

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5
EXCISE APPEAL NO. 85613 OF 2021**

(Arising out of Order-in-Appeal No. PUN-CT-APP-II-000072-2020-21 dated 29.01.2021 passed by the Commissioner (Appeals-II) Pune.)

M/S. BHIMA SAHAKARI SAKHAR KARKHANA LTD
MADHUKAR NAGAR, PATAS,
TAL-DAUND, DIST. PUNE-412219

Appellant

Vs.

THE COMMISSINER CGST -PUNE-I
41-A, ICE HOUSE, OPP.
WADIA COLLEGE, SASSOON ROAD,
PUNE-411001.

Respondent

Appearance:

Shri Abhiram S. Apte, Advocate present for the Appellant.

Shri Rajiv Ranjan, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85036/2026

Date of Hearing : 09.12.2025

Date of Decision: 22.01.2026

Denial of Cenvat Credit of Rs. 3,38,796/- and order for its recovery under Rule 14(1)(ii) of the Cenvat Credit Rules 2004 (CCR) alongwith appropriate interest and equal penalty imposed under Rule-14 and Rule-15 (2) of the Cenvat Credit Rules, that received affirmative confirmation from the Commissioner (Appeals), vide his above referred order is assailed by the assessee appellant before this forum.

2. Fact of the case, in a nut shell, is that appellant is a manufacturer of sugar molasses and its by-products and it had availed Cenvat Credit of the

Central Excise duty paid on the inputs and capital goods. It was pointed out during EA 2000 Audit of the record of appellant that from April 2013- June 2017, there were certain wrong availments of Cenvat Credit on inputs and of Capital Goods that was calculated to be Rs. 3,38,796/- but Appellant had already reversed Rs. 2,87,502/- keeping balance amount in respect of one amounting to Rs. 51,294/- alongwith interest and equal penalty. However, it was issued with a show-cause notice for recovery of alleged inadmissible credit to the tune of Rs. 3,38,796/- alongwith with interest and equal penalty which, it contested unsuccessfully before the Adjudicating Authority and Commissioner (Appeals) and ultimately approached this forum for necessary relief.

3. During the course of hearing of appeal Ld. Counsel for the Appellant Mr. Abhiram S. Apte, Advocate submitted that appellant had already reversed Rs. 2,87,502/- out of total demand amounting to Rs. 3,38,796/-. It was inappropriate on the part of Department to issue show-cause notice for recovery of the entire amount in violation of statutory provision contained in Section 11A(2) of the Central Excise Act, apart from the fact that for that differential amount of Rs. 51,294/-, the invoice (Page-47 of the Appeal Memo) would go to show that for design, supply, installation, commissioning with satisfactory trial of the feeder bay, the amount was charged out of which only for erection part, no credit is available against duty paid on the inputs but on the entire amount of Rs. 4,15,000/-, reversal of duty paid for an amount of Rs. 51,294/- was sought for, even when Appellant had demonstrately established from its work order that it was a composite contract of erection, commissioning etc., a part of which is only work contract. Further, in submitting decision of this Tribunal passed in the

case of Mundra Port & Special Economic Zone Ltd. Vs. CCE, Rajkot, reported in 2009(13) S.T.R. 178 (Tri.-Ahmedabad) & Sarita Hand Exports Pvt. Ltd., reported in (2023) 11 Centax 258 (Tri.-Chan), he further argued that when credit availed is mentioned in the Statutory record, no *mala-fied* can be attributed to invoke penal provision as it is a settled decision of this Tribunal that issue involving interpretation of the provision cannot be equated with intend to evade payment of duty, for which confirmation of penalty by invoking the extended period is not at all proper and therefore, the order passed by the Commissioner (Appeals) is assailed in this case.

4. *Per contra*, Authorised Representative for the Respondent Department Mr. Rajiv Ranjan, Assistant Commissioner argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and took this Bench through the work order viz-a-viz. that disputed invoice at Page-47 to justify that Appellant was directed to reverse credit in respect of service tax paid towards erection part and not for the entire work of design, supply, installation, commission etc. and therefore, the order passed by the Commissioner (Appeals) need not be interfered with.

5. I have gone through the case records and perused the available documents. At the outset, it is to be said that when appellant had reversed Rs. 2,87,502/- after such availment of allegedly inadmissible credit that was pointed out by the Department through audit, notice of recovery should remain confined to the balance amount. Further, it is acknowledged in both Order-in-Original and Order-in-Appeal that such amount was

reversed prior to issue of Show-cause notice and they appropriated the same amount through their order but ultimately imposed interest and equal penalty on the same, which appears to be contrary to the provision containing Section 11A(2) of the Central Excise Act, 1944 and appellant's ascertainment that the interest was not payable since amount was reversed from the Cenvat Credit account where amount was lying balance, is acceptable. Though initially appellant had also challenged the additional demand and legality of the disputed demand of Rs. 51,294/- availed against tax invoice dated 02.07.2012., Ld. Counsel for the Appellant ultimately conceded that in the particulars mentioned in the said invoice, erection part is only referred against which Rs. 4,15,000/- has been posted and Service tax @ 12.36% on it comes to Rs. 51,294/- which was paid in respect of erection part alone against which Cenvat Credit is not available in terms of Rule 2(L) of the Cenvat Credit Rules 2004.

6. I am, therefore, of the considered view that Appellant may feel duty bound to pay back the said amount of Rs. 51,294/- but since it is a composite contract in which all varieties of work are also mentioned in the invoice including erection, commission, design supply satisfactory trials etc., it can be considered as an erroneous understanding of the provision of Cenvat Credit Rules 2004 about such credit on erection part which has been categorically mentioned to be inadmissible in the said Rule but such a erroneous understanding or erroneous interpretation of the provision can never be equated with intention to evade payment of duty so as to invoke the extended period, apart from the fact that said invoice pertains to a period which is not covered in the show-cause notice. Hence the order.

The order

7. The appeal is allowed and the order passed by the Commissioner (Appeals) vide Order-in-Appeal No. PUN-CT-APP-II-000072-2020-21 dated 29.01.2021 is, hereby set aside. Appellant, since agrees that such availment of Cenvat Credit of Rs. 51,294/- was not admissible, it is at liberty to pay the same with interest to the credit of the Respondent Department on its own volition without any compulsion to establish its credibility as a good participant in nation building process.

(Order pronounced in the open court on 22.01.2026)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)