CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 52187 of 2015

[Arising out of Order-in-Original No. 05/MV/CCE/2014-15 dated 04.03.2015 passed by the Commissioner of Central Excise, Gurgaon]

M/s Frigo Glass India Pvt. Ltd. **……Appellant**
Plot No.26A, Sector-3, IMT Manesar,
Gurgaon, Haryana-122050

VERSUS

Commissioner of Central Excise, Gurgaon-II **……Respondent**
Plot No.36-37, Sector-32, Gurugram,
Haryana-122001

APPEARANCE:

Shri Rajat Dosi, Advocate for the Appellant

Shri Aniram Meena and Shri Shantanu Kumar Meena, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60861/2025

DATE OF HEARING: 08.07.2025
DATE OF DECISION: 18.07.2025

P. ANJANI KUMAR:

M/s Frigo Glass India Pvt. Ltd, the appellants, are engaged in the manufacture of commercial refrigerators; on conduct an audit, in July/ August 2013, it appeared to the Revenue that the appellant was also engaged in trading activities, which is an exempted service,

and therefore the appellants are required to reverse Cenvat credit availed on common input services under Rule 6 (3) of CENVAT Credit Rules as they have not maintained separate accounts/ records; during the course of audit, the appellant reversed an amount of Rs.42,86,832/- for the period 2011-12 and 2012-13 along with interest of Rs.8,83,456/- and penalty of Rs.5,97,151/-; a show cause notice dated 27.02.2014 was issued to the appellants demanding CENVAT credit of Rs.79,99,537/-; learned Commissioner vide impugned order dated 04.03.2015 confirmed the demand along with equal penalty under Rule 15(2) of CENVAT Credit Rules. Hence, this appeal.

2. Learned Counsel for the appellant submits that trading services can be considered as exempted services only w.e.f. 01.04.2011 when trading service was included under the ambit of exempted service under Rule 2 (e) of the CENVAT Credit Rules; the same cannot be applied retrospectively as held in My Car (Bhopal) Pvt. Ltd. – 2019 (22) GSTL 273 (Tri. Delhi) and Franke Faber India Ltd. – 2017 (52) STR 155 (Tri. Mumbai). He also relies on Ingersoll-Rand Technologies and Services Pvt. Ltd. – (2023) 8 Centax 41 (Tri. All.) and submits that trading was not exempted service prior to 01.04.2011.

3. Learned Counsel further submits that the entire demand is based on an interpretation of provisions of law and the figures were taken from the public documents like balance sheets etc. maintained

by the appellants; the show cause notice is issued on the basis of audit; moreover, Department did not establish any evidence to prove that the ingredients required for invocation of extended period are satisfied; therefore, extended period cannot be invoked and penalty cannot be imposed. He relies on the following cases:

- Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.);
- Sunshine Steel Industries vs. Commissioner of CGST, Customs & Central Excise, Jodhpur, (2023) 8 Centax 209 (Tri.-Del)
- Vijayanand Roadlines Ltd. v. CCE, Belgaum [2007 (8) STR 600 (Tri.-Bang)]
- Mega Trends Advertising Ltd. vs. Commr. of C. EX. & S.T., Lucknow, 2020 (38) G.S.T.L. 57 (Tri. - All.)
- Compark E Services Pvt. Ltd. vs. Commr. of C. EX. & S.T., Ghaziabad, 2019 (24) G.S.T.L. 634 (Tri. - All.)
- Shri Balaji Industrial Products Ltd. vs. Commr. of Cus. & C. Ex., Jaipur, 2019 (370) E.L.T. 280 (Tri. - Del.)

4. Learned Authorized Representative for the Department reiterates the findings of the impugned order and relies on Ruchika Global Interlinks – 2017 (5) GSTL 225 (Mad.).

5. Heard both sides and perused the records of the case. We find that it will be beneficial to have a look at the definition of "Exempted Service" prior to and after 01.04.2011. The definition under Rule 2 (e) of CENVAT Credit Rules is as follows:

Before 01.04.2011

"Exempted service" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under Section 66 of the Finance Act"

After 01.04.2011

"Exempted service" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under Section 66 of the Finance Act and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

6. We find from the above that trading falls under the ambit of exempted service only from 01.04.2011 which has been further clarified by the Notification No.03/2011-CE (NT) dated 01.03.2011. We also find that the case law relied upon by the appellants squarely supports this view. Therefore, we are of the considered opinion that the appellants are not required to reverse any credit for the period prior 01.04.2011. We find further that the show cause notice has been issued invoking the extended period. We find that the appellants are a central excise assessee and has been regularly paying duty and paying taxes; understandably, regular audit is also being undertaken. As submitted by the learned Counsel for the appellants, we find that there is no specific allegation with evidence to indicate that the appellants have indulged in fraud, collusion, mis-declaration etc. with intent to evade payment of duty. Therefore, we find merit in the submissions of the appellants that the Revenue has

not made out any case for invocation of extended period. It has been held by the Tribunal in a number of cases that in such circumstances, extended period cannot be invoked; moreover, extended period cannot be invoked when the detection was due to an audit conducted. We find that the Principal Bench of the Tribunal in the case of G.D Goenka Private Limited vide Final Order No.51088/2023 dated 21.08.2023 has held as follows:

> 20. Thus, 'the central excise officer' has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible CENVAT credit would not have come to light. It would have come to light if the central

excise officer had discharged his responsibility under section 72.

7. In view of the above, we find that the demand does not survive on merits and limitation. Moreover, we find that the appellants have deposited the CENVAT credit payable w.e.f. 01.04.2011. Accordingly, the appeal is allowed.

(Order pronounced in the open court on 18/07/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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