

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 374 OF 2012

[Arising out of OIA-COMMR-A--92-VDR-II-2012 dated 16/02/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-II]

TENNCO EXHAUST INDIA PVT LTD

Plot No. Wp-27, Phase-2, Bol GIDC, Industrial Area,
Sanand, Ahmedabad, Gujarat

Appellant

Vs.

**COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS (ADJUDICATION)-VADODARA-II**

1st Floor... Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

Respondent

Appearance:

Shri Shankar Patil, Advocate for the Appellant

Shri A K Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 13161/2024

Date of Hearing : 05/09/2024

Date of Decision : 10.12.2024

RAMESH NAIR

The appellant are engaged in the manufacture of part of Motor Vehicle for General Motor India Pvt Ltd. They have also manufactured tools and fixtures for manufacture of parts of motor vehicle in their factory on behalf of M/s. General Motor India Pvt Ltd. Though the said tools and fixtures were retained by the appellant in their factory for further manufacture of parts on behalf of M/s. General Motors India Pvt Ltd but raised the sale invoice to M/s. General Motors India Pvt Ltd on which no excise duty was paid. Out of 5 tools and fixtures for which 5 invoices were raised, 2 numbers of tools and fixtures after use for substantial period cleared to their own unit at Pune. Even at that stage also no excise duty was paid. The case of the department

is that when the appellant issued the sale invoice to M/s. General Motors India Pvt Ltd and even though the goods were retained in the factory and used for further manufacture of parts of motor vehicle, they were required to pay excise duty. The department also contended that at least when in respect of two invoices the tools and fixtures are cleared also they were required to pay excise duty. Accordingly a show cause notice dated 27.09.2010 was issued demanding excise duty of Rs. 17,83,136/- which was adjudicated by the adjudicating authority vide order-in-original no. 18/VDR-II/Dem/ADC/Adj./D-Halol/Tenneco/2010-11 dated 15.12.2010 whereby the proposal made in the show cause notice was confirmed. Aggrieved by the said order. The appellant filed appeal before Commissioner (Appeals) who vide the impugned order dated 21.02.2002 rejected the appeal by upholding the order-in-original passed by the adjudicating authority therefore the present appeal is filed by the appellant.

2. Shri Shankar Patil learned counsel appearing on behalf of the appellant submits that the tools and fixtures manufactured by the appellant were used captively in further manufacture of parts of motor vehicle therefore such tools and fixtures are clearly covered under the exemption Notification No. 67/95-CE. He submits that even though the sale invoice was issued but there was no physical removal of the goods from the factory. In this fact the excise duty is not payable merely because issue of the sale invoice to M/s. General Motors India Pvt Ltd. In support of his submissions. He placed reliance on the following judgments:-

- Elcon Clipsal India Ltd. Vs. Commissioner of C. Ex. Ahmedabad-I – 2002 (09) LCX 0201
- Ashok Iron Works Ltd Vs. Commissioner of Central Excise, Belgaum – 2004 (02) LCX 0202
- Commissioner of Central Excise, Chennai Vs. Sheet Metal Industries – 2002 (08) LCX 0071
- Tenneco Rc India Pvt Ltd Vs. Commissioner of Central Excise, Chennai – 2008 (07) LCX 0281

As regard the goods cleared to their own unit located at Pune, he submits that since their Pune unit is eligible for Cenvat Credit the whole exercise of payment of duty by the appellant and availment of Cenvat Credit by the Pune unit amounts to revenue neutral. Therefore no malafide intention can be attributed to the appellant with intention to evade payment of duty therefore the demand related to the clearance made to the Pune unit being under extended period of limitation is liable to be set aside on the ground of time bar. Learned counsel submitted a chart showing that their Pune unit has paid maximum duty from PLA as compared to the Cenvat Credit account therefore this evident that the entire exercise is revenue neutral. In this regard he placed reliance on this tribunal judgment at Chennai Bench in the case of Indo Shell Cast Pvt Ltd Vs. Commissioner of GST & Central Excise Final Order no. 40543-40544/2023 dated 11.07.2023.

3. On the other hand, Shri A K Samota learned Superintendent AR appearing on behalf of the revenue reiterates the findings of the impugned order. He further submits that since goods were cleared by issuing sale invoice in favour of M/s. General Motors India Pvt Ltd. the appellant is liable to pay excise duty for the reason that excise duty is payable on the manufacture and not on the clearance of goods. As regard the clearances made to the appellant's own Pune unit since the goods have been cleared outside the factory the same is liable to excise duty.

4. We have carefully considered the submission made by both the sides and perused the records. The facts is not in dispute in as much as the appellant have manufactured tools and fixtures and used captively within their own factory for manufacture of parts of motor vehicle for M/s. General Motor India Pvt Ltd. The contention of the revenue is that since for these tools and fixtures sale invoices were raised by the appellant they are liable to pay excise duty. We strongly disagree with this contention of the revenue

for the reason that firstly the excise duty is payable only at the time of clearance of the goods secondly in the present case the tools and fixtures manufactured by the appellant is used within the factory as captive consumption for manufacture of other excisable goods that is parts of motor vehicle which are cleared on payment of duty to M/s. General Motors India Pvt Ltd. The said captive consumption is clearly covered by exemption Notification No. 67/95-CE dated 16.03.1995 therefore no excise duty is payable on tools and fixtures manufactured and captively used even though the sale invoice in favour of M/s. General Motors India Pvt Ltd were issued. This issue has been settled in the following judgments:-

- Elcon Clipsal India Ltd. Vs. Commissioner of C. Ex. Ahmedabad-I – 20002 (09) LCX 0201
- Ashok Iron Works Ltd Vs. Commissioner of Central Excise, Belgaum – 2004 (02) LCX 0202
- Commissioner of Central Excise, Chennai Vs. Sheet Metal Industries – 2002 (08) LCX 0071
- Tenneco Rc India Pvt Ltd Vs. Commissioner of Central Excise, Chennai – 2008 (07) LCX 0281

As regard the demand of duty on tools and fixtures cleared by the appellant to their Pune unit, we find that the Pune unit is also engaged in manufacture of parts of vehicle for General Motor India Pvt Ltd and the same is cleared on payment of duty, therefore they are eligible for Cenvat Credit of duty, if any payable by the appellant. The learned counsel has submitted a chart showing that the Pune unit of the appellant are paying maximum duty from cash / PLA therefore even though if the duty is payable but the same is available as Cenvat Credit to their Pune unit.

4.1 We are of the view that since the entire exercise of duty if any payable by the appellant which is available as Cenvat Credit to their Pune unit this amount to revenue neutrality accordingly, as per the settled law in case of

the revenue neutrality malafide intention cannot be attributed to the appellant, consequently extended period is not invocable. Therefore, we are of the view that in the facts and circumstances in the present case and as per the settled legal position, the duty payable on the clearance of the tools and fixtures to the Pune unit is hit by limitation for the reason that the demand was raised after the normal period.

5. Accordingly, the impugned order is set aside. The appeal is allowed.

(Order pronounced in the open Court on 10.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)