CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No.2422 Of 2012

[Arising out ofOIO No.119-CE/PKJ/CCE/Adj/2012 dated 10.05.2012 passed by the Commissioner of Central Excise (Adjudication), New Delhi]

M/s Goodyear India Ltd. **: Appellant (s)**
Mathura Road, Ballabgarh, Faridabad,
Haryana-1221004

Vs

The Commissioner of Central Excise,
Delhi-IV **: Respondent (s)**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001

With
Excise Appeal No.2423 Of 2012

[Arising out of OIO No.119-CE/PKJ/CCE/Adj/2012 dated 10.05.2012 passed by the Commissioner of Central Excise (Adjudication), New Delhi]

Shri Yashwant Singh Yadav, Director
M/s Goodyear India Ltd. **: Appellant (s)**
Mathura Road, Ballabgarh, Faridabad,
Haryana-1221004

Vs

The Commissioner of Central Excise,
Delhi-IV **: Respondent (s)**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001

AND
Excise Appeal No.2424 Of 2012

[Arising out of OIO No.119-CE/PKJ/CCE/Adj/2012 dated 10.05.2012 passed by the Commissioner of Central Excise (Adjudication), New Delhi]

Shri R.K. Gupta, Manager (Excise)
M/s Goodyear India Ltd. **: Appellant (s)**
Mathura Road, Ballabgarh, Faridabad,
Haryana-1221004
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Vs

The Commissioner of Central Excise,
Delhi-IV : **Respondent (s)**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001

APPEARANCE:
Shri B.L. Narasimhan, Ms. Krati Singh and Shri Aman Singh, Advocates for the Appellants
Shri Nikhil Kumar Singh, Authorised Representative for the Respondent

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINALORDER Nos.60529-60531/2023

Date of Hearing: 28.08.2023
Date of Decision:20.10.2023

Per: P. ANJANI KUMAR

The appellants, M/s Goodyear India Limited, are engaged in the manufacture of tyres; the appellants purchased tubes and flaps from other manufacturers and clear the same along with the tyres to the original equipment manufacturers and overseas purchasers; the appellants have availed CENVAT credit on the said tubes and flaps which is disputed by the Department by issuing a show-cause notice dated 04.04.2011 covering the period from March 2006 to January 2011; the said show-cause notice was adjudicated vide impugned order dated 10.05.2012 wherein demand of CENVAT Credit of Rs.2,97,33,358/- was confirmed along with equal penalty; penalty was also imposed on Shri Yashwant Singh and Shri R.K. Gupta, the Directors of the Company; therefore, M/s Goodyear and the other two Directors are in appeal before us. All the appeals are taken up together for discussion and consideration.

2. Shri B.L. Narasimhan, assisted by Ms. Krati Singh and Mr. Aman Singh, learned Counsel appearing for the appellants, submits that denial of CENVATA credit on tubes and flaps is not correct as the same are covered under the definition of "Input" under Rule 2(k)(i) of CCR, 2004; in the industry, tyres, tubes and flaps is known as set packing for readymade fitment in vehicles; thus, the tubes and flaps are covered under the ambit of "all goods used in or in relation to manufacture of final products"; in addition, they can also be treated as "accessories" and either way, credit is admissible. Learned Counsel submits that the Department has not appealed against the order dated 28.11.2017, for the subsequent period, passed by Commissioner (Appeals) in their favour. Department cannot take different stand for different periods. He also submits that in number of cases, the issue stands decided in favour of the appellants.He submits that the Commissioner has relied upon the decision of Hon'ble Kerala High Court in the case of Apollo Tyres- 2010 (259) ELT 194 (Ker.). However, the said decision of Hon'ble Kerala High Court has been stayed by the Hon'ble Apex Court 2014 (310) ELT A153 (SC).He relies on the following cases in support of his contentions:

- SS Engineers Order, Civil Appeal No.5700 of 2019 dated 07.07.2023 (SC).
- Rosemarta Technologies Ltd.- 2020-TIOL-916-CESTAT-CHD affirmed by Hon'ble Supreme Court vide Order dated 10.07.2023.
- Carrier Air Conditioning and Refrigeration Ltd.- Final Order No.A/60098-60099/202 dated 18.04.2023.
- SRF Ltd.- TIOL-523-CESTAT-DEL.
- Commissioner of CGST, Alwar Vs Balkrishna Industries Limited (vice-versa)- Final Order Nos.50243-5244/2023 dated 23.02.2023 affirmed by Rajasthan High Court Order dated 11.08.2023.

- Apollo Tyres Ltd.- 2014-TIOL-3135-CESTAT-AHM.
- Balkrishna Industries Ltd.- 2007 (217) ELT 228 (Tri. Del.) affirmed by Rajasthan High Court vide Order dated 04.01.2017.
- Apollo Tyres- 2014-TIOL-555-CESTAT-BANG.
- Balkrishna Industries Vs C.G., S.T. and C.E- Alwar (Vice Versa) Final Order No.52292-52293/2018 dated 26.06.2018.

3. Learned Counsel further submits that it is not disputed that the value of the tubes and flaps is included in the assessable value of tyres and as such once the value of bought out items is included in the assessable value of the manufactured goods, credit cannot be denied. He relies on the following cases:

- Siddhartha Tubes Ltd.- 2006 (193) ELT 3 (SC).
- Hical India Pvt. Ltd.- 2020 (40) GSTL 465 (Tri. Bang.)
- Honda Motorcycles & Scooter, India (P) Ltd.- 2012 (282) ELT 533 (Tri. Del.) affirmed by Hon'ble Punjab & Haryana High Court in CCE Vs Honda Motorcycles- 2014 (303) ELT 193 (P&H).
- Honda Motorcycles & Scooter, India (P) Ltd.- 2012 (286) ELT 110 (Tri. Del.) affirmed by Hon'ble Punjab & Haryana High Courtin CC Vs Honda Motorcycles- 2014 (303) ELT A53 (P&H).
- Hero Motorcorp Ltd.- 2012 (285) ELT 218 (Tri. Del.) affirmed by Hon'ble Punjab & Haryana High Court in Commissioner Vs Hero Motorcorp- 2015 (315) ELT A88 (P&H).
- CCE Vs Hero Honda Motors Ltd.- 2015 ()329O ELT 930 (Tri. Del.)

4. Learned Counsel further submits that extended period is not invocable as the issue involved is of interpretation of statutory provision as held in Bharti Airtel Ltd. Vs CCE- Final Order No.20098/2021 dated 06.04.2021- CESTAT-Bang; none of the ingredients like fraud, collusion, wilful mis-statement or suppression of

facts or contravention of any provisions with intent to evade payment of duty have been established; moreover, the appellant has informed the Department on various occasions, between 2000-2005, the fact of availment of CENVAT credit on tubes and flaps; the Department has issued a show-cause notice dated 20.10.2009 on the very same issue and therefore, the impugned show-cause notice dated 04.04.2011 cannot be issued invoking the extended period; as the demand is not sustainable, penalty on the company and on the Directors cannot be imposed. He relies on Zapak Digital Entertainment Ltd.- Final Order No. A/85107/2023 dated 31.01.2023 (Tri. Mumbai).

5. Shri Nikhil Kumar Singh, learned Authorized Representative for the Department submits that the tubes and flaps are just packed along with the tyres manufactured by them and are not further used in the manufacture of final product and therefore, it would not qualify to be called input or capital goods under Rule 2 (k) of CCR, 2004; the appellants did not inform the Department the fact of availment of CENVAT credit on tubes and flaps and have also not declared them to be inputs in their application for registration (Form A-1) in terms of Rule 9 of Central Excise Rules, 2002; the appellants did not declare the same as inputs in the annual declarations filed under Rule 9A(i) of CENVAT Credit Rules, 2004. He submits that the value of tubes and flaps were separately reflected in assessable value of tyres cleared and therefore, CENVAT credit is not admissible. He relies on the following cases and submits that tyres come into existence even before they are packed along with tubes and flaps and therefore

simply because the appellants packed them as a set along with tyres, they do not become inputs:

- Godfrey Philips India Ltd.- 1993 (63) ELT 186 (Tri.)
- Garden Silk Mills- 1991 (51) ELT 373 (Tri.)
- Modern Mills- 1999 (113) ELT 822 (Tri.)

6. Learned Authorized Representative further submit that the appellants have not been declared their intent to use the tubes and flaps as inputs in the respective declarations as discussed above; moreover, the appellants supplied wrong data of CENVAT credit taken on flaps and tubes, which was found incorrect during the audit and this amounts to suppression of fact and therefore, extended period is invocable. He also submits that Shri R.K Gupta and Shri Yashwant Singh Yadav, being in charge of excise affairs of the company, have concerned themselves in wrongful availment of CENVAT credit and hence, penalty is imposable on them.

7. Heard both sides and perused the records of the case. The brief issue involved in the case is whether the appellants are eligible for CENVAT credit, on the flaps and tubes supplied along with tyres cleared by them in a set packing. It is the contention of the Department that the said tubes and flaps are not used in the manufacture of the tyres and as such do not qualify to be “inputs” in view of the definition given under Rule 2(k) of CCR, 2004. On the other hand, the argument of the appellant is that the tubes and flaps are used in or in relation to the manufacture of final products whether directly or indirectly; they also contend that alternatively, the same

may be considered as accessories of the final products; either way, the credit is admissible.

8. Rule 2(k) of CCR, 2004 is reproduced as under:

> [(k) "input" means -
>
> (i) all goods used in the factory by the manufacturer of the final product; or
>
> (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
>
> (iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or
>
> (iv) all goods used for providing any [output service, or];
>
> [(v) all capital goods which have a value upto ten thousand rupees per piece.]
>
> but excludes -
>
> (A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
>
> [(B) any goods used for -
>
> (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
>
> (b) laying of foundation or making of structures for support of capital goods,
>
> except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]
>
> [(C) capital goods, except when, -
>
> (i) used as parts or components in the manufacture of a final product; or
>
> (ii) the value of such capital goods is up to ten thousand rupees per piece;]

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;]

9. It is seen that the definition of Inputs as above has a wider connotation and the inputs can be used directly or indirectly and may or may not be contained in the final product. Moreover, they can also be accessories of the final products cleared along with the final products. It is not the case of the Department that these inputs fall under any exclusion clause of the definition. The Courts and Tribunals have been consistently holding that the definition of Inputs is wide and comprehensive. We find that there are number of decisions in favour of the appellants in cases with identical facts. Only one decision of Hon'ble Kerala High Court is against the appellants and the same is relied upon in the impugned order. Learned Counsel for the appellants submits that Hon'ble Apex Court[2014 (310) ELT A153 (SC)] has stayed the operation of the said decision, of the Hon'ble Kerala High Court, vide Order dated 17.08.2010. We find that even after the decision of Hon'ble Kerala High Court in the above case, Tribunal has been consistently holding that the credit of tubes and flaps is admissible for the manufacturers of tyres. Once such decision in the

case of Balakrishna Industries Ltd. (supra) has been upheld by the Hon'ble Rajasthan High Court.

10. The appellants further submits that the Department itself has decidedthe issueof applicability of CENVAT credit on tubes and flaps, for the period 2006-2007, in favour of the appellant themselves, vide OIA No.159/CE/CGST/Appeal-Gurugram/SG/2017 dated 28.11.2017; learned Counsel for the appellants further submits that Department has not appealed against that case and therefore, the issue has attained finality. Learned Authorized Representative intervenes and submits that the decision was accepted on monetary grounds.We find that irrespective of the Department's acceptance of the case on monetary limits or otherwise, the issue stands settled in favour of the appellants by the various decisions of the Tribunal. We find that Delhi Bench of this Tribunal vide Final Order No.50243-50244/2023 dated 23.02.2023 held that:

> "7. We are of the considered view that the decision of the Tribunal as well as of the High Court of Rajasthan in the case of the assessee itself holding that CENVAT credit on duty paid tubes and flaps as accessories of manufactured tyres is admissible, is binding on us. Therefore, the issue having been held in favour of the assessee, the present appeal by the revenue needs to be dismissed and the order passed by the Adjudicating Authority is consequently upheld. "

11. In view of the above, we find that the appellants are eligible to avail CENVAT credit on flaps and tubes cleared in a set packing along

with the tyres manufactured by them. We further find that Department’s objection that the assessable value of tubes and flaps is separately shown in the invoices and therefore, CENVAT credit is not available, is not acceptable in view of the various decisions cited above. As we find that the credit is admissible on merits, penalty imposed on the company and the Directors is not sustainable.

12. Accordingly, the impugned order is set aside and all the three appeals are allowed.

(Pronounced on 20/10/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK