

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 218 of 2010

[Arising out of Order-in-Original No. 25/2009-(Denovo) dated 28.11.2009
passed by the Commissioner of Central Excise, Bangalore-II]

Maini Precision Products Pvt Ltd

.....Appellant

No. B-165, 2nd Cross, 1st Stage,
Peenya Industrial Estate,
Bangalore

VERSUS

**Commissioner of Central Excise,
Bangalore-II**

.....Respondent

PB N. 5400, C R Building,
Queens Road, Bangalore – 560001

APPEARANCE:

Present for the Appellant: Sh. Rajesh Chander Kumar, Sr. Advocate

Ms. Yovini Rajesh Rohra, Advocate

Present for the Respondent: Mrs. D.S. Sangeetha, Addl. Commr. (AR)

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21148/2023

DATE OF HEARING: 06.06.2023

DATE OF DECISION: 20.10.2023

PER D. M. MISRA

This appeal is filed against Order-in-Original No.
25/09(Denovo) dated 28.11.2009 passed by Commissioner of
Central Excise, Bangalore-II Commissionerate.

2. Briefly stated facts of the case are that the appellant are engaged in manufacturing of Fork lift truck parts, components for machinery, automobile parts etc. falling under Chapter 84 & 87 of Central Excise Tariff Act, 1985 (in short 'CETA'). During the period from 01.4.2004 to 31.3.2006 the appellant availed CENVAT Credit of Rs. 2,40,75,746/- on the goods received in their factory and subjected to various processes like blackening, buffing, final inspection, packing etc. which were subsequently exported on the Letter of undertaking without payment of duty and also suo moto credit of Rs.28,700/- on the rejected inputs. It is alleged that the goods were received by the appellant on which CENVAT Credit was availed were in the nature of finished goods and the processes carried out by the appellant do not result into 'manufacture' in terms of Section 2(f) of Central Excise Act, 1944; hence credit availed is inadmissible to them. Also, it is alleged that the appellant have wrongly availed the CENVAT Credit of Rs. 28,700/- suo moto in respect of rejected goods. Consequently, the entire amount of wrong credit availed was proposed to be recovered with interest and penalty and show cause notice dated 08.08.2007 was issued accordingly. On adjudication, the demand was confirmed with interest and penalty by the learned Commissioner. Aggrieved by the said order, the appellant preferred appeal before this Tribunal and vide order dated 07.05.2009, the Tribunal remanded the matter to the adjudicating authority for de novo consideration.

On re-adjudication, the learned Commissioner confirmed the demand with interest and penalty, hence, the present appeal.

4. At the outset, the Id. Sr. Advocate for the appellant has submitted that during the period in question, the goods were received by the appellant were not in marketable condition but only after subjecting the same to various processes like blackening, buffing, final inspection, packing etc. as per the requirement of customers, it became marketable even though the impugned goods do not lose their original nomenclature, identity, and essential characters. He has submitted that as per Note 6 to Section XVI of CETA, 1985, the conversion of an article which is incomplete or unfinished would result into 'manufacture'. He has further submitted that various processes undertaken by them which are necessary to meet the requirement of customers; these processes are narrated in detail (page nos. 177 to 355 of Vol. II of Appeal Paper Bok). Further, he has submitted that the processes of drilling, burr removal, grinding, blackening etc. are necessary to complete the goods and to render the same marketable, hence would definitely result into manufacture. In support, he placed reliance on the following decisions:

- 1) *Western Refrigeration vs. CCE Vapi – 2009 (245) ELT 485 (Tri. Ahmd.)*
- 2) *Rico Auto Industries vs. CCE New Delhi – 2007 (210) ELT 583 (Tri. Del.)*
- 3) *Flex Engineering Ltd vs. CCE – 2012 (276) ELT 153 (SC)*
- 4) *CCE vs Indo Asian Fuse Gear Ltd – 1993 (68) ELT 207 (Tri.)*

5) *Prasad Films Laboratories vs CCE – 2001 (130) ELT 491*

6) *TISCO vs UOI – 1988 (35) ELT 605 (SC)*

7) *Hero Moto Corp vs CC – 2014 (302) ELT 501 (Del.)*

5. On the issue of demand of CENVAT Credit of Rs. 28,700/- which was availed by the appellant suo moto on the inputs rejected initially, on which proportionate credit was already debited, and the said inputs being not cleared from the factory and the invoices were cancelled, hence, CENVAT Credit was availed duo motto by them correctly.

6. The Id. A.R. for the Revenue reiterates the findings of the Id. Commissioner.

7. Heard both sides and perused the records.

8. The Issues involved for determination are : (i) Admissibility of CENVAT Credit of Rs. 2,40,75,746/- on the inputs/goods subjected to various processes viz. blackening, buffing, final inspection, packing etc. in the factory and the resultant the finished goods were exported. (ii) Admissibility of suo moto credit of Rs. 28,700/-.

9. On the first issue, Revenue's allegation is that the inputs received by the appellant are neither unfinished or semi-finished; also, the processes like drilling, burr removal, grinding, blackening etc. carried out on the said inputs do not result into 'manufacture' as per the definition of Section 2(f) of CEA, 1944; hence, credit availed on such inputs is irregular. The claim of the appellant on

the other hand that unless the aforesaid processes are carried out on the goods received, which were as per the requirement of customers, the product cannot be marketable. The details of processes have been listed by the appellant in Appeal Paper Book Vol. II at page nos. 177 to 355. No evidence has been placed by the Revenue in support of the allegation that without subjecting the received inputs to various processes by the appellant, these goods be considered as marketable and could be exported as it is. The processes undertaken by the appellant are necessary to put the product in marketable condition as per the requirement of the customers; the appellants, on the other hand, adduced evidence in the form of rejection letters of the customers rejecting the goods supplied by the Appellant as it did not meet their requirement as per the order placed. Hence, in our opinion various processes blackening, buffing, final inspection, packing etc. carried out on the inputs be considered as processes amounting to manufacture. We find more or less similar principle has been laid down by the Hon'ble Apex Court in the case of *Flex Engineering Ltd (supra)* where it has been observed as under:

"20. *Thus, if a product is not saleable, it will not be marketable and consequently the process of manufacture would not be held to be complete and duty of excise would not be leviable on it. The corollary to the above is that till the time the step of manufacture continues, all the goods used in relation to it will be considered as inputs and thus, entitled to Modvat credit under Rule 57A of the Rules. In the present case, as*

aforesaid, each machine is tailor made according to the requirements of individual customers. If the results are not in conformity with the order, then the machine loses its marketability and is of no use to any other customer. Thus, the process of manufacture will not be said to be complete till the time the machines meet the contractual specifications and that will not be possible unless the machines are subjected to individual testing. Even though the revenue has alleged that the process of manufacture is complete as soon as the machine is assembled, yet it has not discharged the onus of proving the marketability of the machines thus assembled, prior to the stage of testing. Moreover, as has been held in the case of Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur, (2005) 2 SCC 662 = [2005 \(181\) E.L.T. 170](#) (S.C.), the burden of proving whether a particular product is marketable or not is on the department and in the absence of such proof it cannot be presumed to be marketable. In the absence of the revenue having adduced any such evidence or contorted the assessee's claim that the machines cannot be sold unless testing is done with some alternative evidence as to their marketability, the stand of the revenue cannot be accepted."

Therefore, the processes carried by the appellant in their premises result into manufacture and accordingly, CENVAT Credit availed on the duty paid on inputs received is admissible to the appellant.

10. On the issue of suo moto credit we find that credit of Rs. 28,700/- is irregular in view of the judgment of Larger Bench of

this Tribunal in the case of *BDH Industries Ltd vs. CCE, Mumbai – 2008 (229) ELT 364 (Tri. L.B.)*.

11. In the result, the impugned Order is modified to the extent of setting aside demand of CENVAT credit of Rs.2,40,75,746/- with interest and penalty, however, the recovery of suo moto credit of Rs.28,700/- with interest and penalty is confirmed. The Appeal is disposed on above terms.

(Order pronounced in the court on 20.10.2023)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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