CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE
REGIONAL BENCH, COURT NO. 2

Central Excise Appeal No. 21784 of 2015

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-DIV2-APP-HAB-021-2015 dated 18.05.2015 passed by the Commissioner of Central Excise (Appeals), Mysore.)

V.C. Auto Cables
Plot No. 276-E, KIADB,
Hebbal Industrial Area,
Mysore – 570 018. ……….**Appellant**

VERSUS

The Commissioner of Central Excise
S1 and S2 Vinaya Marg,
Siddhartha Nagar,
Mysore – 570 011. ………..**Respondent**

AND

Central Excise Appeal No. 20890 of 2017

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-108,109&110-16-17 dated 23.02.2017 passed by the Commissioner of Central Excise (Appeals), Mysore.)

V.C. Auto Cables
Plot No. 276-E, KIADB,
Hebbal Industrial Area,
Mysore – 570 018. ……….**Appellant**

VERSUS

The Commissioner of Central Excise
S1 and S2 Vinaya Marg,
Siddhartha Nagar,
Mysore – 570 011. ………..**Respondent**

Appearance:
Mr. B. Venugopal, Advocate for the Appellant.
Mr. Akshay Kumar, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 21295-21296 /2025

Date of Hearing: 02.01.2025
Date of Decision: 02.01.2025

Per: Pullela Nageswara Rao

These 2(two) appeals are filed against the respective Orders-in-Appeal dated 18.05.2015 and 23.02.2017 passed by the Commissioner of Central Excise (Appeals), Mysore.

2. The brief facts are the Appellant, M/s. V.C. Auto Cables are engaged in the manufacture of battery cables positive/negative falling under Chapter heading (CETH) 85443000 of the Central Excise Tariff Act, 1985 and are availing Cenvat credit of duty paid on inputs under Cenvat Credit Rules, 2004 and utilizing the same for the payment of Central Excise duty on the final products cleared by them. The department alleging the following issued 7(seven) show cause notices (SCNs) for different periods.

(i) the appellant manufactures Battery cables positive/negative on job work basis for M/s Yazaki Wiring Technologies (India) (P) Ltd., Kanchipuram (YWT in short);

ii) the inputs required for manufacturing the Battery Cables positive/negative (finished product) are Die-Forged terminals of brass and Cables;

(iii) the forged terminals used for the manufacture of finished product are procured by the assessee themselves and the cables are supplied free of cost (FOC) by M/s YWT;

(iv) the assessee was discharging Central Excise duty only on the value of the finished product cleared to M/s. YWT excluding the cost of battery cables supplied free of cost by principal manufacturer (YWT);

(v) the assessee has therefore undervalued the final product by not including the value of cables received from YWT, free of cost, and thereby has evaded the payment of duty on the value of battery cables; and

(vi) the appellant therefore has contravened the provisions of Section 4(1)(a) of the Central Excise Act, 1994 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 4, 6, 8 of the Central Excise Rules, 2002 in as much as they have undervalued the finished Battery Cables Positive/Negative manufactured and cleared by them.

3. The 7(seven) show cause notices (SCNs) were for the period October 2012 to December 2013 (3 SCNs) demanding duty of ₹12,98,889 and for the period January 2014 to September 2015 (4 SCNs) demanding a duty of ₹5,90,931/-. The SCNs proposed to demand differential duty in terms of Section 11A of the Central Excise Act, 1944 along with interest in terms Section 11AA of the Central Excise Act, 1944 and also to impose penalty under Rule 25 and 26 of Central Excise Rules 2002. After due process of law, all the 7(seven) show cause notices were adjudicated, and the adjudicating authority confirmed the demands of duty along with interest and also imposed equivalent penalty. Aggrieved by the orders of the adjudicating authorities the appeals filed by the appellant were rejected by Commissioner (Appeals). Assailing the impugned order these appeals were filed before the Tribunal.

4. Appeal No. E/21784/ 2015 pertains to the period October 2012 to December 2013 and Appeal No. E/20890/2070 pertains to the period January 2014 to September 2015.

5. Since the issue involved in both the appeals is common and for different periods both the appeals are taken up for hearing and disposal by this order.

6. The learned counsel during the hearing submits that; the case of the revenue is that the value of inputs received free of cost from the manufacture is required to be included in the assessable value of the goods cleared back to such supplier; they manufacture battery cable

positive/negative on job work basis for M/s. YWT; the appellant is the manufacturer of the final product ,the inputs required are cables and die forged terminals of brass, while the forged terminals are procured by the appellant themselves the battery cables are supplied by the principal manufacturer free of cost under the cover of delivery note /challan in terms of provisions of Rule 4 (5)(a) of Cenvat Credit Rules, 2004.; Rule 4(5)(a) provides that the inputs on which cenvat credit is availed shall be allowed to be sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose with a condition that the same or received back within 180 days of being sent from the factory; in the instant case the principal manufacturer was clearing cables (on which cenvat credit was availed) for the manufacture of intermediate goods viz., battery cable positive /negative on job work basis to the appellant and the same were received back in their factory for further manufacture of the final product which are cleared on payment of duty; since the cables are supplied free of cost by the principal manufacturer the appellant was discharging central excise duty only on the value including the cost of inputs used by them, job work charges and profit element, excluding the value of inputs supplied free of cost by M/s. YVT, following the decision of Hon'ble Supreme Court in the case of International Auto Ltd. Vs. CCE Bihar-2005 (183) ELT 239 (SC).

7. The learned counsel further submits that; the battery cable positive/ negative is an intermediate product used in the manufacture of final product by M/s. WYT; the appellant is entitled to the benefit of cenvat credit if the cables were to be procured/purchased on payment of duty; since the cables have been supplied under Cenvat Credit Rules for job work the appellant has not taken any cenvat credit of duty paid on such cables; thus both the cases are on the identical set of facts except that in the case of International Auto Limited, supra, the raw materials were supplied free of cost were sent under relevant erstwhile Rule 57F(2)(b) of Central Excise Rules, 1944, which permits supply of inputs for carrying out job work operations.

8. The appellant further relied on the following decisions rendered in the identical set facts as in this case;

i) **Dymos Lear Automotive India Pvt. Ltd. Vs. CCE., Chennai-IV-2019 (366) ELT 898 (Tri. - Chennai) [Affirmed by the Supreme Court reported as in Commissioner Vs. Dymos Lear Automotive India Pvt. Ltd. 2019 (366) ELT A186 (S.C.)]**

ii) **SRF Ltd. Vs. CCE., Chennai-I- 2007 (220) ELT 201 (Tri. - Chennai) [Affirmed by the Supreme Court as reported in SRF Ltd. Vs. Commissioner-2016 (331) ELT A138 (S.C.)]**

iii) **Krishna fabrications Pvt. Ltd. Vs. Commr. oF C. EX., Bangalore - 2006 (206) ELT 1008 (Tri. - Bang.)**

iv) **Techno packers Vs. Commissioner of GST & Central Excise - (2024) 17 Centax 97 (Tri.-Mad)**

9. The learned Authorised Representative (AR) for the Revenue reiterated the findings in the Orders-in-Appeal dated 18.05.2015 and 23.02.2017 of Commissioner (Appeals).

10. Heard both sides and perused the records.

11. The issue in the present case is with regard to inclusion of value of free of cost material i.e., cables supplied by the principal manufacturer M/s. YWT to the appellant on job work basis. The appellant procured terminals and other required inputs and manufactured cables positive/negative utilising the cable supplied by the principal manufacturer free of cost and cleared on payment of duty on the value of inputs procured by them, job work charges and profit margin. We find that this issue is no more *res integra* and is covered by the decisions cited, supra. We find that the Hon'ble Supreme Court in the case of International Auto Ltd. Vs. CCE Bihar-2005 (183) ELT 239(SC) held as under;

> *"5. Before us learned Counsel appearing on behalf of the appellant has submitted that the entire transaction between the TELCO and the appellant was covered by Rule 57F(2)(b) of the Central Excise Rules, 1944. Under these Rules the assessee is the*

manufacturer of the final product, in this case, excavators. The manufacturer of the final product is permitted to remove inputs to a place outside the factory for the purpose of manufacture of intermediate products so that they are returned to the factory for further use in the manufacture of final products. In such a case the credit is taken by the manufacturer of the final products on the inputs purchased by it which are made available to the intermediate product produces. Modvat credit is taken by the manufacturer of the final product on the inputs supplied by it to the manufacturer of the intermediate products which credit is reversed ultimately when the final product is removed from such manufacturers' factory. As far as the appellant, (the intermediate purchaser) is concerned, it is not liable to pay duty on the inputs supplied by TELCO since it had not taken the credit for the Modvat in respect of inputs. It is submitted that it cannot be called upon to pay the duty in respect of those inputs nor can the value of the inputs be added to the excisable value of the assemblies.

6. We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to adjust the credit on the inputs supplied by it to the Intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were *supplied free by the Railway Board to the assessee could be included in the value of the wagons.*

This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an Intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.

7. In this appeal as we have already noted, the final product was the excavator. According to the Modvat scheme, it is the Modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product. The Tribunal having misconstrued the provisions of Rule 57F(2)(b), its decision cannot stand. The decision of the Tribunal is accordingly set aside and the appeal is allowed."

12. We find that the issue is squarely covered by the decision of the Hon'ble Supreme Court which was subsequently followed by the Tribunal in the cases cited, supra. Therefore we find that the impugned orders are not sustainable and liable to be set aside.

13. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential, relief if, any as per law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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