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Date: 20.06.2025

CESTAT Chandigarh Upholds CENVAT Credit on Endorsed Bills of Entry

Background of the Case

The dispute arose from CENVAT credit claimed by Hero Cycles Ltd. on imported e-bikes and parts brought in by Hero Exports under FMC and DFCE Scrips. These goods were:

- Imported in CKD condition,
- Endorsed on the Bill of Entry to Hero Cycles, and
- Sent directly to their factory for job work and assembly.

The department rejected the CENVAT credit on the grounds that:

- Endorsed Bill of Entry is not a valid document under Rule 9 of CENVAT Credit Rules, 2004, and
- Hero Cycles was not listed as a supporting manufacturer in the respective export licenses under Notification No. 53/2003-Cus. and 90/2006-Cus.

Key Legal Issues

1. Is an endorsed Bill of Entry a valid document for availing CENVAT credit?
2. Can Hero Cycles, as a job-worker, avail credit when it was not named in the import license?
3. Was the extended period of limitation invoked validly?
4. Is penalty under Rule 26 of Central Excise Rules sustainable against a company?

Tribunal's Observations

Validity of Endorsed Bill of Entry

- The Tribunal held that endorsement on the BoE is acceptable for availing credit, provided:
 - Goods are directly received in the factory,
 - Used in manufacture,
 - Cleared on payment of duty.
- Cited cases like *Bando India Pvt. Ltd.* and *Xerox Modicorp Ltd.* upheld the substantial compliance over mere procedural formalities.

Treatment as Job Work

- Hero Cycles acted as a job-worker, assembling goods under direction and ownership of Hero Exports.
- Notifications do not mandate that job-work must be under Notification 214/86-CE to be valid.
- CENVAT credit is permissible even when the job-worker is not listed as a supporting manufacturer if all conditions of manufacturing and duty payment are fulfilled.

Extended Limitation Not Justified

- Prior SCN dated 08.05.2009 accepted Hero Cycles' CENVAT entitlement.
- Issuing contradictory SCNs later amounts to shifting departmental stance, and invoking the extended period was unwarranted.

Penalty Not Sustainable

- No evidence of fraud, suppression, or misstatement.
- Penalty under Rule 26 is not maintainable against a corporate entity as held in *Woodmen Industries*.

Final Verdict

- CENVAT credit taken by Hero Cycles Ltd. was legally valid.
- The demand raised was unsustainable, and both the extended and normal period of limitation failed.
- All six appeals were allowed, and penalties set aside.

Significance of the Ruling

This judgment reinforces several key principles:

- **Substance over form:** Valid credit cannot be denied for mere technical deviations like document format.
- **Job work flexibility:** Legitimate transfer for processing doesn't require exhaustive procedural compliance.
- **Predictability in tax administration:** Authorities cannot keep shifting their stance to suit revenue demands.

Relevant Provisions & Precedents

- Rule 9(2) of CENVAT Credit Rules, 2004
- Notification No. 53/2003-Cus., 90/2006-Cus.
- Bando India Pvt. Ltd., Ujagar Prints (SC), Xerox Modicorp, Cosmic Dye Chemical (SC)

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Chandigarh

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No.419 of 2012**

[Arising out of OIO No.23/LDH/2011 dated 23.11.2011 passed by the Commissioner of Central Excise, Ludhiana]

**M/s Hero Cycles Limited**  
**(New Cycle Division)**  
 (now known as Hero Ecotech Ltd)  
 Phase-viii, Focal Point, Chandigarh  
 Road, Ludhiana- 141010

**: Appellant**

Vs

**The Commissioner of Central**  
**Excise, Ludhiana**  
 Central Excise House, F-Block, Rishi  
 Nagar, Ludhiana, Punjab-141001

**: Respondent**

**WITH**

**2. Excise Appeal No.420 of 2012 (Hero Exports)**

[Arising out of OIO No.23/LDH/2011 dated 23.11.2011 passed by the Commissioner of Central Excise, Ludhiana]

**3. Excise Appeal No.4137 of 2012 [Hero Ecotech Ltd. (formerly known as Hero Cycles Ltd), (New Cycle Division)]**

[Arising out of OIO No.30/LDH/2012 dated 01.10.2012 passed by the Commissioner of Central Excise, Ludhiana]

**4. Excise Appeal No.4138 of 2012 (Hero Exports)**

[Arising out of OIO No.30/LDH/2012 dated 01.10.2012 passed by the Commissioner of Central Excise, Ludhiana]

**5. Excise Appeal No.55131 of 2013 [Hero Ecotech Ltd. (formerly known as Hero Cycles Ltd), (New Cycle Division)]**

[Arising out of OIO No.37/LDH/2012 dated 01.11.2012 passed by the Commissioner of Central Excise, Ludhiana]

**6. Excise Appeal No.55132 of 2013 (Hero Exports)**

[Arising out of OIO No.37/LDH/2012 dated 01.11.2012 passed by the Commissioner of Central Excise, Ludhiana]

**APPEARANCE:**

Shri Sudhir Malhotra, Advocate for the Appellant

Shri Aneesh Dewan, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER Nos.60028-60033/2024**

Date of Hearing: 05.01.2024

Date of Decision: 30.01.2024

***Per:P. ANJANI KUMAR***

M/s Hero Cycles Limited presently known as Hero Ecotech Limited have filed these appeals against various impugned orders as stated above. The brief facts of the case are that M/s Hero Exports imported e-bikes in CKD condition and e-bikes parts thereof and have transferred the same to M/s Hero Cycles Ltd who manufactured e-bikes and have cleared the same on payment of duty and have availed credit of CVD and ACD paid by M/s Hero Exports Ltd at the time of import; the said duty was paid by M/s Hero Exports Ltd in cash in FMC and DFCE Scrips in terms of Notifications No.90/2006 dated 01.09.2006 and No.53/2003 dated 01.04.2003; Revenue disputes the availment of CENVAT credit on the grounds that endorsed Bill of Entry is not a proper document for availment of CENVAT credit and Notifications issued for FMC and DFCE Scrips do not provide for transfer of credit; show-cause notices were issued for recovery of CENVAT credit and imposition of penalty; the original authority has confirmed the demands raised and the appellate authority upheld the same. Hence, these appeals.

2. Shri Sudhir Malhotra, learned Counsel for the appellants, submits that M/s Hero Exports imported e-bikes in CKD conditions and parts and sends the goods directly from the Port to M/s Hero Cycles Limited endorsing their name on the Bill of Entry; M/s Hero Cycles assembled the e-bikes and cleared on payment of duty; in terms of Rule 9 of CENVAT Credit Rules 2004, Bill of Entry is a valid document for availing CENVAT credit. He further submits that CBEC vide Circular No.179/13/96-CX dated 29.02.1996 clarified that:

"Para 4: Where the imported goods are still in Customs dock area and the manufacturer/ importer decides to divert/ transfer the goods, a declaration by the manufacturer/ importer can be made on the reverse of triplicate copy of Bill of Entry/ duplicate copy of the Bill of Entry generated on EDI system by the manufacturer/ importer that consignments are being delivered to the unit (name of the unit) for availing credit and endorsed by the Proper Officer of Customs for enabling the manufacturing unit to avail credit.

3. Learned Counsel submits that there is no dispute regarding the endorsement of Bill of Entry in favour of M/s Hero Cycles Ltd by the Proper Officer of Customs and receipt of goods directly from the Port by M/s Hero Cycles; he submits that credit should not be denied as the same is availed on the basis of an endorsed Bill of Entry. He relies on the following cases:

- Xerox ModicorpLtd – 2005 (192 ELT) 878 (T).
- Eupec- Welspun Coating India Ltd – 2009 (235) ELT 347 (T).
- Jewel Brushes Pvt.Ltd – 2009 (236) ELT 326 (T).
- Bando India (P) Ltd – 2010 (262) ELT 1103 (T).

4. Learned Counsel submits also that out of the total credit in dispute of Rs.4,89,15,623/-, Rs.3,06,89,307/- was paid in cash and rest by the debit/ offset in the script; there is no transfer of sale of goods to M/s Hero Cycles; learned Commissioner erred in holding that Notification No.53/2003-Cus dated 01.04.2003 did not provide for availment of CENVAT credit by other than importer and that e-bikes were transferred to M/s Hero Cycles Ltd in violation of Condition No.2 of the Notification and that the name of M/s Hero Cycles Ltd is not mentioned in the license as a supportive manufacturer; learned adjudicating authority failed to appreciate that the goods were sent to M/s Hero Cycles on job-work basis; there is no bar on sending the goods for job-work in the FMS or DFCE Scheme; sending of goods by M/s Hero Exports to M/s Hero Cycles fits into the definition of Job-Work as per Rule 2(n) of CENVAT Credit Rules, 2004. He relies on the Ujagar Prints Ltd - 1988 (38) ELT 535 (SC) and submits that the Central Excise duty was paid in terms of Rule 10A of Central Excise Valuation Rules, 2000; therefore, M/s Hero Cycles are job-workers of M/s Hero Export and to that extent, there is no violation of Notification No.No.53/2003-Cus dated 01.04.2003 and Notification No.90/2006 dated 01.09.2006; in any case, as the goods received in the factory under a cover of document and are used in the manufacture, credit cannot be denied.

5. Learned Counsel for the appellants further submits that all the show-cause notices are barred by limitation; there was no suppression of fact, mis-statement, fraud, collusion etc. with an intent to evade of duty and therefore, as held by the High Court and Hon'ble Supreme Court in the following cases, extended period cannot be invoked:

- Naresh Kumar & Company Pvt.Ltd – 2022 (67) GSTL 324 (Cal.)..
- Uniworth Textiles Ltd – 2013 (288) ELT 161 (SC).
- Cosmic Dye Chemical – 1995 (75) ELT 721 (SC).

6. Learned Counsel submits further that penalty under Rule 26 cannot be imposed on companies as held by the Tribunal in the case of Woodmen Industries – 2004 (164) ELT 339 (T) [affirmed by Hon'ble Supreme Court – 2004 (170) ELT A307 (SC)].

7. He further submits that the Department has been changing their stand; Revenue has issued another show-cause notice to the appellant on 08.05.2009 on the ground that the CENVAT credit availed by them should lapse on the issuance of Exemption Notification No.25/2008-CE dated 29.04.2008. It is pertinent to note that the Department did not dispute the availment of CENVAT credit but held that CENVAT credit availed should lapse when e-bikes got exempted from payment of Central Excise duty.

8. Shri Aneesh Dewan, learned Authorized Representative for the Department, reiterates the findings of the impugned order and submits that the case laws and the Board Circular relied upon by the

appellants are no longer valid with the introduction of new CENVAT Credit Rules, 2004; he relies upon Marigold Coatings Pvt. Ltd – 2016 (337) ELT 515 (Guj.) and submits that the decision of the Tribunal in the case of Balmer Lawrie & Co. Ltd – 2000 (116) ELT 364 (Tribunal) was overruled by the Hon'ble Gujarat High Court in the case of Vimal Enterprise – 2006 (195) ELT 267 (Guj.) and that the issue of endorsed Bill of Entry was not a subject matter of dispute.

9. Learned Authorized Representative for the Department further submits that endorsed Bill of Entry is not a specified document in terms of Rule 9 of CENVAT Credit Rules, 2004; Clause (2) and Clause (7) of the Notification No.53/2003 dated 01.04.2003 were violated; M/s Hero Cycles Ltd cannot be said to be the job-worker of M/s Hero Exports as the procedure laid down under Notification No.214/86-CE dated 25.03.1986 was not followed; similarly, Condition No.6 of the Notification No.90/2006-Cus dated 01.09.2006. Regarding the extended period, he submits that the impugned orders spell out clearly the reasons for invocation of extended period.

10. Heard both sides and perused the records of the case. The brief point for discussion is as to whether M/s Hero Cycles (Hero Ecotech Ltd) are entitled to CENVAT credit on the basis of endorsement on the Bill of Entry and as to whether CENVAT credit can be availed by them in respect of imports made under FMC and DFCE Scrips; as to whether

extended period is invocable in the case and as to whether imposition of penalty is justified in the facts and circumstances of the case.

11. We find that main objection of the Department is that CENVAT credit cannot be availed on the basis of endorsed Bill of Entry and that Customs House, Nhava Sheva have issued a Public Notice stating that the practice of endorsement on the Bill of Entry is dispensed with. Important factors like receipt of raw material, consumption of the same and clearance of the final products thus manufacture by the appellant on payment of duty are not disputed; the only dispute lies with the type of document. We find thus, substantial compliance of the provisions relating to CENVAT credit have been complied with and only the procedural aspects thereof are to be looked into. We find that learned Counsel for the appellants has cited some cases (supra) wherein it was held that endorsed Bill of Entry is a valid document for availment of CENVAT credit. Learned Authorized Representative submits that the Board's Circular cited by the learned Counsel for the appellants and the case laws pertain to an era prior to 2004 when the new CENVAT Credit Rules have been notified. However, we find that CESTAT in the case of Bando India Pvt. Ltd (supra) considered the new CENVAT Credit Rules also; the Bench observed that:

**23.** Rule 7 of Cenvat Credit Rules, 2002 and sub-rule (9) of Cenvat Credit Rules, 2004, undoubtedly describes the various documents based on which the cenvat credit can be claimed. They include invoice issued by the importer as well as bill of entry. Sub-rule (1A) of Cenvat Credit Rules, 2002 and sub-rule (2) of Rule 9 of Cenvat Credit Rules,

2004, however, further clarifies that in case of any deficiency to be found in such documents in relation to the particulars which are required to be disclosed therein to justify the claim of credit, such deficiency shall not be in relation to the relevant aspects which are specified in those provisions. However, the said clarification nowhere provides that the presence of name of the contractor in the invoice alongwith that of consignee would disentitle the manufacturer to avail credit on the basis of such invoice irrespective of the fact that goods were actually received and utilized by the manufacturer and the contractor had not availed any credit in respect of the duty paid on such goods. Therefore, merely because the invoice discloses the name of the contractor along with that of the consignee, but the documentary materials placed before the authority establish to the satisfaction of the adjudicating authority that the goods which described in the invoice were in fact received in the factory of the consignee/manufacturer and those goods were subjected to payment of duty as disclosed in the invoice and further that the goods were utilized or were to be utilized by the manufacturer, certainly the credit in relation to duty paid on such goods cannot be disallowed to such manufacturer.

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**31.** The contention of the department that there is no provision for endorsement of the credit and therefore the appellants are not entitled to claim credit on the basis of the endorsement is devoid of substance for more than one reason. Firstly, the credit is taken not because of endorsement but on the basis of bill of entry which also disclosed the name of the appellant, apart from the fact that the goods accompanying the Bill of entry were subjected to the payment of duty, and on clearance, were directly transported to the appellant's factory premises and were utilized by the appellants for installation of their factory, and no credit in respect of duty paid on those goods was taken by the contractor. Secondly, the effect of endorsement is only to amend the name of consignee and nothing more. Black's Law

dictionary depicts the term "endorsement" as amendment of the installment signifying the same being made referable to a person other than the one disclosed earlier. And, it is not the case of the department that on endorsement of the Bill of entry in favour of the appellant, it was, in any manner, rendered to be invalid document or that the import under such document become unlawful.

12. We find that the facts of the above case are comparable to the impugned one. The unmissable conclusion of different judgments is that endorsed Bill of Entry is a valid document. During the course of the argument, learned Counsel for the appellants displayed a few Bills of Entry in question which show that there is a declaration as follows on the back of the Bill of Entry:

Declaration

The CENVAT credit against this B/E shall be taken by the supporting manufacturer i.e. Hero Cycles Limited, New Cycle Division, Phase-VIII, Focal Point, Ludhiana.

|                         |                                                                    |
|-------------------------|--------------------------------------------------------------------|
| NAME OF FIRM            | HERO EXPORTS<br>HERO NAGAR<br>LUDHIANA                             |
| TIN NO.                 | 03761004555                                                        |
| CENTRAL EXCISE NUMBER   | AAAFH809HXM001                                                     |
| JURIDICIAL EXCISE AUTH. | RANGE-III, NEW PREM<br>NAGAR, LUDHIANA, DIV 1,<br>CRB, CIVIL LINES |
| COMMISSIONERATE         | LUDHIANA                                                           |
| ASSESSEE CODE NO.       | AAAFH8092HXM001                                                    |
| PAN NO.                 | AAAFH8092H                                                         |

13. We also find that in addition to the above declaration on the back of the Bill of Entry, the name of M/s Hero Cycles is mentioned on the face of the Bill of Entry also as a supportive manufacturer. Therefore, we find that the objections of the Department are not valid.

As long as the documents indicate the consignments of goods to the manufacturer, the said goods are received in the factory of the manufacturer, the said goods are used in the manufacture of final products cleared on payment of duty, CENVAT credit cannot be denied. We find that this is the spirit of Rule 9(2) of CENVAT Credit Rules, 2004. Under these circumstances, credit availed by the appellants cannot be held to be incorrect.

14. Coming to the availment of CENVAT credit of CVD and ACD availed by the appellants, Revenue avers that the same is in violation of the conditions of respective notifications and that the name of the appellant is not mentioned in the licenses as a supporting manufacturer. We find that mere non-mention of the appellant as the supporting manufacturer, cannot take away the substantial benefit of CENVAT credit, looking into the fact that the appellant's name is mentioned in the Bills of Entry as a supporting manufacturer. Moreover, as submitted by the learned Counsel for the appellants, there is no bar on the importer to send the goods for job-work. It is not mentioned in the notifications under discussion that the job-worker should be a job-worker who is working under the provisions of Notification No.214/86. The fact that the ownership of the goods always remained with the importer i.e. M/s Hero Exports Ltd, the activity undertaken by the appellants is that of a mere job-worker. Further, if it was the case of the Department that the conditions of Customs Notification have been violated by the importer i.e. M/s Hero

Exports Ltd, the importer should have been proceeded against for any such violation and not the appellant. We find that as the goods are cleared from the factory of the appellant at the price they are sold by M/s Hero Exports Ltd, the conditions of Central Excise Valuation Rules are also complied with. Therefore, we find that the appellants having received the goods in the factory; having used the same in the manufacture and clearance of excisable goods cleared on payment of duty cannot be dis-entitled to the benefit of CENVAT credit.

15. Further, we find that the Department has been changing its stand. It is on record that the appellants have been issued a show-cause notice dated 08.05.2009 holding that the credit available with the appellants shall lapse on the date on which e-bikes manufactured by them became exempt by virtue of Notification No.25/2008 dated 29.04.2008. While the Department did not dispute the availment of CENVAT credit in the above case, they are doing so in the impugned case. We find that the Department is not free to change the stand detrimental to the appellant/ assessee. Moreover, having issued the show-cause notice as above, it is not free for the Department to invoke extended period in the impugned show-cause notices which are subsequent to the show-cause notice dated 08.05.2009. Further, no element of suppression, mis-statement, fraud, collusion etc. with intent to evade payment of duty has been established against the appellants. Therefore, the Department has not made out any case for invocation of extended period. Therefore, we are of the opinion that

the impugned show-cause notices are barred by limitation. However, as we find that there is no case on merits, the demands for normal period also cannot be sustained. When the demand itself cannot be sustained, the question of imposition of penalties does not arise. We are in agreement with the submissions of the learned Counsel for the appellants that penalty, under Rule 26, cannot be imposed on companies.

16. In view of the above, all the six appeals are allowed.

*(Pronounced on 30/01/2024)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

PK