Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10695 of 2016 - DB

(Arising out of OIO-VAD-EXCUS-002-COM-023-15-16 dated 08/01/2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Apollo Tyres Limited ....**Appellant**
Village-limda, Tal-waghodia,
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii ......**Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Joseph Kodianthara Sr. Advocate & Ms. Shweta Garge Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No.10907/2024

DATE OF HEARING: 19.12.2023
DATE OF DECISION: 19.04.2024

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of Automobile Tyres leviable to excise duty. In this appeal the appellant is concerned with it's plant at Limda, Vadodara. The sale of such duty paid tyres by appellant essentially takes place in two segments i.e. (a) the Original Equipment (OE) Segment (Vehicle Manufacturers) and (b) the Replacement Segment. In the OE segment the purchaser which is the Original Equipment Manufacturer takes CENVAT Credit of the duty paid on the Inputs procured by him. In the replacement market no such CENVAT Credit is taken by the Purchaser. Tyre, Tube and Flap are excisable goods on which Excise Duty is also actually paid. The appellant procures Tube and Flap on payment of duty. Such tubes and flaps are admittedly components/

accessories and therefore inputs as far as the appellant's manufactured final product namely tyre is concerned. In the light of the above facts narrated with respect to sale in the two Segments, tubes and flaps procured by the Appellant on payment of duty and brought to the factory for supply to the OE Segment are first Cenvated i.e. credit of duty paid on the tubes and flaps is taken at the factory. Thereafter the tyre, tube and flap are cleared as a set to the OE Manufacturer. In the process, the tube and flap are inserted into tyre, the tube is mildly inflated and thereafter the tyre is strapped at three places to prevent the tube and flap from falling out. The set thereafter is used by the OE Manufacturer in the manufacture of the automobiles in what is now popularly known as a "just in time" concept. Therefore while clearing the tyre, tube and flap as a set to the OE Manufacturer, duty is again paid on all the three items namely tyre, tube and flap and the same are cleared under the Appellant's invoice / invoices which will clearly show the duty paid on the tyre manufactured by the Appellant and again paid on the tube and flap on which CENVAT credit was earlier taken.

1.1 With respect to the replacement Segment (depots), since the purchaser does not avail CENVAT, no CENVAT Credit is taken of the duty paid on the tube and flap received in the factory. The clearance however to the Appellant's dealer/depot is in the similar set form as in the case of supplies to OE. In this case however duty is paid on the tyre manufactured by the Appellant and the tube and flap are supplied along with the tyre. No duty is thereafter again paid/payable on the tube and flap separately since no CENVAT has also been availed of the duty paid by the concerned manufacturer on the tube and flap. The case of the department is that the sale of tube and flap on which no duty is paid is exempted service being a trading activity therefore the appellant is liable to pay proportionate credit of Cenvat in respect of Service Tax paid on input service attributed to such trading activity. The adjudicating authority has confirmed the demand of Cenvat Credit therefore, the present appeal was filed.

2. Shri Joseph Kodianthara Learned Sr. Advocate with Ms. Shweta Garge Advocate appearing on behalf of the appellant at the outset submits, firstly for the purpose of calculation entire Cenvat credit of service tax was taken which is absolutely incorrect. It is his submission that only those input service which are commonly used for the manufacturing activity as well as the trading activity should be taken for calculating the proportionate Cenvat credit. Therefore to that extent there is an apparent mistake in quantifying the amount of demand.

2.1 He submits that the show cause notice proceed from the erroneous presumption that receipt of tubes and flaps and clearances thereafter to their depot after process under taken in respective plants pursuant to receipt of the tube and flap of unpacking, insertion into tyre, strapping of the tyre and clearance of the tyre, tube and flap as set is a trading activity, this is fundamentally erroneous. He submits that the very same issue that whether such activity is manufacture or trading activity is pending consideration before the Hon'ble Supreme Court in SLP (CE) No. 34310-34311/2011 therefore, the request for keeping the matter in abeyance was not accepted by the adjudicating authority. He also submits that the demand is time bar as the entire activity was known to the department hence there was no suppression of facts. In support his submission he placed reliance on the following judgments:-

- COLLECTOR OF CENTRAL EXCISE VS. CHEMPHAR DRUGS & LINIMENTS - 1989 (40) E.L.T. 276 (S.C.),
- PUSHPAM PHARMACEUTICALS COMPANY VS. COLLECTOR OF CENTRAL EXCISE, BOMBAY - 1995 (78) E.E.T. 401 (S.C.)
- M/S. CONTINENTAL FOUNDATION JOINT VENTURE VS. COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH (216) ELT 177 (SC) AND 2007
- UNIWORTH TEXTILES LTD. VS. COMMISSIONER OF CENTRAL EXCISE, RAIPUR - 2013 (288) ELT 161 (SC).
- THE COMMISSIONER OF CENTRAL EXCISE VS. APPOLLO TYRES LTD-2010 TIOL 670 HC KERALA-CX
- M/S APOLLO TYERS LTD VS. COMMISSIONER OF CENTRAL EXCISE, VADODARA- 2014-TIOL-3135-CESTAT-AHM
- RUNGTA SIZING WORKS & PROCESS VS. CCE, THANE-1-2006 (206) E.L.T. 974 (Tri Mumbai)

3. Shri Tara Praksah, Learned Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned orders.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the demand of proportionate credit in respect of the service for manufacture as well as trading activity is on the ground that the sale of tyre tube and flap in set to their depot is a trading activity which as per amendment made on 01.04.2011 such trading activity is a exempted service accordingly proportionate credit is required to be reversed. We find that the activity of selling the tyre duly fitted with tube and flap whether a trading activity or otherwise is pending before the Hon'ble Supreme Court in appellant's own case in SLP (CE) No. 34310-

34311/2011 wherein two orders were issued by the Hon'ble Supreme Court dated 14.10.2011 and 08.11.2011. In view of this position unless it is decided that the activity is a trading activity or otherwise the consequential liability of proportionate credit in respect of service tax cannot be concluded.

4.1 Moreover the appellant have vehemently argued that the quantification of proportionate credit is incorrect, this is also reason that the matter needs to be reconsidered as regard the correct quantification of the demand. In this position we are of the view that the entire matter on all the issues need to be reconsidered only after the outcome of the Hon'ble Supreme Court judgment in the appellant's SLP (supra) pending.

5. Accordingly the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority for passing a fresh order, keeping the above observation in mind.

(Pronounced in the open court on 19.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha