आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
.☎ 07926305065 - टेलेफैक्स07926305136

DIN : **20220464SW000038083C**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/516/2021/92 – 96

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-001/2022-23**
दिनाँक Date : **05-04-2022** जारी करने की तारीख Date of Issue 05.04.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **GNR Comm'ate/AC-KCG/C.Ex./Kalol/039/2020-21** दिनाँक: **31.03.2021** issued by Assistant Commissioner, CGST& Central Excise, HQ, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address

1. **Appellant**

M/s Heavy Metal & Tubes Limited
Plot No. 101, Bileshwarpura, Kalol,
Chhtral, Gandhinagar, Gujarat-382729

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :.

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(27) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(lxiv) amount determined under Section 11 D;
(lxv) amount of erroneous Cenvat Credit taken;
(lxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Heavy Metal & Tube Limited, Plot No. 101, Bileshwarpura, Kalol, Chhatral, Gandhinagar – 382 729 (hereinafter referred to as the appellant) against Order in Original No. GNR Comm'ate/AC-KCG/C.Ex./Kalol/039/2020-21 dated 31-03-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST & Central Excise, H.Q., Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are holding Central Excise Registration No. AAACH3882QXM001 and are engaged in manufacture of SS Welded Tubes falling under CETH No. 73041910 and 73061100. During the course of the audit of the records of the appellant, it was observed that they had taken credit of Rs.4,30,915/- in their ER-1 Returns for the month of February, 2015 and March, 2015 on the basis of invoices of F.Y. 2012-13, which are more than one year. Similarly, in the F.Y. 2015-16, the appellant had taken credit of Rs.7,00,621/- in the month of August, 2015 and September, 2015, which pertains to the period of March, 2012 to June, 2014. The said credit so availed was utilized for payment of excise duty by the appellant. In terms of Notification No. 21/2014-CE (NT) dated 11.07.2014 and the proviso to Rule 4 (7) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004), credit in respect of inputs and input services can be taken within one year from the date of issue of any of the documents specified in sub-rule (1) of Rule 9 of CCR, 2004.

2.1 In response to the Query Memo dated 12.09.2018, the appellant submitted vide their letter dated 17.09.2018 that all the purchases are recorded in their books as soon as the inputs are received by their company and the cenvat credit is taken immediately on receipt of inputs. When the appellant was asked to produce the documents or accounts for verification of cenvat credit, they provided the signed and authorized cenvat credit register. Verification of the records submitted by the appellant revealed that they had booked purchases as per practice and that is nowhere related to the procedure for taking credit and the same was also not matching with the

credit availed and shown in the ER-1 returns. For taking credit, the appellant had maintained credit register on the basis of which credit was taken and shown in their returns. The verification also indicated that the appellant had taken credit of Rs.11,31,536/- on invoices which were pending more than one year from the date of taking credit in ER-1 returns and the credit register.

2.2 The appellant was issued Show Cause Notice bearing No. 40/2018-19/CGST dated 31.12.2018 from F. Vi/1(b)-02/AP-70/Cir-X/2018-19 proposing to recover the cenvat credit amounting to Rs.11,31,536/- under the proviso to Section 11A(4) of the Central Excise Act, 1944 read with Rule 4 of the CCR, 2004 along with interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the CCR, 2004. Imposition of Penalty was also proposed under Section 11AC of the Central Excise Act, 1944 read with Rule 15 (2) of the CCR, 2004.

3. The said SCN was adjudicated vide the impugned order wherein the Cenvat credit was disallowed and ordered to be recovered along with interest. Penalty was also imposed under Rule 15 (2) of the CCR, 2004 Section 11AC (e) of the Central Excise Act, 1944.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

i. The impugned order is badly time barred and hit by grounds of limitation.

ii. They had clearly submitted that the SCN was issued mis-interpreting the provisions of CCR, 2004 and the cenvat credit was admissible to them and the submissions made by them have been settled by the decision of the Commissioner (Appeals). However, the adjudicating authority has failed to consider the submissions and reiterated the allegations made in the SCN.

iii. The adjudicating authority has failed to consider that the cenvat credit was availed by them on the basis of statutory books of accounts maintained by them within the stipulated period of one year and the

only lapse which occurred on their part was reporting of the availment of credit.

iv. For the purchase of inputs or capital goods, gate inward register or Goods Receipt Note register is prepared which shows that the inputs have been physically received under cover of Central Excise invoice and all such inputs are entitled for cenvat credit only after receipt of inputs in the factory. However, when input services are received their employee may not be able to record the expenses of services in RG23A Pt II as there is no mechanism available for preparing goods receipt note in case of receipt of services. However, the inputs/services/capital goods are invariably recorded in their books of accounts. In some of the cases, their staff missed to reflect the input credit related to services in RG23A Pt.II.

v. The cenvat credit related to inputs, capital goods and input services are the primary records in their books of accounts, whereas the credit register is only for management control system, which works as a reconciliation of receipts of inputs/capital goods with the accounting system and as such cannot be considered as a statutory register for availment of cenvat credit.

vi. The entire audit by the Central Excise officers was on the basis of the books of accounts maintained by them and the facts have not been disputed by the Auditors nor in the SCN. The adjudicating authority too has not rejected the books of accounts maintained by them as the statutory records and the base for availment of cenvat credit.

vii. The auditors erred in assuming that the terms 'taken' can be considered only when the same is mentioned in the returns and for interpreting the same they have assumed that the credit taken can be considered as taken only if the same is shown in the ER1 returns.

viii. The adjudicating authority had examined that there was no discrepancy during the verification of the books of accounts as the said cenvat credit was recorded in the books of account and the credit balances had been covered in the closing balances of the trial balance of the respective year. Thus the allegation of availment of cenvat credit after the specified time limit gets ruled out.

ix. The auditors have not alleged that the inputs/input services covered under the invoices were not received within one year from the date of

issuance of invoices. Thus, the invoices have been received by them within one year from the date of issuance and the same were duly recorded in their books of accounts, which were verified and confirmed by the auditors during the audit.

x. They had submitted the details of recording of purchase transactions in their books of accounts before the adjudicating authority which established that the credit was taken by them within one year of the date of issuance of invoices. The adjudicating authority has at Para 12.1 of the impugned order observed that it is not disputed by the appellant that the primary records in their case are the books of accounts which are considered as statutory register for availment of cenvat credit. However, the adjudicating authority has erred in considering the date of declaring in ER1 as the date of availment.

xi. They submit details of the date of recording of the transactions in their books of accounts to establish that they had availed the credit in their books within the stipulated time period.

xii. The statutory records under the Central Excise Rules, 1994 were dispensed off in the year 2000 and it was decided to rely on the private records of the assessee. Thus, the only lapse that had occurred in the instant is that the credit taken by them in their books of accounts had not been reflected in the monthly returns filed by them. Substantial benefit cannot be denied due to minor procedural infractions and the lapse was required to be condoned considering that they had fulfilled all the conditions required to avail credit.

xiii. The word 'taken' has not been defined anywhere under the Central Excise and Service Tax law. However, it has been assumed by the adjudicating authority that taken means claiming the same in respective periodical returns and since they had accounted for the credit in their books but not declared it in their returns, the credit was not admissible.

xiv. When the term has not been defined in law, the same cannot be applied on the basis of assumptions and presumptions, especially when they have been able to establish on the basis of settled law that the phrase 'taken' is required to be considered as availment of credit in the books of accounts maintained by them.

xv. They rely upon the OIA No. CCESA-SRT(APPEAL)/PS-329/2017-18 dated 11.12.2017 passed by the Commissioner (Appeals), Surat in the case of Raman & Weil Pvt. Ltd, Daman wherein it was held that where an assessee has taken credit in their accounts within the time limit and their only mistake is that they had not shown the same in the ER-1 returns, then in such cases, cenvat credit cannot be denied on the grounds of limitation.

xvi. The demand has been raised under Section 11A of the Central Excise Act, 1944. The confirmation of demand or irregular availment of cenvat credit is otherwise also hit by limitation. The issue relates to interpretation of law and in such cases, extended period cannot be invoked.

xvii. The entire objection has been raised on the basis of books of accounts maintained by them, it is difficult to understand as to how can it be alleged that the credit was availed by reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of the provisions of law.

xviii. It is a settled law that extended period cannot be invoked where the issue pertains to interpretation of law or where the demand has been raised on the basis of entries made in the books of accounts. They rely upon the judgment in the case of : Mohan Goldwater Breweries Limited Vs. Commissioner of CST, Lucknow – 2017 (4) GSTL 170 (Tri.All.) and Ranbaxy Laboratories Ltd. Vs. Commissioner of CST, Chandigarh – 2015 (329) ELT 768 (Tri.Del).

xix. Imposition of penalty under Section 11AC of the Central Excise Act, 1944 is therefore, unsustainable in law.

xx. As the demand itself is not sustainable, the proposal to recover interest is also not sustainable.

5. Personal Hearing in the case was held on 09.03.2022 through virtual mode. Shri Anil Gidwani, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing as well as material available on records. The issue before me for decision is

whether the cenvat credit was correctly availed by the appellant within the specified time period of six months/one year or whether the appellant had availed the cenvat credit after one year as alleged in the SCN and held in the impugned order.

7. It is undisputed that the invoices on the basis of which the cenvat credit was availed in the month of February and March, 2014 were issued during F.Y. 2012-13, while the invoices on the basis of which credit was availed in the month of August, 2015 and September, 2015 were issued during March, 2012 to June, 2014.

8. It is the contention of the appellant that they had taken the credit in their books of accounts and the lapse on their part was that the same was not reflected in the periodical returns filed by them. The conditions governing cenvat credit availment are contained in Rule 4 of the CCR, 2004. As per Rule 4 (1) of the CCR, 2004 as it stood before its amendment on 11.07.2014, "*The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer...*". By virtue of Notification No. 21/2014-CE (NT) dated 11.07.2014, a third proviso was inserted to Rule 4(1) of the CCR, 2004 w.e.f. 01.09.2014, which reads as :-

> "Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9".

8.1 The third proviso was subsequently amended by Notification No. 6/2015-CE (NT) dated 01.03.2015, and the words 'six months' was substituted with 'one year'. The above provisions are in respect of inputs. Similar provisions in respect of input services are contained in the sixth proviso to Rule 4 (7) of the CCR, 2004.

8.2 The documents on the strength of which cenvat credit can be taken and the records to be maintained are provided under Rule 9 of the CCR, 2004. The relevant Rule 9 (5) of the CCR, 2004 is reproduced as under :

> "The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit".

Similar provisions in respect of input services are contained in Rule 9 (6) of the CCR, 2004.

8.3 From a plain reading of the provisions of Rule 4(1) and (7) of the CCR, 2004, I find that they provide only for taking of cenvat credit. However, the manner in which the credit is to be taken is not specified i.e. when a cenvat credit is considered as taken is not specified.

8.4 I find that sub-rule (5) and (6) of Rule 9 of the CCR, 2004 provides for maintenance of proper records for receipt, disposal, consumption and inventory of the input/input services in which, among others, the cenvat credit taken and utilized is also recorded. No statutory records are prescribed under the CCR, 2004 and the records maintained by the assessee reflecting the above requisite details and particulars are accepted records for compliance of the provisions of sub-rule (5) and (6) of Rule 9 of the CCR, 2004. Therefore, if upon receipt, the inputs/input service are recorded in the records maintained by an assessee and contain the details specified in the said rules, it would amount to cenvat credit having been taken by the assessee. Nowhere in the CCR, 2004, it is stipulated that cenvat credit would be considered to have been taken only if the same are reported in the periodical returns filed by the assessee. Therefore, the act of taking of cenvat credit gets completed once the details are recorded in the records regarding receipt, disposal, consumption and inventory of the input/input services as well as the cenvat credit taken and utilized.

8.5 The reporting of the cenvat credit taken and utilized is provided under sub-rule (7) of Rule 9 of the CCR, 2004, which is reproduced as under :

> "(7) The manufacturer of final products shall within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:".

8.6 The monthly return to be filed is notified vide Notification No. 20/2011-CE (NT) dated 13.09.2011. There is no provision in the CCR, 2004 to deal with non filing of the returns in terms of sub-rule (7) of Rule 9 of the CCR, 2004. However, Rule 12(6) of the Central Excise Rules, 2002, inserted w.e.f

01.03.2015 provides for imposition of late filing fee. Therefore, if an assessee does not report the cenvat credit taken by them in the prescribed monthly return, he would be liable to pay the late fee. However, mere non reporting of the cenvat credit taken in the monthly returns does not render the cenvat credit inadmissible and neither can the same be considered to have been taken wrongly as to invoke the provisions of Rule 14 of the CCR, 2004.

9. I proceed to examine and deal with the merits of the case in light of the above legal position. It is the contention of the appellant that they had taken credit in the books of the accounts maintained by them and their only lapse was that they had not reflected the same in the periodical returns filed by them during the relevant period. I find that the adjudicating authority has considered the submissions of the appellant and examined the financial records submitted by them. It has been recorded at Para 12.1 of the impugned order that the financial records like the General Ledger account (service tax) and other financial records submitted by the appellant were examined by the adjudicating authority. Having examined these records, the adjudicating authority has concluded that the cenvat credit was taken during February and March, 2015 in respect of invoices issued during the period from April, 2013 to February, 2014. Similarly, cenvat credit was taken during August and September, 2015 in respect of invoices issued during the period from April, 2012 to May, 2014.

9.1 However, I find that the finding of the adjudicating authority is contrary to the SCN issued to the appellant. In Paragraph 8 of the SCN it is stated that "*Further, on assessee's contention, books of accounts were also verified and it was found that the assesse has booked the purchases in books of accounts as per practice and this is nowhere related to procedure of taking credit and the same is also not matching with the credit availed and shown as taken in the ER-1 Returns*". Therefore, even the SCN acknowledges the fact that the appellant had recorded the purchase transactions in their books of accounts. Such being the case, the mere non reporting of the cenvat credit in their periodical returns cannot be a ground for denial of the cenvat credit.

10. Further, I find that all the invoices, on the strength of which the appellant had taken cenvat credit after more than six months/one year from

the date of issuance, were issued prior to 01.09.2014 i.e. before amendment of Rule 4 (1) and (7) of the CCR, 2004 providing for taking of cenvat credit within six months/ one year from the date of issuance of the invoices. It has been discussed above that as per legal provisions existing prior to 01.09.2004, there was no time limit for taking cenvat credit in terms of Rule 4 (1) and (7) of the CCR, 2004.

10.1 I find that in the case of Voss Exotech Automotive Pvt Ltd. Vs. Commissioner of C.Ex., Pune-I reported at 2018 (363) ELT 1141 (Tri.-Mumbai), it was held by the Hon'ble Tribunal that :

> "On careful consideration of the submissions made by both the sides, I find that for denial of the credit, the Notification No. 21/2014-C.E. (N.T.), dated 11-7-2014 was invoked wherein six months period is available for taking credit. As per the facts of the case credit was taken in respect of the invoices issued in the month of March & April 2014 in November 2014. On going through the Notification No. 6/2015-C.E. (N.T.), dated 1-3-2015 the period available for taking credit is 1 year in terms of the notification, the invoices issued in the month of March and April 2014 become eligible for Cenvat credit. I also observed that the Notification No. 21/2014-S.T. (N.T.), dated 11-7-2014 should be applicable to those cases wherein the invoices were issued on or after 11-7-2014 for the reason that notification was not applicable to the invoices issued prior to the date of notification therefore at the time of issuance of the invoices no time limit was prescribed. Therefore in respect of those invoices the limitation of six months cannot be made applicable. Moreover for taking credit there is no statutory records prescribed the assessee's records were considered as account for Cenvat credit. Even though the credit was not entered in so-called RG-23A, Part-II, but it is recorded in the books of accounts, it will be considered as Cenvat credit was recorded. On this ground also it can be said that there is no delay in taking the credit. As per my above discussion, the appellant is entitled for the Cenvat credit hence the impugned order is set aside. The appeal is allowed."

10.2 A similar view as taken by the Hon'ble Tribunal in the case of Indian Potash Ltd. Vs. Commissioner of CGST, Meerut reported at 2019 (369) ELT 742 (Tri.-All); Sanghvi Marmo Pvt Ltd. Vs. Commissioner of CGST, Jodhpur reported at 2020 (33) GSTL 232 (Tri.-Del). Further, the Hon'ble High Court of Delhi had in the case of Global Ceramics Pvt Ltd., Vs. Principal Commissioner of C.Ex., Delhi-I reported at 2019 (26) GSTL 470 (Del.) held that :

> **"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."

10.3 In view of the above facts and the judicial pronouncements on the issue, I am of the considered view that the time limit of six months/one year, in terms of the proviso to Rule 4 (1) & (7) of the CCR, 2004, would not apply to the impugned invoices which were issued prior to the insertion of the time limit in relevant Rule 4(1) of the CCR, 2004 and, therefore, the appellant had rightly availed Cenvat Credit in the facts and circumstances of the case.

11. In view of the facts discussed herein above, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

..5th April, 2022..

(**Akhilesh Kumar**)
Commissioner (Appeals)
Date: .04.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Heavy Metal & Tube Limited,
Plot No. 101,Bileshwarpura, Kalol,
Chhatral, Gandhinagar – 382 729 — Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division- Kalol,
Commissionerate : Gandhinagar — Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar. (for uploading the OIA)
4. Guard File.
5. P.A. File.