CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 40020 of 2023

(Arising out of Order-in-Original No. 34/2022 dated 21.10.2022 passed by the Commissioner of GST & Central Excise, Chennai)

M/s. Dow Chemical International Pvt. Ltd. ...Appellant
(Formerly Rohm & Haas (India) Pvt. Ltd.)
L-7, Phase II, SIPCOT Industrial Park,
Mambakkam Village, Sriperumbudur,
Kanchipuram – 602 103.

Versus

Commissioner of GST and Central Excise ..Respondent
Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

APPEARANCE:

Shri Mihir Deshmukh, Advocate for the Appellant
Shri Abhijeet, Advocate for the Appellant
Shri Harendra Singh Pal, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.40607/2025

DATE OF HEARING: 27.02.2025
DATE OF DECISION:11.06.2025

Per Mr. Ajayan T.V.

M/s. Dow Chemical International Pvt. Ltd, the appellant herein, has assailed the impugned Order-in-Original No.34/2022 dated 21.10.2022 whereby the Adjudicating Authority has confirmed a demand of Rs.6,87,50,472/- being the ineligible credit taken and utilised for the period from April 2014 to September 2015 under Section 11A(4) of the Central Excise Act, 1944 read

with Rule 14 of the Cenvat Credit Rules, 2004 along with appropriate interest and also imposed an equivalent penalty under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC 1(C) of the Central Excise Act, 1944.

2. The brief facts are that the appellant is a registered manufacturer of primary form of 'Styrene and Acrylic Polymers' classifiable under Central Excise chapters 3903 & 3906 of the Central Excise Tariff Act, 1985. They are availing Cenvat credit on inputs, capital goods and input services. While verifying the eligibility of cenvat credit taken on invoices it was noticed by the Department that the appellant is receiving imported inputs supplied by the appellant's unit situated at IMC Storage Tank Terminal, JNPT Port, Raigad District, having Central Excise dealer registration No.AAACR2855FED016, coming under the jurisdiction of Alibag Division of Central Excise. The Chennai factory of the appellant was availing Cenvat credit of the imported inputs based on the invoices issued by the Raigad unit of the appellant having the aforementioned Central Excise dealer registration. The department was of the view that as per Rule 9(1) (a) of the CCR, 2004, the Cenvat credit shall be taken by the manufacturer based on invoices issued by a registered importer or an importer from his depot or the premises of the consignment agent, provided the said depot or the premises of the consignment agent is registered in terms of Central Excise Rules, 2002 and that consequent to the amendment to sub Rule (1) of Rule 9 of the Central Excise Rules, 2002 *vide* Notification No.8/2014 CE (NT) dated 28.02.2014 which came

into force from 01.04.2014, an importer who issues invoice on which Cenvat credit can be taken, is also required to be registered under Central Excise. The department was of the view that an existing dealer cannot dispose off the stock of imported excisable goods where the Cenvat credit is being passed on, without obtaining registration under category of "importer" from Central Excise. The appellant's unit at Raigad district has not obtained a separate registration as "importer" with their jurisdictional Central Excise Officer. The department was therefore of the view that the dealer invoices issued by the appellant's Raigad unit in respect of imported goods cleared/sold to the appellant's unit at Sriperambadur during the relevant period are not eligible documents to take Cenvat credit. It was also the view of the Department that since the appellant is operating under self-assessment procedure, the onus is on the appellant to take reasonable measures to ascertain the eligibility of the credit for availing the same and inasmuch as the fact of the appellant having taken credit on ineligible invoices had come to the notice only during verification, it warranted invocation of the extended period for the demand of duty. Therefore, Show Cause Notice No. 2/2017 dated 02.02.2017, invoking extended period, proposing demand of duty along with interest and proposal for imposing penalties came to be issued. After due process of law, the demand stood confirmed *vide* the impugned Order-in-original, as above mentioned, aggrieved by which, the appellant having preferred this appeal, is now before this Tribunal.

3. Shri Mihir Deshmukh, Advocate, along with Shri Abhijeet, Advocate, appeared and argued for the appellant. Shri. Mihir Deshmukh submits that Rule 9 (1) provides for the person to be registered with the department as a dealer or as an importer. Hence, if an assessee is registered with the department as a dealer or as an importer, the said registration would suffice for trading of local and/or imported goods also. It is his submission that on a perusal of the language of Rule 9 (1), it is clear that if a person who is already registered with the Department as a dealer and is issuing Cenvat invoices, and if such person as a dealer, deals with locally procured goods and also intends to deal with imported goods, the Rule does not require him to get yet another separate registration as importer. The Rule only requires an importer, who wants to issue invoices to enable another person to take Cenvat credit on the specific duty paid on imported goods, to obtain registration under the Central Excise Act. He would submit that during the period of dispute and on the date of issue of invoices, the Raigad unit was holding valid Central Excise Registration as a dealer and thus the requirement of Rule 9 (1) stood fulfilled when the appellant issued invoices for imported goods in the capacity as a dealer. Hence there is no violation of any of the provisions of the Act or rules. The Ld. Counsel further submits that the Adjudicating Authority has erred in holding that during the subject period the appellant in his capacity as first stage dealer could not issue an invoice based on which CENVAT can be taken for the goods imported by them. It is his submission that this is an erroneous

interpretation as neither the Act nor the Rules mandate such dual registration. He submits that the intention of the Government for amending the provisions of Rule 9 the Central Excise Rules was never to impose an obligation on an already registered first stage dealer to once again obtain a fresh importer registration. Rather, it was to safeguard the interests of small traders and manufacturers which were registered as second stage dealers to allow them to remain in the Cenvat credit chain and claim Cenvat credit. The Ld. Counsel submits that this is evident from the note sheet provided by the CBEC in response to the application made by the appellant under the Right to information Act, 2005 requesting information on certain points in relation to the Notification No.08/2014-Central Excise (NT). The Ld. Counsel further submits that this position that a person who registered as a dealer is not required to separately register as an importer stood clarified by the Notification No.30/2016-CE (NT) dated 28.06.2016 as well as in Circular No.1032/20/2016-CX dated 28.06.2016. It is further submitted that the issue stood settled in the appellant's favour by virtue of the decisions in ***Commissioner of CGST, Thane vs Western Refrigeration Pvt. Ltd. (2018-YIOL-08-Cestat-Mum)***, ***Uravi T & Wedge Lamps Pvt. Ltd. vs Commissioner of CGST & Central Excise (2018 TIOL 1899-Cestat), Sarvaiya Chemicals Industries Pvt. Ltd. vs CCE, Surat (2019 TIOL 2001 Cestat-Ahm.)***. The Ld. Counsel also points out that even otherwise, Rule 9(1)(a)(iv) of the Cenvat Credit Rules, 2004 provides that the invoice issued by various dealers, is a valid document for availment of credit

and thus the invoice issued by the appellant in the capacity of a first stage dealer is a valid and legal document for availment of credit. Further in the appellant's own case *vide* Order-in-Original No. 23/2019-2020 dated 08.08.2019 and Order-in-Original No. 06/2019-2020 dated 30.04.2019 passed by the Assistant Commissioner, CGST & CE Division-IV, Palghar the decision has been given in the appellant's favour. Without prejudice to the above contentions, the Ld. Counsel would also submit that not applying or obtaining registration is a procedural lapse and substantial right cannot be denied from procedural irregularity. He also submitted that extended period of limitation is unsustainable and relied on the decision in ***Uniworth Textiles Ltd. vs C.C.E., Raipur [2013 (288) ELT 161 (SC)]***.

4. Ld. AR Shri Harendra Singh Pal appeared for the respondent and reiterated the findings of the adjudicating authority. He further relies on a decision in ***HM Bags Manufacturer v CCE, 1997 (7) TMI 119-SC*** to contend that the Board's Circular dated 28th June, 2016 cannot be applied retrospectively.

5. We have heard the rival submissions, perused the appeal records as well as the case laws submitted as relied upon.

6. The principal issue that arises for determination is whether the appellant is eligible to avail the input credit on imported goods based on invoices issued by a dealer who is not registered as an 'importer' consequent to the amendment in Rule 9 of the Central Excise Rules, 2002 vide notification No.8/2014-CE (N.T)

dated 28.02.2014. An attendant question would also be whether the Department is justified in invoking the extended period of limitation.

7. We note that the amended Rule 9(1) of the Central Excise Rules, 2002, (CER, 2002) as it stood for the relevant period is as under:

> "**Rule 9. Registration**. - (1) Every person who produces, manufactures, carries on trade, holds private store room or warehouse or otherwise uses excisable goods or an importer who issues an invoice on which CENVAT Credit can be taken shall get registered."

8. On a bare reading of the amended Rule 9 of the CER, 2002, we are unable to decipher any mandate flowing therefrom requiring a dealer who is already registered as a 'dealer' with the Department and issuing invoices for the excisable goods that he trades in, upon which the recipient can avail cenvat credit, to yet again obtain a separate registration as an 'importer'. The amendment made to the rule 9 ibid vide notification 8/2014 ibid only requires that an importer who issues an invoice on which CENVAT credit can be taken shall get registered.

9. It is also seen that the Central Government has issued a Notification No. 30/2016-C.E. (N.T.), dated 28-6-2016 stipulating as under:

" **First Stage Dealer and Importer — May opt for single registration**

In pursuance of sub-rule (2) of rule 9 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby specifies that -

(i) a person who is registered as a first stage dealer shall not be required to take registration as an importer; or

(ii) a person who is registered as an importer shall not be required to take registration as a first stage dealer."

10. Simultaneously, on the same date, that is 28-6-2016, the Board also issued a Circular which is reproduced below:

"**First Stage Dealer and Importer — Common registration — Clarification**

Circular No. 1032/20/2016-CX, dated 28-6-2016

F.No. 201/04/2016-CX-6

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Common registration and return for First Stage Dealer and Importer - Regarding.

Attention is invited to Notification No. 30/2016-C.E. N.T., dated 28th June, 2016 by which it has been provided that an assessee who is registered as a First Stage Dealer shall be exempted from taking registration as an importer and vice-versa.

2.1 An assessee who conducts business both as an importer and a First Stage Dealer may take only one registration as he has been exempted from the requirement of taking a second registration. It may be noted that the facility is optional and

any assessee needing separate registration for his own business purposes, may so register.

2.2 Such assessee who conducts business both as a First Stage Dealer and an Importer, henceforth shall also have the option of filing a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of the return, viz., all transactions as first stage dealer during the return period shall be followed by all transactions as an importer during the same return period.

3. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow."

11. Thus, we find that any room for interpretative confusion, that may have prevailed, has been decisively obliterated by the said Notification read in conjunction with the Board Circular. The intent and purpose are clear. An assessee who conducts business, both as an importer and a First Stage Dealer, may take only one registration as he has been exempted from the requirement of taking a second registration. The requirement to register, in so far as a First Stage Dealer who is also an importer is concerned, is at the option of the assessee and any assessee needing separate registration for his own business purposes, may so register.

12. Thus, the notification and the circular make it amply clear, without room for any doubt whatsoever, that there is no requirement for a First Stage Dealer who is already registered

with the Department to take yet another separate registration as an importer. Thus, we are of the firm view that there is no diktat in the amended Rule 9 of the CER 2002 that would require a first stage dealer who is duly registered with the Department, and entitled to issue invoices on which cenvat credit can be availed, to yet again obtain a separate registration, merely because he also chooses to import goods and to trade in them. Moreso, when such invoices issued by the person as a first stage dealer are also prescribed documents as per the extant provisions of Rule 9(1)(a) (iv) of the Cenvat Credit Rules, 2004 to avail cenvat credit. Thus, the benefit of cenvat credit availment on the invoices received by the appellant in the instant case from its unit at Raigad, cannot be denied to the appellant.

13. That apart, we also note that it is a settled principle in law that beneficial circular is to be applied retrospectively. The decision in ***Suchitra Components Ltd v CCE, Guntur, 2007 (208) ELT 321 (SC)*** refers in this context. It is also settled that the intent of the legislature can be culled out from the background facts and exemption/beneficient notification can be given retrospective effect, the doctrine of fairness being a relevant factor. The decision in ***Government of India v India Tobacco Association, 2005 (187) ELT 162 (SC)*** refers for the aforesaid proposition. We are of the considered view that the said notification and circular seeks only to avoid any misconstruction of the letter of the law and dispel any doubt flowing therefrom. They merely clarify the position and make it

explicit what was even otherwise implicit. Thus, we are of the considered view that the Notification and the Circular are clarificatory in nature and apply retrospectively.

14. We also find the reliance placed by the Ld. A.R. on the decision of the Apex Court in ***HM Bags Manufacturer v CCE, 1997 (7) TMI 119-SC,*** emphasising on the use of the word "henceforth" to contend that the Board's Circular dated 28th June, 2016, is applicable only prospectively, is thoroughly misplaced in this context. The term henceforth used in the present circular, is merely indicative of the fact that the assessee who was conducting business both as a First Stage Dealer and an Importer hitherto, also has, thereafter, the option of filing a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of the return. In other words, the term henceforth is with respect to the option of filing single quarterly return that is being extended to the assessee, and that does not convey that prior to the issuance of the said Circular, there was a mandate requiring a dealer, who is also an importer, to register separately.

15. In any event, we also note that the show cause notice as well as the impugned order in original concedes that the Appellant is a dealer, duly registered with the Department. It is also undisputed that the invoices issued by the appellant are in accordance with Rule 11 of the CER, 2002. Therefore, as elucidated supra, when Rule 9(1)(a)(iv) of the Cenvat Credit

Rules, 2004 stipulate that cenvat credit shall be taken by the manufacturer on the basis of an invoice issued by a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Rules, 2002, and when there is no dispute as the duty paid nature of the invoice, or receipt of the inputs covered thereunder and use thereof, the credit taken by the appellant is even otherwise not deniable on merits. We also hold that in the instant case, the SCN does not bring out any positive act on the part of the appellant that can be construed as a deliberate or wilful act of suppression or misstatement of facts with intent to evade payment of duty, and thus the invocation of the extended period of limitation is wholly untenable. The reliance placed by the appellant on the decision in ***Uniworth Textiles Ltd. vs C.C.E., Raipur [2013 (288) ELT 161 (SC)]*** is apposite in this context.

16. It is also pertinent that the Tribunal had in earlier instances in similar circumstances, held that cenvat credit taken is not to be denied as can be seen from the decisions in ***Commissioner of CGST, Thane vs Western Refrigeration Pvt. Ltd. (2018-YIOL-08-Cestat-Mum)***, ***Uravi T & Wedge Lamps Pvt. Ltd. vs Commissioner of CGST & Central Excise (2018 TIOL 1899-Cestat), Sarvaiya Chemicals Industries Pvt. Ltd. vs CCE, Surat (2019 TIOL 2001 Cestat-Ahm.)***. We also note that, as reflected in the appeal records, the Departmental adjudicating authorities had on the very same issue held in the appellant's favour in their decisions for the subsequent periods rendered in May 2019 and August 2019. It has also not been

shown to us that these decisions have not been accepted by the Department, or that they have not attained finality.

17. We therefore hold when the appellant brought the notification and the circular to the authority's notice, along with the binding decisions of the Tribunal governing the issue, judicial discipline warranted that the adjudicating authority adhere to the same and ought to have extended the benefit to the appellant. Thus, the adjudicating authority committed an egregious error in denying the benefit of the notification and circular to the appellant even after the binding decisions of this Tribunal were brought to the authority's attention. We are constrained to observe that often it is the bane of judicial indiscipline that is resulting in proliferation of the appeals before this Tribunal, making the process itself the punishment for the assessee who is thus compelled to bear the brunt of protracted litigation in his struggle to secure justice.

18. In light of our discussions above, we find that the appellant succeeds in its plea on merits as well as on the plea that invoking of extended period of limitation is untenable. We hold that the impugned order in original cannot sustain and is liable to be set aside in its entirety. Ordered accordingly.

The appeal is allowed with consequential relief in law, if any.

(Order pronounced in open court on 11.06.2025)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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