CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 2012 Of 2012

[Arising out of OIA No. 83/CE/Chd-I/12 dated 19.04.2012 passed by the Commissioner of Commissioner (Appeals) of Central Excise, Chandigarh-I]

M/s Micro Turners Unit-II : Appellant (s)
Village Jharmajri, Barotiwala, H.P.

Vs

CCE, Chandigarh-I : Respondent (s)
Plot. No. 19, Sector 17-C, Chandigarh

APPEARANCE:
Ms. Vrinda Bagaria, Advocate for the Appellant
Shri Ravinder Jangu, Authorised Representative for the Respondent

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

FINAL ORDER No. 60671/2023

Date of Hearing:28.11.2023

Date of Decision:28.11.2023

Per : S. S. GARG

The present appeal is directed against the impugned order dated 19.04.2012 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has confirmed the demand of excise duty of Rs. 2,34,796/- alongwith interest and penalty under Section 11A readwith Cenvat Credit Rules, 2004.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of precision turned components of motor vehicles falling under Chapter 87 of the Central Excise Tariff Act 1985. The Appellant has manufacturing units at Himachal Pradesh, Rohtak & Gurgaon in Haryana and at Pune in Maharashtra. During the period
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2005-06 to 2007-08, the Appellant cleared machinery from Himachal Pradesh unit to their sister unit i.e. M/s Micro Turners, Unit No. III, Gurgaon on payment of excise duty on transaction value as per Section 4 of the Central Excise Act, 1944. The sister unit of the Appellant to whom the capital goods were cleared availed Cenvat credit of the duty paid by the H.P unit, as per the provisions of the Cenvat Credit Rules, 2004.

2. On April 30, 2010, a Show Cause Notice was issued alleging short payment of duty on the ground that the Appellant was required to reverse the entire amount of credit availed on the said capital goods under Rule 3(5) of the Cenvat Rules.

3. After following due process, the original authority vide order-in-original dated 26.10.2012 confirmed the demand of duty of Rs. 10,11,712.52/- alongwith interest and penalty.

4. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide the impugned order confirmed the demand of Rs. 2,34,796/- along with equivalent penalty under Rule 15 of the Cenvat Credit Rules by invoking the extended period of limitation.

5. Hence, the present appeal.

6. Heard the parties and perused the case records.

7. Ld. Counsel Ms. Vrinda Bagaria appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. She further submits that Rule 3(5) of Cenvat Credit Rules is not applicable to removal of 'used' capital goods. She further submits that Rule 3(5) of Cenvat Credit

Rules is applicable only when the goods have been removed 'as such' i.e. without being put to any use. She further submits that this issue has been considered by various benches of the Tribunal and consistently held that Rule 3(5) of Cenvat Credit Rules is not applicable to removal of 'used' capital goods. She relied upon the decision of this Tribunal in the case of Cummins India Ltd. vs. CCE, Pune-III reported in 2007 (219) ELT 911 which was upheld by the Hon'ble Bombay High Court as reported in 2008 (7) TMI 945. She further submits that this issue is no more res-integra and has been settled by various High Courts as reported herein below:-

(i) Commissioner of C.Ex., Ludhiana v. Khalsa Cotspin (P) Ltd. (2011 (4) TMI 1116-Punjab & Haryana High Court]

(ii) Commissioner of Central Excise, Ludhiana v. Oswal Woollen Mills (2014 (307) ELT 595 (Tri-Del.)] affirmed in Commissioner v Oswal Woollen Mills [2015 (319) ELT A127 (P&H))

(iii) Harsh International (Khaini) Pvt. Ltd. v. Commr. Of Central Excise (2012 (281) ELT 714 (Del.)

(iv) The Commissioner of Central Excise, Bangalore-II v. M/s Solectron Centum Electronics Ltd. (2014 (10) TMI 596-Karnataka High Court]

(v) Power Plastech Private Limited v. CCE, Bangalore [2017 (3) TMI 1076 (CESTAT Bangalore))

She also submits that there is no requirement to reverse credit on depreciated value on the goods cleared before 13.11.2007 as proviso to Rule 3(5) was inserted with effect from 13.11.2007 and cannot be applied retrospectively to capital goods removed prior to this date. She also submits that majority of capital goods were removed before

13.11.2007 except Centreless Machine indicated at Sl. No. 28 at Page No. 39 wherein the differential duty involved is only Rs. 1,191/- which also the appellant is not liable to pay because the entire transaction is revenue neutral and the duty paid on removal of capital goods inter-unit is available as credit to the sister unit and hence the demand is not warranted. For this, she relied upon the following decisions:-

(i) Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur - II [2008 (7) TMI 214-CESTAT New Delhij

(ii) M/s Supreme Non Woven Industries Pvt. Ltd. v. Commissioner of Central Tax, Bengaluru West [2019 (12) TMI 175- CESTAT Bangalore]

(iii) Moser Baer India Ltd. v. Commr. Of C.Ex. & Customs, Noida [2009 (6) TMI CESTAT New Delhi]

She also submits that the extended period of limitation is not invokable in the present case as there is no suppression of facts and misdeclaration, fraud, collusion etc. on the part of the appellant and the entire duty paid by the appellant is available as credit to their sister unit and moreover, the period of dispute is from 2005-2006 to 2007-2008 whereas the show cause notice was issued on 30.04.2010 which is beyond two years from the date when the transaction came to knowledge of the department. She also submits that the penalty cannot be imposed as the issue involved is relating to interpretation of Rule 3(5) of the Cenvat Credit Rules and there is no mens-rea on the part of the appellant.

8. On the other hand, the Ld. Authorized Representative reiterated the findings of the impugned order.

9. After considering the submissions of both the parties and perusal of material on record, we think it appropriate to reproduce Rule 3(5) of Cenvat Credit Rules, interpretation of which is involved in the present case as under:-

> *"When inputs or capital goods, on which Cenvat credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9"*

10. On perusal of above stated Rule, it is clear that the said Rule is applicable only when the capital goods have been removed 'as such' without being put to any use and this issue is no more res-integra and has been settled by various decisions of the Tribunal and the High Courts cited (supra) by the appellant.

11. Further, we find that the findings of the Ld. Commissioner is wrong when he held that credit has to be reversed on depreciated value at the time of removal of capital goods as per proviso to Rule 3(5).

12. Further, we find that the said proviso was inserted w.e.f. 13.11.2007 and cannot be applied retrospectively to capital goods removed prior to this date.

13. Further, we find that the majority of the capital goods were removed before 13.11.2007 except Centreless Machine indicated at Sr. No. 28 at Page 39 involving differential duty of only Rs. 1,191/- and even the same cannot be demanded because the entire transaction is revenue neutral and the duty paid by the appellant is available as cenvat credit to their sister concern. This issue is also

settled by the decision of the Tribunal relied upon by the appellant cited (supra).

14. Besides this, we are of the opinion that the entire demand is barred by limitation because the revenue could not established that there was a suppression of facts with intend to evade payment of duty. The period of dispute involved is 2005-2006 to 2007-2008 whereas the show cause notice has been issued on 30.04.2010 which is beyond the statutory period prescribed under the law.

15. Moreover, the appellant has been regularly filing the statutory returns and has not concealed any facts from the department and once the duty demand was not maintainable, the penalty cannot be imposed.

16. In view of our discussion by relying upon the judgements cited (supra), we are of the considered opinion that the impugned order is not sustainable in law and hence we set-aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.