

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 53710 OF 2018

[Arising out of the Order-in-Original No. ALW-EXCUS-000-COM-020-18-19 dated 24/08/2018 passed by The Commissioner of Central Excise, Alwar]

M/S KUNSONS METALS LTD.APPELLANT
(now called Balar Marketing Private Limited)

G-I,472, Phase-I, RIICO Industrial Area
Bhiwadi, District Alwar
Rajasthan - 110 035

Versus

COMMISSIONER OF CENTRAL EXCISERESPONDENT

A-Block, Surya Nagar
Alwar,
Rajasthan- 301001

APPEARANCE:

Shri B.L.Narasimhan and Ms. Sukriti Das, Advocates for the appellant.
Shri Rakesh Agarwal, Authorized Representative for the Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50174/2026

DATE OF HEARING : 21.11.2025
DATE OF DECISION: 27.01.2026

P.V.SUBBA RAO

We have heard Shri B.L. Narasimhan, learned counsel for the appellant and Shri Rakesh Agarwal, learned authorized representative for the Revenue and perused the records.

2. The facts which led to the issue of the impugned order are that the appellant manufactured goods on job work basis during the period 2008-09 to 2011-12 but had not paid any central excise duty. Goods manufactured on job work basis were exempted from payment of central excise duty during the relevant period under conditional exemption notification no.

214/86 and the condition being that the Principal undertakes to pay the central excise duty. No such undertaking was given by the Principal and hence the appellant was bound to, but had not, paid central excise duty.

3. Accordingly, a Show Cause Notice was issued to the appellant and thereafter an order dated 7.1.2014 was passed confirming demand of central excise duty of Rs.2,37,08,329/- under section 11A(4) along with interest and an equal amount of penalty was imposed under section 11AC on the appellant. Penalty of Rs. 25,00,000/- was also imposed on Shri Vimal Jain, Director of the appellant.

4. Both the appellant and Shri Vimal Jain had appealed to this Tribunal and Final Order No. 57388-57389/2017 dated 26.1.2017 allowed the appeal of Shri Vimal Jain and remanded the matter to the original authority as follows:

- a) The confirmation of demand with interest was upheld invoking extended period of limitation;
- b) The appellant was held entitled to CENVAT Credit on inputs and input services on satisfactory verification by the jurisdictional officer;
- c) Cum duty benefit was allowed;
- d) It was held that the amount of penalty also needs to be re-determined after re-determining the duty payable; and
- e) The matter was remanded to the Commissioner for calculation as above.

5. Thereafter, the Commissioner passed the impugned order:

- a) Holding that the appellant was entitled to CENVAT credit of Rs. 1,99,62,470/- on the inputs and input services;

- b) Disallowing CENVAT credit on capital goods amounting to Rs. 2,86,134/- on the ground that this Tribunal had, while remanding the matter did not allow CENVAT credit on capital goods;
- c) Re-quantified the amount of duty considering the cum-duty benefit to Rs. 2,09,22,155/- from Rs 2,37,08,329/-; and
- d) Imposing penalty of Rs. 2,09,22,155/- under section 11AC.

6. The submission of the learned counsel for the appellant is that the Commissioner has erred in not allowing CENVAT Credit on capital goods and also in imposing penalty under section 11AC without considering the CENVAT credit available to the appellant.

7. Learned authorized representative for the Revenue vehemently supported the impugned order.

8. We have considered the submissions advanced by both sides and perused the records.

9. As far as the CENVAT credit on capital goods is concerned, both sides agree that the only reason this was not allowed is because in the remand order, while this Tribunal allowed CENVAT credit on inputs and input services but had not mentioned about CENVAT credit on capital goods.

10. After going through the order of this Tribunal remanding the matter and the impugned order, we do not find anything to suggest that this Tribunal had considered the question of CENVAT credit on capital goods and decided that it should not be allowed. We also find no logical reason to deny CENVAT credit on capital goods while allowing CENVAT credit on inputs and input services. We, therefore, find that the appellant is entitled to CENVAT credit on capital goods also.

11. As far as the penalty under section 11AC is concerned, this section reads as follows:

"11AC. Penalty for short-levy or non-levy of duty in certain cases. (1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows--

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of Section 11-A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or Rupees Five thousand, whichever is higher:

Provided that where such duty and interest payable under Section 11-AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;

(b) where any duty as determined under sub-section (10) of Section 11A and the interest payable thereon under Section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of Section 11A shall also be liable to pay a penalty equal to the duty so determined:

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent of the duty so determined;

(d) where any duty demanded in a show cause notice and the interest payable thereon under Section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

(e) where any duty as determined under sub-section (10) of Section 11A and the interest payable thereon under Section 11AA in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.

(2) Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of Section 11A, then, the amount of penalty payable under clause (c) of sub-section (1) and the interest payable under Section 11AA shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of Section 11A shall also be liable to pay such amount of penalty and interest so modified.

(3) Where the amount of duty or penalty is increased by the appellate authority or tribunal or court over the amount determined under sub-section (10) of Section 11A by the Central Excise Officer, the time within which the interest and the reduced penalty is payable under clause (b) or clause (e) of sub-section (1) in relation to such increased amount of duty shall be counted from the date of the order of the appellate authority or tribunal or court.

Explanation 1.-- For the removal of doubts, it is hereby declared that--

(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President shall be governed by the provisions of Section 11AC as amended by the Finance Act, 2015;

(ii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued but an order determining duty under sub-section (10) of Section 11-A has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall be eligible to closure of proceedings on payment of duty and interest under the proviso to clause (a) of sub-section (1) or on payment of duty, interest and penalty under clause (d) of sub-section (1), subject to the condition that the payment of duty, interest and penalty, as the case may be, is made within thirty days from the date on which the Finance Bill, 2015 receives the assent of the President;

(iii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where an order determining duty under sub-section (10) of Section 11-A is passed after the date on which the Finance Bill, 2015 receives the assent of the President shall be eligible to payment of reduced penalty under clause (b) or clause (e) of sub-section (1), subject to the condition that the payment of duty, interest and penalty is made within thirty days of the communication of the order.

Explanation 2.-- For the purposes of this section, the expression "specified records" means records maintained by the person chargeable with the duty in accordance with any law for the time being in force and includes computerised records."

12. As is evident, penalty under section 11AC is imposable equal to the duty sought to be evaded. In this case, as this

Tribunal had decided that the appellant was entitled to CENVAT credit, to that extent, it cannot be said that the appellant had an intent to evade payment of duty. Only that portion of the duty which is confirmed after allowing CENVAT credit can be said to have been intended to be evaded.

13. If CENVAT credit of Rs. 2,86,134 on the capital goods is added to the CENVAT credit of Rs.1,99,62,470/- on inputs and input services which has already been allowed to the appellant by the Commissioner, the total CENVAT credit will be Rs. 2,02,48,604/-. The total amount of duty payable has been re-computed by the Commissioner as Rs. 2,09,22,155/-. Therefore, the net duty sought to be evaded will be only Rs. 7,26,559/- (Rs. 2,09,22,155 – Rs. 2,02,48,604).

14. In view of the above, the appeal is allowed and the impugned order is modified allowing CENVAT credit of Rs. 2,86,134/- on capital goods and reducing the penalty under section 11AC to Rs. 7,26,559/-.

15. The appellant will be entitled to consequential relief.

[Order pronounced on **27/01/2026**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)