

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

REGIONAL BENCH - COURT NO. I

E/CROSS/50401/2015

Excise Appeal No. 56900 of 2013

[Arising out of Order-in-Original No. 153-154/SA/CCE/2012 dated 21.12.2012
passed by the Commissioner of Central Excise, Delhi-III, Gurgaon]

**Commissioner of Central Excise, Goods &Appellant
Service Tax, Gurugram**

Plot No. 36-37, Sector 32,
Gurgaon, Haryana 122001

VERSUS

M/s Maruti Suzuki India Ltd.Respondent

Finance Division,
Palam – Gurgaon Road
Gurgaon, Haryana 122015

APPEARANCE:

Present for the Appellant: Shri Siddharth Jaiswal, Shri Aneesh Dewan & Shri
Yashpal Singh, ARs

Present for the Respondent: Ms. Krati Singh & Ms. Shreya Khunteta,
Advocates

CORAM:

HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60692/2024

DATE OF HEARING: 04.09.2024

DATE OF DECISION: 24.12.2024

P. ANJANI KUMAR:

This appeal is filed by the Revenue against the impugned order
dated 21.12.2012 passed by the Commissioner of Central Excise,
Delhi-III, Gurgaon.

2. Brief facts of the case are that M/s. Maruti Suzuki India Limited, Palam Gurgaon Road ('Gurgaon unit') and M/s Maruti Suzuki India Limited, IMT, Manesar, Gurgaon ('Manesar unit') (the Respondent) are engaged in the manufacture and clearance of Motor Vehicles and parts thereof falling under Chapter 87 of Central Excise Tariff Act, 1985; Internal Audit of the Respondent was conducted from 09.11.2009 to 14.11.2009 and on the basis of audit report, two Show Cause Notices one dated 25.08.2011, covering the period August 2006 to March 2011, seeking to deny credit Rs. 11,18,93,459 and another dated 30.04.2012, for the period April 2011 to March 2012, proposing to deny credit of Rs 6,49,40,448, were issued on the ground that the bought-out items do not qualify as inputs under Rule 2(k) of the Credit Rules, as they are stored at the gate only and no manufacturing activity is carried out on them; both the SCNs were adjudicated vide the common Impugned Order wherein the Learned Commissioner dropped the entire demand proposed in the SCNs on the ground that the goods in dispute are used in or in relation to the manufacture of their final products and are thus, eligible to CENVAT credit. Revenue is in appeal against dropping of demand of Rs. 2,10,54,368/- on the grounds that the same has been dropped without discussing and giving any findings on their admissibility to credit.

3. Learned Counsel for the Respondents submits that the dispute involves items i.e. Bolt, Screw, nut, Lock Washer, Washer, washer

Clip; Manual (Audio), R/Con Audio, NS, Switch, Audio; Acc. Socket, Assy, Body Socket; Top Deck Assy; Frame Top Bow front, Cushion top Bow; Pipe Rear; Cover Spare Tyre; Set, ORVM & MTG Screw and Spot Light, Tag Cup Holder; he submits that the Revenue's allegation that the Impugned Order is non-speaking is incorrect; Learned Commissioner made detailed examination of the allegations in the SCNs and the submissions made by the Respondent and held that the respondent is entitled to credit on the above items; Learned Commissioner categorically held that the only requirement for availing credit is that the inputs or capital goods are received in the factory of manufacture of final product; there is no dispute that the impugned goods were received in the factory and therefore, in terms of Rule 3 of the Credit Rules, assessee would be entitled to avail credit on the inputs or capital goods received in the factory of manufacture of final product; the Respondent submitted, in reply to SCN, that the disputed items fell under two categories i.e. Spare Parts and Accessories; Learned Commissioner considered the same and gave the findings in respect of both the categories of items. The Learned Commissioner allowed the credit in respect of the items which were actually fitted with the vehicle at the time of use but supplied along with the vehicle at the time of dispatch from the factory only for the purpose of safe transportation as without these items, vehicle could not be completed. Further, the Learned Commissioner analyzed the definition of accessory in detail and laid down the tests for determining an item as accessory or not; further, learned commissioner used the word 'etc.' there by meaning that the

findings are not only limited to the items specifically mentioned; further, the findings are not item specific; he discussed the principles for admissibility of CENVAT credit on the basis of obligation under the Motor Vehicles Act, 1989 and the CENVAT Credit Rules.

4. Learned Counsel for the respondents submits that the CENVAT credit in respect of the Impugned goods has been allowed by the department to the Respondent, vide OIO dated 25.11.2013, for the period of April 2012 to March 2013, for which proceedings were initiated vide Show Cause Notice dated 25.08.2011, on the ground that the Impugned goods have been cleared along with the final product, whose value has already been included in the assessable value of the final product; for the subsequent period, the Respondent was allowed to take credit of the Impugned goods; no appeal has been filed by the Department against the said order; as the department accepted that order, the said order has attained finality; the department cannot take contrary stands in proceedings on the same issue, for the same assessee, as held in the following.

- CCE, Pune-IIVs SS Engineers 2023 (386) ELT 192 (S.C.)
- Rosmerta Technologies Ltd Vs CCE 2020-TIOL-916- CESTAT-CHD affirmed by Supreme Court vide order dt. 10.07.2023
- SRF Ltd Vs CCE&ST 2021-TIOL-523-CESTAT-DEL.
- Carrier Air Conditioning and Refrigeration Ltd Vs CCE, Delhi-III, Excise Appeal No. 2929 of 2009

5. Learned Counsel for the respondents explains the use of impugned items and submits further that the department denied the credit on

the ground that the items did not enter the assembly line or production area or that the items were not fitted in the vehicles till the clearance of factory; there is no condition that the inputs must enter the production area or assembly line; Rule 2(k) of the Credit Rules clearly provides that inputs include the accessories cleared along with the final products. The Respondent has correctly availed the CENVAT credit in respect of the impugned Goods as the same qualify as 'inputs' under Rule 2k of the Credit Rules Pre or post 01.04.2011 as the same are the accessories supplied along with the vehicle. He places reliance on the following judgments:

- Mehra Bros. Vs Joint Commercial Officer, 1991 (51) ELT 173 (SC)
- Pragati Silicons Pvt Ltd Vs CCE, Delhi 2007 (211) ELT 534 (SC)
- M/S Hero Motocorp Ltd Vs CCE, Delhi- III 2023 (8) TMI 119-CESTAT Chandigarh
- Vodafone Mobile Services Limited Vs CCE&ST, Delhi 2019 (27) GSTL 481 (Del.)

6. Learned Counsel for the respondents submits also that the impugned Goods are either the components of the vehicle or the accessories which are supplied separately for ease of transportation; the accessories supplied with the car not only enhance the intrinsic value of the cars, but also add to the marketability of the motor vehicles and make it more competitive in the market; the accessories are received at the Sales and Dispatch area and are stored and sorted Model/Segment wise and then packed as per the "Operating Standard for Accessory Store" without carrying out any manufacturing activity; From there the packages containing these

items are delivered to the representatives of the carriers who bear the responsibility of safe delivery to the respective dealers along with the final goods; Rule 3 of the Credit Rules allows the availment of credit in respect of inputs which have been received in the factory of manufacture; respondent charges a consolidated selling price, from its dealers and such value includes the value of the bought-out items; no separate consideration is being received; it is not fair on the part of the department to insist that value of the accessories be included in the assessable value on one hand and to deny credit on the other; if according to the department, CENVAT credit is not available on the items in dispute in the present matter, then the duty paid by the Respondent on these items has to be construed as reversal of credit on removal of the final products and Duty already paid has to be adjusted against the demand; it is not open for the department to take two separate stands on the same transaction. He relies on

- Siddhartha Tubes Ltd Vs Commissioner, 2006 (193) ELT 3 (SC.)
- Hical India Pvt. Ltd Vs CCE, Bangalore, 2020 (40) GSTL 465 (Tri.-Bang).
- Honda Motorcycles & Scooter India P. Ltd Vs CCE, Delhi-III 2012 (282) ELT 533 (Tri. -Del.) affirmed by Hon'ble Punjab & Haryana High Court in CCE, Delhi-III
- Honda Motorcycles & Scooter India P Ltd, 2014 (303) ELT 193 (P&H)
- Honda Motorcycle & Scooter India P Ltd Vs CCE, Delhi-III, 2012 (286) ELT 110 (Tri. -Del.) affirmed by Hon'ble Punjab & Haryana High Court 2014 (303) ELT A53 (P&H)

7. Learned Counsel for the respondents submits that the demand raised vide Show Cause Notice dated 25.08.2011 is time barred;

there has been no suppression by the Respondent as department disputed the credit on some items like set of two spare bulbs, warning triangle & first aid kit vide SCN dated 23.09.2003, which was dropped vide Order-in-Original No. 27/2004 dated 31.08.2004; department was aware of the facts relating to the Impugned goods; further respondents vide letter dated 12.09.2002, informed that they are availing CENVAT credit on bulb, wheel caps, triangle assembly, first aid kit, floor mats etc; further, the Respondent was regularly filing monthly returns in Form ER-I; department failed to show any positive act of suppression on part of the Respondent; further, the issue involves interpretation of the complex provisions and the Respondent was under the *bona fide* belief that they were rightly availing the credit; therefore, extended period of limitation could not be invoked; the demand of interest and penalty is liable to be set aside as they cannot be sustained when demand of tax itself is not sustainable; he relies on the following on the issue of limitation.

- CCE&ST Udaipur Vs M/s KK Gupta Construction (Vice-Versa) 2024 (3) TMI 801-CESTAT New Delhi
- M/s. Hero Cycles Limited Vs CCE, Ludhiana, 2024 (2) TMI 11-CESTAT Chandigarh
- CST Vs Naresh Kumar and Company Private Limited & Others 2022 (8) TMI 993- Calcutta High Court

8. Learned Authorized Representative for the appellant department reiterates the grounds of appeal and submits that the contentions of the respondent on the basis of order in original dated 25.11.2013 are misplaced as of subsequent period cannot be made applicable for the

reason that the OIO in question was passed in context of the amended definition of 'input' w.e.f. 01.04.2011; in the new definition "any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product" have been termed as "input"; Learned Commissioner, while passing the above order, mentioned that the Review Order No. 19/2013 dated 26.03.2013, was issued in respect of the order impugned in this case. He further submits that there is no Estoppel in taxation matters. He relies on C.K Gangadharan Vs CIT, Cochin- 2008 (228) ELT 497 (SC) and Raman Boards Vs CCE, Delhi-III-2009 (243) ELT 550 (Tri. - Del.).

9. Learned authorized representative takes us through the provisions of Rule 2(k), Rule 3(5) and Rule 9 of the CENVAT Credit Rules of CENVAT Credit Rules, 2004 and submits that a harmonious reading of the above provisions reveals that if any item except accessory is cleared as such, CENVAT credit availed on those items are required to be reversed. He takes us through the definitions of accessories and parts and submits that each item in question has to be separately examined as whether the same is an accessory or not, to qualify as input under the above definition prior to 1.3.2011; in case the same is an accessory, it qualifies as input when cleared along with the final product; item wise details submitted by the respondents, make it clear that certain items are parts of the final product of the respondents. He submits that the adjudicating authority dropped the proceedings initiated without passing the reasoned and speaking

order; the Adjudicating Authority has discussed about the admissibility of CENVAT Credit on Warning Triangle, First Aid Kit, Spare Bulbs; Carpet Set, Wheel cover, Cigar Lighter, Car Radio Antenna, Fire extinguisher; Wheel cap, carpet, Mirror Assembly and held that CENVAT Credit on these items are admissible to the respondent and dropped the entire demand of Rs. 17,68,33,907, without discussing and giving any findings, as to whether these items could be termed as inputs, parts or accessories and are used in or in relation to the manufacture of the final products, in respect of remaining items mentioned in the appeal.

10. Learned Authorized Representative for the department submits that the Adjudicating Authority, as a quasi- judicial authority is duty bound to give findings on all the allegations leveled in the Show Cause Notice; Adjudication Order passed without giving findings on all the allegations made in the Show Cause Notice cannot be said to be a speaking order; it is a settled law that the unreasoned and non-speaking order never gets scrutiny of the higher authority, being ill founded; the matter is required to be remanded for de-novo consideration to decide the case on the points raised by the department. He relies on the following case laws:

- CCE Vs Oudh Sugar Mills Ltd 2017 (349) ELT 118 (All.)
- CCE&ST, Raipur Vs Sarda Energy & Minerals Ltd 2017 (345) ELT 357 (Chhattisgarh)
- EID Parry (India) Ltd Vs CCE(LTU), Chennai - 2009 (246) ELT 752 (Tri. Chennai)
- CCE, Raigad Vs Parle International Ltd- 2009 (245) ELT 475 (Tri. - Mumbai)

- CCE, Chandigarh Vs Aarti Steels Ltd 2002 (149) ELT 637 (Tri. - Del.)
- CCE, Madras Vs Tamil Nadu Petroproducts Ltd 2000 (126) ELT 1048 (Tribunal)

11. Learned Authorized Representative for department further refers to sample invoices and submits that a perusal of the same reveals that only two items (i.e, Tool Kit and Jack Assy) have been mentioned on the invoices; cost of these items has also not been included in the assessable value; excise duty has not been paid on the value of the said items. He further submits that there is no mention of other items on the invoices; adjudicating authority has not examined on which document other items have been cleared; it only reflects that all other items excluding two items (i.e Tool Kit and Jack Assy) have been supplied free of cost for subsequent replacement as also held by the adjudicating authority; if the said goods are cleared free of cost, it only signifies that duty has not been paid on the said goods; when duty has not been paid on the goods and when the goods are cleared free of cost, CENVAT credit cannot be available for the said goods. He relies on the following.

- GM Enterprises Vs CCE, Jaipur 2004 (177) ELT 955 (Tri. Del.)
- Air Command India Ltd Vs CCE 2007 (211) ELT 351 (Tri. Ahmd.).
- CCE Vs Appollo Tyres Ltd- 2010 (259) ELT 194 (Ker.)
- CCE Vs Appollo Tyres Ltd.- 2010 (259) ELT194 (Ker.)
- Yamuna Gases and Chemicals Ltd Vs CCE, Panchkula-2014 (310) ELT 502 (P & H)

12. Learned Authorized Representative for department submits that the cases relied upon by the respondent are not applicable to the facts of the impugned case.

13. In reply, learned Counsel for the respondents submits that the argument put forth by the Learned Authorized Representative referring to the invoices is beyond the Show Cause Notice, impugner order and the grounds of appeal. It is not open for the Learned Authorized Representative to establish a new case at this juncture. The grounds of appeal challenge the dropping of demand of Rs 2.10 Cr on particular items mentioned therein on the grounds that the adjudicating authority did not give any findings.

14. Heard both sides and perused the records of the case. Admissibility of CENVAT credit on certain bought out items purchased by the respondent and supplied along with the vehicles is the precise issue involved in this case. It is the case of the Department that the learned Commissioner, vide impugned order, has not given any specific findings on the nature of the items in dispute and their admissibility to CENVAT credit and to that extent, the order is not a speaking order; on the other hand, learned Counsel for the respondents submits that in their reply to the Show Cause Notice, the respondents have categorized the impugned goods into "accessories" and "spare parts"; learned Commissioner has gone through the submissions and the accepted the contentions of the respondents; however, instead of discussing each and every item in question, the adjudicating authority has used the word "etc." thereby indicating

that all the impugned items are discussed; it is the case of the respondents that the items in question fulfill the criteria for being inputs used in or in relation to the manufacture in terms of Rule 2(k) of CENVAT Credit Rules, 2004 before or after 01.03.2011. The respondent further submits that learned Commissioner has further held in respect of subsequent show cause notices that the impugned items are admissible to credit; Revenue has accepted that order and therefore, cannot dispute the admissibility for the impugned period in the present proceedings.

15. We find that it will be beneficial to have a look at the definition of "Input" as contained in **CENVAT** Credit Rules; Rule 2(k) defines Input as follows:

(i) Before 01.03.2011

2(k) "input" means all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

Explanation 1. The high-speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2. Inputs include goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer."

(ii) After 01.03.2011

"2(k) "input" means,

(a) all goods used in the factory by the manufacturer of the final product; or

(b) 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

(c) all goods used for generation of electricity or steam (or pumping of water) for captive use; or

(d) all goods used for providing any (output service); or

(e) all capital goods which have a value up to 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 piece of the final product and is not charged separately from the customer.

16. We find that learned Commissioner correctly finds that the only requirement for the entitlement to avail CENVAT credit is that the inputs are capital goods must be received in the factory of manufacture of final products; the receipt of the inputs in the factory is not disputed and therefore, credit is admissible. We further find that relying on the decision of the Hon'ble Supreme Court in the case of Mehra Brothers Vs Joint Commercial Officer – 1991 (51) ELT 173 (SC), learned Commissioner finds that the test as to verify whether an item is an accessory or part of the vehicle is whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or as a supplementary or secondary to the main or primary importance and the other test may be whether a particular article or articles or parts can be said to be available for sale in an automobile market or

shops or places of manufacture. We find that Commissioner applied this test and the provisions of the Rules and came to a conclusion that the items qualify to be “parts” or “accessories”.

17. We find that before 01.03.2011, the definition of Input included accessories of the final product cleared along with the final product; there is no dispute about the fact that these items are cleared, along with the final products i.e. motor vehicles, by the respondents. Only after 01.03.2011, the condition was that the value of the accessories should be included in the value of the final products cleared. We find that learned Commissioner finds that value of these bought out items is included in the assessable value of the motor vehicles, on which Central Excise duty has been paid. Accordingly, learned Commissioner rightly finds that the impugned items are either parts or accessories and therefore, credit is admissible before 01.03.2011 or after 01.03.2011. Authorized Representative for the Revenue tried to explain during the hearing on the basis of a sample invoice that the value of the impugned accessories is not included in the assessable value of the motor vehicles. We find that this submission is beyond the scope of the show cause notice and the grounds of appeal. Revenue’s appeal is very clear that it is only on the grounds that learned Commissioner (Appeals) has not given any findings as to the impugned goods vis-à-vis their admissibility to CENVAT credit. Therefore, we find that it is not open for the Revenue to set up a new case at this juncture.

18. We further find that the goods in question are Bolt, Screw, nut, Lock Washer, Washer, washer Clip; Manual (Audio), R/Con Audio, NS, Switch, Audio; Acc. Socket, Assy, Body Socket; Top Deck Assy; Frame Top Bow front, Cushion top Bow; Pipe Rear; Cover Spare Tyre; Set, ORVM & MTG Screw and Spot Light, Tag Cup Holder. We find that learned Commissioner has discussed the items under two Headings i.e. "Parts" and "Accessories"; he has discussed a few items and used the word "etc". We find that learned Counsel for the respondent's argument in this regard that the use of the term "etc" amounts to indicate that the adjudicating authority has discussed the admissibility of all the items. Therefore, we find that no case has been made by the Revenue on the admissibility of these items to CENVAT credit. We find that this Bench in the case of Hero Motor Corp. Ltd. held, vide Final Order No.60232/2023, that:

4. Heard both sides and perused the records of the case. On going through the records of the case we find that CBEC Circular, cited above, classifies the helmet locks under heading no. 87.14 of CETA, i.e as part of Motorcycles. We find that the definition of "input" during the relevant period includes accessories of the final products; as long as an input is an accessory to the Excisable goods manufactured and cleared, credit cannot be denied. Moreover, contrary to the contention of the learned Authorized Representative, the definition does not prescribe the part/component to be an essential accessory. As long as the "input" in question is an accessory, it qualifies to be an "input" as per Section 2(k) of Central Excise Act, 1944. It is not Revenue's case that the Helmet lock is not an accessory. Such a conclusion runscontrary to the classification approved by CBEC; Moreover, we find as per the various decisions cited, by the learned Counsel for Appellants, and the provisions of Motor Vehicle Act, Helmet (and lock thereof) is required to be supplied along with the motorcycles. This being a statutory provision, the department cannot argue that it

is not an "input" for the manufacture of Motorcycles. Lastly, we find that the Revenue themselves, accepted the contention of the appellant and allowed the CENVAT credit for the subsequent period. As there is no change in the legal provisions for the subsequent period, credit is admissible in the previous period which is impugned in this case. Therefore, we are of the considered opinion that the impugned order is not legally sustainable and therefore, liable to be set aside.

19. We find also that the respondents rely on the proceedings which culminated by the issue of OIO dated 25.11.2013, vide which the Revenue has accepted the admissibility of these items to CENVAT credit for the subsequent period; Revenue has not appealed against the order and therefore, cannot take a contrary stand in the present proceedings. We find that learned Authorized Representative refers to the OIO dated 25.11.2013 and submits that the period involved therein is after 01.03.2011; there is a categorical reference to the present impugned OIO; the Commissioner has specifically mentioned in the OIO dated 25.11.2013 that the present impugned order has been appealed against. In view of our discussions as above, we find that inclusion or otherwise of the value of the accessories, on which CENVAT credit is availed, in the assessable value of the motor vehicles cleared by the respondents, is not the subject matter of the grounds of appeal. In view of the assertions by the adjudicating authority that such value of the accessories is included in the assessable value of the motor vehicles; the argument of the learned Authorized Representative does not succeed. As the Department has accepted the OIO dated 25.11.2013 and no proceedings have been initiated for further period, it is not open for the Department to

dispute the admissibility in the impugned case. We find that Hon'ble Apex Court in the case of S.S. Engineers (supra) held that:

Having regard to the fact that for the subsequent period, the Department has taken a stand that the bought-out items are not entered in the factory and the Assessee has not claimed credit on them, there is no case for adding their value in the assessable value and hence no proceeding need be initiated in the form of a show cause notice, we find that for the previous period, in respect of which this appeal arises, the stand of the Department cannot be contrary to what has been stated above. Hence, we do not find any merit in the appeal. The Civil Appeal is dismissed.

20. In view of the above, we are of the considered opinion that the Revenue has not made out any case in their favour and consequentially, we do not find any reasons to interfere with the impugned order. In the result, the appeal filed by the Revenue is dismissed. Cross objections filed by respondents are accordingly disposed of.

(Order pronounced in the open court on 24/12/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)