-2 returns filed by the appellant it is clear that the credits were claimed by the appellant in the books of account within one year of the date of invoice.

33. In **Origin Learning Solutions**, the Tribunal held:

"5. It is not in dispute that the appellants are eligible for credit to the tune of Rs.16,93,074/- on the service tax paid by them under reverse charge mechanism on input services availed by them. The only reason for denying the credit is that they have not reflected such availment of credit in ST-3 returns for

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**7. Service Tax Appeal No. 40599 of 2017 decided on 20.07.2021**

July, 2013 to September, 2013. The services having been exported, the service tax paid on the input services used for export of services should be refunded to the appellants as per Rule 5 of Cenvat Credit Rules, 2004. The appellants have properly accounted in their books of account. Not mentioning the credit availed in ST-3 returns is only a procedural lapse, which can be condoned."

**(2)**

**Reclaim of CENVAT credit previously reversed pertains to refund claims withdrawn amounting to Rs. 32,61,281/-**

34. The appellant has provided detailed of the credit which are as follows:

S. No.	Period of claim	Amount (in Rs.)	Date of submission of claim	Date of Reversal of Credit	Date on which claim withdrawn	Date on which recredit claimed
1.	Oct 14 to Dec 14	18,20,245/-	02.04.2015	29.01.2016	22.06.2017	29.06.2017
2.	Apr 15 to June 15	7,63,097/-	28.05.2016	19.04.2016	22.06.2017	29.06.2017
3.	July 15 to Sept 15	6,77,939/-	30.06.2016	04.03.2016	22.06.2017	29.06.2017

35. The contention of the appellant is that the appellant had initially claimed refund of the accumulated credit, but subsequently withdrew the refund claims and re-availed the earlier reversed credit during the month of June 2017 which was justified since the time limit prescribed under rule 4 of the 2004 Credit Rules applies only to availment of credit on documents such as invoices and bills and not to re-availment of credit that had earlier been reversed for the purpose of refund claims. In this connection, learned counsel placed reliance upon the letter submitted by the appellant to the department, intimating the withdrawal of the refund claim and the corresponding recredit of the amount.

36. The aforesaid contention of the appellant deserves to be accepted as rule 4 of the 2004 Credit Rules would have no application to the facts of the present case.

**(3)**

**Credit claimed on the unavailed 50% portion of credit on capital goods amounting to Rs. 1,18,493/-**

37. Under rule 4(2)(a) of the 2004 Credit Rules, a manufacturer is permitted to avail only 50% of the credit on capital goods in the financial year of receipt, and the remaining 50% can be availed in any financial year subsequent to the year of receipt.

38. There is no time limit placed to availing the remaining 50% credit.

39. The contention of the appellant is that the credit alleged to have been taken belatedly pertains to the balance 50% of the credit on capital goods. In the reply filed by the appellant to the show cause notice details have been given which indicate the date of invoice and the corresponding claim of the balance 50% credit in the financial year following the date of invoice.

40. The impugned order, therefore, wrongly rejects the CENVAT credit claimed on the unavailed 50% portion of the credit on capital goods.

**(4)**

**Credit claimed on various input goods beyond the prescribed one year period amounting to Rs. 1,12,837/-**

41. Like in the case at serial no. 1, here also the impugned order erred in alleging that the credit was availed beyond the stipulated period provided under rule 4 of the 2004 Credit Rules. The appellant has demonstrated that the credit had been availed in the books of account

of the appellant within the prescribed one year period and the delay was only in disclosing the availment in the ER-2 returns of a later period.

### **CONCLUSION**

42. In view of the aforesaid discussion, it has to be held that the appellant cleared samples for testing purposes to its in-house facility at Surat in the State of Gujarat and had not cleared finished goods. It cannot, therefore, be said that the appellant was engaged in clandestine removal of goods.

43. It also emerges that the appellant had correctly availed and utilized CENVAT credit.

### **ORDER**

44. The impugned order dated 28.02.2022 passed by the Commissioner cannot, therefore, be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **06.11.2025**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**