

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 217 of 2010

(Arising out of Order-in-Original No. 24/09 dated 24.11.2009 passed
by the Commissioner of Central Excise, Bangalore.)

**M/s. Maini Precision Products
Pvt. Ltd.**

No. B-59, 2nd Cross I Stage,
Peenya Industrial Estate,
Bangalore – 560 058.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise,**

Central Revenue's Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri Rajesh Chander Kumar, Senior Advocate with
Smt. Deepa Rani, Advocate for the Appellant

Shri H. Jayathirtha, Superintendent (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 21178 /2024

DATE OF HEARING: 03.06.2024

DATE OF DECISION: 29.11.2024

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Original No.24/09
(Denovo) dated 24.11.2009 passed by the Commissioner of
Central Excise, Bangalore-II Commissionerate, Bangalore.

2. Briefly stated the facts of the case are that the appellant
are engaged in the manufacture and clearance of parts of Fork

Lift components, industrial machinery, hand primer and fuel filters falling under Chapter 84 of the Central Excise Tariff Act, 1985. They availed cenvat credit on various inputs. Alleging that during the period December 2004 to July 2005, they have availed irregular cenvat credit of Rs.96,83,557/-, show-cause notice was issued on 08.08.2007 for recovery of the said credit along with interest and penalty. On adjudication, the same was confirmed with interest and penalty. Aggrieved by the same, they filed appeal before the Tribunal and vide Final Order dated 07.05.2009, the matter was remanded to the original authority to decide the case afresh. Consequently, the same was adjudicated and the learned Commissioner in the impugned order confirmed the demand with interest and penalty. Hence, the present appeal.

3.1. At the outset, the learned Senior advocate for the appellant has submitted that they have two units, i.e. No.B-59 situated at 2nd Cross, 1st stage, Peenya Industrial Estate, Bangalore and the second one bearing No.B-165, situated in 3rd Cross, 1st Stage, Peenya Industrial Estate, Bangalore. They have been issued with a show-cause notice for recovery of cenvat credit amounting to Rs.72,97,860/- availed on inputs at B 59 for manufacture of hand primers and fuel filters but since these were not used in the manufacture of finished goods in the factory but cleared to other unit B-165 under Delivery Challans/ issue slips, where it is used for manufacture of hand primers and fuel filters, later cleared on payment of duty. Further, it is alleged that they have availed credit of Rs.18,24,710/- on inputs which were in almost finished stage and since no activity of manufacture has been undertaken on the said inputs, credit availed was irregular. Also, it has been alleged that they have availed credit of Rs.5,60,978/- irregularly i.e. (i) invoices addressed to the appellant Unit B-59, but the goods are not

received there, but at B-165 (ii) invoices which are not addressed to the appellant and (iii) on rejected goods which cannot be treated as inputs.

3.2. On the first issue i.e. denial of credit of Rs.72,97,860/-, he has submitted that the inputs sent to their own unit i.e. Unit B-165 for further processing and export from there. Both these units belong to the appellant and are registered under the same Range falling under the same Division. Further, he has submitted that the inputs that were removed from B-59 to B-165 are supported by evidences of challans for movement of the goods issued. The said inputs have been used at Unit B-165 for manufacture of hand primers and fuel filters which were later cleared on payment of duty from there. He has further submitted that the records of Unit B-59 show such removal and the records maintained at Unit B-165 also show receipt of such inputs. The records maintained revealed that after completion of the necessary processes on inputs, the manufactured goods were exported/cleared on payment of duty from their unit B-165. In the statements of Shri S. Sridhar, Deputy General Manager dated 25.04.2007 detailed records of receipt and consumption of the said inputs at Unit B-165 has been provided. In his statement, it is also very clearly stated that during the period in question, the appellant had not cleared hand primers and fuel filters from Unit B-59 but have manufactured some parts of hand primers and fuel filters that were cleared to their unit at B-165 under Delivery Challans and issue slips without payment of duty for further processing. It is clear that these parts are further used at Unit B-165 for manufacture of hand primers and fuel filters which were later cleared on payment of duty. In support of their submission that proper records have been maintained relating to dispatch of inputs by way of delivery notes/challans evidencing the movement of inputs from Unit B-

59 to Unit B-165; he has enclosed the said documents along with their Written Submissions dated 03.06.2024. Also, he has enclosed the monthly statement for each month for the period December 2004 to July 2005 indicating monthly production/consumption as prescribed which show that there was consumption of inputs received at Unit B-165 and used in the production of finished goods from the inputs received from B-59. Therefore, denial of cenvat credit alleging that the inputs have not been used in the production of finished goods is unsustainable. He has submitted that only because they did not obtain permission to clear the finished goods from B-165 manufactured on job work basis, the credit availed on inputs cannot be denied.

3.3. With regard to denial of cenvat credit of Rs.18,24,710/- on inputs which were subjected to processes of drilling, burr removal, grinding, blackening etc. on the ground that the said activities do not amount to manufacture, the learned advocate has submitted that this issue has been decided by the Tribunal with reference to the unit at B-165 vide Final Order No.21148/2023 dated 20.10.2023. Therefore, the demand on this account is unsustainable; hence, to be set aside.

3.4. With regard to the demand of Rs.5,60,978/-, the learned advocate has submitted that the demand is based simply on the fact that the invoices under which the inputs were received contain the acknowledgement seal of Unit B-165 at the time of receipt whereas the invoices were addressed to Unit B-59 and cenvat credit was taken in Unit B-59. Certain goods were rejected by M/s. Reva Electric Co. Pvt. Ltd. and consigned to Unit B-59 under Invoice No.475 dated 28.03.2005 and on receipt, the seal of Unit B-165 was affixed on the said invoice and the cenvat credit has been availed at Unit B-59. The said goods were re-

manufactured and cleared again to M/s. Revena Electric Co. Pvt. Ltd. under Invoice No.11001 dated 04.04.2005 and No.11018 dated 15.04.2005 from Unit B-59 on payment of duty. Hence, the credit was correctly availed. He has submitted that in fact the goods were received at Unit B-59 but erroneously the seal of the Unit B-165 affixed on the receipt challans which does not mean that the same were received at Unit B-165 and not processed and cleared on payment of duty from unit B-59. Further, he has submitted that cenvat credit availed suo moto on inputs rejected initially on which proportionate credit was already debited while rejecting inputs but subsequently the rejected inputs were not cleared and the invoices were cancelled and the inputs were put to use. Further, he has submitted that demand is barred by limitation.

4.1. Learned AR for the Revenue reiterated the findings of the learned Commissioner. He has submitted that the appellant have contended that the semi finished goods were sent to their unit at B-165 for further processing following job work procedure and the goods manufactured at Unit B-165 cleared on payment of duty from the said premises, however, they have not taken any permission for removal of finished goods from the premises of job worker i.e. Unit at B-165. The learned AR has also submitted that the appellant during the course of hearing, documents and worksheets to substantiate their claim that inputs were cleared to other unit at B-165 and used in the manufacture of finished goods and cleared the same on payment of duty. On perusal of the said documents, it is observed that though they are submitting that the materials cleared from Unit B-59 have been consumed for the purpose of manufacture of finished goods at Unit B-165, there is no correlation forthcoming. The said materials were actually used by the other unit. Further, on perusal of the total consumption and also clearances, it is

seen that there are excess consumption on some materials and also there are no clearance details of some finished goods. These discrepancies have not been explained. Further, he has submitted that the allegation against the appellant is not with regard to duty payment at the other unit at B-165 but admissibility of cenvat credit availed on the inputs which have not been used in relation to manufacture of the final goods at B-59. It is submitted that they have admitted that cenvat credit on inputs has been availed and cleared to their other unit B-165 without payment of duty /reversal of credit and Annexure-II challan for jobwork which have not been declared to the Department. Also, it is claimed that they have cleared inputs on payment of duty from the unit B-165 but no permission was availed for clearance from the job worker's premises. Further, he has submitted that benefit of Notification No.214/86-CE is a conditional notification and cannot be available to the appellant in the present case as no procedure has been followed nor any declaration has been submitted by them to the jurisdictional authority. Further, he has submitted that the appellant are required to clear the goods under valid invoices on payment of duty if they had manufactured goods /semi-finished goods and were obliged to reverse the cenvat credit availed on inputs in terms of Rule 3(4) of Cenvat Credit Rules if such inputs have been cleared as such since the appellant failed to substantiate; therefore, credit availed on this ground is inadmissible. The permission for clearance of job-worked goods from the job-worker's premises is allowed only when the permission in this regard is granted in terms of Rule 4(6) of the CCR by the jurisdictional authorities which cannot be considered as only procedural.

4.2. With regard to the credit of Rs.5,60,978/-, it is submitted that the cenvat credit availed on rejected goods and in view of

the *suo moto* credit on rejected goods but later used by them is totally wrong and it is only to the extent of Rs.10,703/-. They have submitted a list of such invoices and sample invoices during the hearing. This aspect has not been verified by the adjudicating authority in detail. With regard to rejected goods, the details furnished by the appellant are not substantiated with proper documentary evidence and also copy of the register maintained in terms of Rule 16 has not been furnished, which shows that no such register was maintained and hence the credit availed is erroneous. In support, he referred to the following judgments:-

- i. **Automax** [2018(363) ELT 1121 (Tri. Chandigarh)]
- ii. **Shamon Galva** [2015(318) ELT A166 (Cal.)]
- iii. **Facor Steels Ltd.** [2014(314) ELT 593 (Tri. Mum.)]
- iv. **Jaindendra Industries (P) Ltd.** [2012(278) ELT 613 (Tri. Del.)]
- v. **Arti Steels** [2009(239) ELT 51 (Tri. Del.)]
- vi. **Swaraj Mazda Ltd.** [2008(10) STR 533 (Tri. Del.)]

4.3. On the issue of limitation, the learned AR for the Revenue has submitted that the appellant was fully aware the procedure stipulated under Trade Notice No.10/2003 in terms of Rule 4(6) of CCR has to be followed scrupulously and the same does not specify about the duty payment by the job worker and clearance of the said goods under the invoice of the job worker. In spite of the same, the appellant themselves devised their own system and availed cenvat credit irregularly. Therefore, invocation of extended period of limitation is right and penalty imposed on them by the appellant is justified.

5. Heard both sides and perused the records.

6. The issues for consideration in the present appeal are whether cenvat credit of :

- (i) Rs.72,97,860/- availed on inputs at B-59 transferred to Unit B-165 is admissible;

- (ii) Rs.18,24,719/- availed on inputs used in the final product not amounting to manufacture;
- (iii) Rs.5,60,978/- is admissible which was denied on various grounds.

7. Arguing in support of the admissibility of the credit availed on inputs received in their factory and later transferred to their other Unit B-165 having separate Central Excise registration, amounting to Rs.72,97,860/-, it is submitted that the inputs received in their factory at B-59 were transferred against proper delivery notes/ challans after recording their receipt in their input stock register to their unit at B-165 for further processing and cleared finished goods for export and/or on payment of duty thereafter from the said unit. To establish the claim of transfer of inputs from Unit B-59 to Unit B-165 through challans and receipt of inputs at Unit B-165 and further processing, the appellant had enclosed relevant Dispatch / delivery notes along with Annexure-II Challans pertaining to the relevant period and the monthly raw materials consumption statement along with monthly summary for each of the month from December 2004 to July 2005 at their unit B-165, with their written submission dated 03.06.2024. Also, they have enclosed summary of receipts and consumption of inputs for the period December 2004 to July 2005 at their Unit B-165 vis-a-vis production of finished goods at Unit B-165 using inputs received from their Unit B-59. Further, they have enclosed monthly statement for the period December 2004 to July 2005 indicating the clearance of finished goods / final products manufactured under duty paying invoices with reference to corresponding excise invoices. Also, they have enclosed sample copies of excise invoices indicating clearance of finished goods on payment of duty. Thus, they have made an attempt to establish the fact that inputs were received at their Unit B-59 and transferred to Unit B-165 where

it was processed and thereafter the finished goods were cleared on payment of appropriate excise duty or for export. The documents in the form of Annexure A to E now submitted along with their written submissions dated 03.06.2024, reveal that the appellant had effected the movement of goods from Unit B-59 to Unit B-165 and later cleared for processing for the inputs at their Unit B-165 on payment of duty under proper documentation. On examination of the said annexures submitted along with their written submissions, it is clear that the appellant had accounted for the receipt of the inputs and its transfer to their other Unit at B-165 under proper challans which have been accounted there in their records, later consumed in the manufacture of finished goods cleared for export on payment of duty. Thus, the entire movement of the inputs from the stage of receipt at B-59 till the clearance of the final product on payment of duty from B-165 had been duly recorded. On going through the said documents, we are of the opinion that the appellant could able to establish the receipt and transfer of inputs and its proper use at Unit B-165 to the satisfaction of the authority. In these circumstances, there is no justification for denial of the cenvat credit of Rs.72,97,860/- merely because necessary permission was not obtained for clearance of finished goods on payment of duty from Unit B-165 , instead of bringing it back to their Unit at B-59.

8. The cenvat credit of Rs.18,24,719/- availed on inputs that were used in the manufacture of finished goods was denied on the ground that the process of conversion of inputs into final products does not amount to 'manufacturer'. This issue has been considered by this Tribunal in their own case and it has been observed that the process viz. drilling, burr removal, grinding, blackening etc. as per the specification of customers undertaken by the appellant result into the emergence of a new

product having distinct identity, use and hence amount to manufacture, vide Final Order No.21148/2023 dated 20.10.2023. Thus, the credit on this count is also admissible.

9. On the issue of admissibility of cenvat credit of demand of Rs.5,60,978/- on rejected goods, it has been submitted that certain goods were rejected by M/s. Reva Electric Co. Pvt. Ltd. and consigned to their Unit at B-59 against invoice No.475 dated 28.03.2005, erroneously the seal of Unit at B-165 was affixed on the returned invoice but the credit was availed at Unit B-59 and goods were reprocessed and cleared to Reva Electric Co. Pvt. Ltd. under Invoice No.11001 dated 04.04.2005 and No.11018 dated 15.04.2005 on payment of duty. Further, they have referred to the submission advanced before the learned Commissioner on 23.10.2007 enclosing therewith the details of the rejected/returned goods which have been processed and later cleared on payment of duty with relevant invoices indicate that the rejected goods were, after processing, removed from the factory on payment of duty. Thus credit cannot be denied merely on the ground of affixation of wrong seal indicating the receipt of returned goods at Unit B-165, which pertains to B-49, when the documents submitted reveal that the rejected goods were duly received recorded as inputs and reprocessed and cleared on payment of duty on the processed goods.

10. Also, we find that the demand pertains to the period December 2004 to July 2005 and the show-cause notice was issued on 08.08.2007 invoking suppression of facts which cannot be sustained when all movements of inputs from B-59 to B-165 had been duly recorded by the Appellant and clearance of finished goods effected on payment of appropriate Central Excise duty. Therefore, the demand is also barred by limitation and cannot be sustained. Further, we find that the transfer of raw materials and utilisation of credit availed on inputs used in the

manufacture of finished goods later cleared on payment of duty relate to the appellant's own units at B-59 and B-165, therefore imposition of penalty on the appellant also cannot be sustained.

11. In the result, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 29.11.2024)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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