

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH

Excise Appeal No. 60265 of 2020

[Arising out of Order-in-Original No. 32/2019-20/Commr/PP/FBD dated 31.01.2020 passed by the Commissioner of Central Goods & Service Tax, Faridabad, Haryana]

M/s Brakes India Private Limited

...Appellant

Versus

**Commissioner, Central Goods And Service
Tax, Faridabad**

...Respondent

APPEARANCE:

Ms. Krati Somani, Advocate for the Appellant

Ms. Shivani, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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

Date of Hearing/Decision : 29.11.2021

Final Order No. 60962/2021

P. Anjani Kumar

The appellant – M/s Brakes India Private Limited assails the Order-in-Original No. 32/2019-20/Commr/PP/FBD dated 31.01.2020.

2. The brief facts of the case are that the appellants are engaged in manufacture of motor vehicle parts namely brakes assembly; the appellant has 8 manufacturing units; out of which, three units are located at Padi, Polambakkan and Gurgaon are engaged in the manufacture of various parts like show assembly, servo sub-assembly, TMC assembly, wheel cylinder assembly and

caliper sub-assembly; these goods are cleared to their Gurgaon unit on payment of excise duty under stock transfer invoices. The Department issued a show cause notice proposing to deny Cenvat credit for the impugned period alleging that the credit of duty paid on inputs received from their sister concern under stock transfer invoices, is not admissible under Rule 7(4) of the Cenvat Credit Rules, 2001/2002 and that the said inputs are not purchased. The show cause notice further alleges that the said Rule 7(4) of CCR was amended vide Notification No. 13/2003-CE(NT) dated 1.3.2003 substituting the word "purchased" by "procured" and, therefore, the appellant is not entitled to avail Cenvat credit on the stock transfer prior to 1.3.2003.

3. Learned Counsel for the appellant submits that the inputs in question were purchased by them from their sister units and, therefore, the transaction would not change from 'purchase' to 'procurement'; Central Excise Act, 1944 defines "sale" and "purchase" with their grammatical variations and cognate expresses to mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred Payment or other valuable consideration; she submits that the definition does not provide that the value of consideration paid to the determinative factor; the appellant has a separate excise registration for different units and avail right of input services and inputs used for manufacturing the goods; certain inputs are purchased from the sister concerns, therefore, it cannot be said that the goods or inputs are not procured without any purchase. Tribunal in the case of **CCE Vs. Modern Food**

Industries (India) Ltd. – 1988 (37) ELT 294 (Tribunal)

observed that even a book adjustment is a valid payment of consideration and transfer of possession of goods from one unit to another would amount of 'sale' and 'purchase'. Learned Counsel also submits that in terms of Rule 3 read with Rule 4 of CCR, Cenvat credit can be availed on inputs on receipt of inputs or capital goods in the factory of the manufacturer. The provisions do not envisage purchase to be a pre-requisite; Rule 7(4) is only a procedural rule and provides for the maintenance of records and does not deal with admissibility of credit. She submits that Karnataka High Court in the case of **Karnataka Soaps & Detergents Ltd. Vs. CCE, Mysore – 2010 (258) ELT 62 (Kar.)** held that Rule 7 is illustrative in nature and cannot place fetters on Rule 3.

4. Learned Counsel submits that the issue is no longer res integra and has been decided by the Tribunal in the case of **Exide Industries Ltd. Vs. CCE, Haldia – 2008 (226) ELT 249 (Tri.-Kolkata)**; Tribunal allowed the credit of duty paid on inputs received on stock transfer basis from sister units on the ground that the word 'purchased' has been used only in procedural part of Rule 57AE(3), in the context of maintaining record of inventory whereas there is no such stipulation regarding 'purchased' in the substantive rule granting input duty credit. She relies upon the following cases :

- (i) **Commissioner of Central Excise Vs. M/s Coates of India Ltd. – 2018 (7) TMI 251 – CESTAT Kolkata;**
- (ii) **National Aluminium Company Ltd. Vs. CCE, Rourkela – 2019 (4) TMI 1256 – CESTAT Kolkata;**

- (iii) **CCE, Siliguri Vs. Hindustan Lever Ltd. – 2018 (7) TMI 1934-CESTAT Kolkata;**
- (iv) **CCE, Belapur Vs. Vishnu Chemicals Pvt. Ltd. – 2009 (245) ELT 297 (Tri.-Mumbai);**
- (v) **CCE, Kolkata VI Vs. ITC Ltd. – 2018 (5) TMI 1186 – CESTAT Kolkata.**

5. Heard both sides and perused the records of the case.

6. On going through the records of the case and on hearing the rival contentions, we find that the issue is squarely covered in favour of the appellant. We find that Rule 3 of Cenvat Credit Rules which provides for eligibility criteria of Cenvat credit does not discriminate between purchase and procurement. We find that the only pre-condition appears to be receipt of input or capital goods in the factory of manufacture. We also find that Karnataka High Court in the case of **Karnataka Soaps & Detergents Ltd.** (supra) has upheld the view that Rule 7 which is more towards laying down the procedure cannot take precedence over Rule 3. We find that Tribunal in the case of **Exide Industries Ltd.** (supra) have held as follows:

"4.3 Relevant period involved in the proceeding was April, 2000 to March, 2002 raising aforesaid demand on the allegation that input received by one unit from its sister unit were not entitled to CENVAT credit. There is nothing on record to state whether inputs so received were not used in manufacture. Also record does not demonstrate that input had not undergone suffering appropriate duty before procurement. The order of adjudication also fails to exhibit that "purchase" is an essentiality to claim CENVAT credit under law even if the term "procurement" being substituted in Rule 7(4) of CENVAT Credit Rules, 2002. There is no doubt that Notification No. 13/03, dated 1-3-2003 has substituted the word 'procured' for the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002 w.e.f. 1-3-2003. But Notification No. 27/2000, dated 31-3-2000 which sought to amend CENVAT Credit Rules, 2000 does not prohibit to read the said substitution for the period earlier to

that, under challenge. Definition "inputs" under Rule 57A of Central Excise Rules, 1944 read with Rule 57B and conditions laid down by Rule 57AC nowhere warranted 'purchase' is *sine qua non*. Therefore Notification No. 13/2003, dated 1-3-2003 guides to appreciate legislative intention. Further, decisions cited by learned Counsel also brings its case in all four. When a levy is not expressly designed by law by a statutory provision, respective Rule which grants credit cannot be presumed to be a charging section by any analogy. "

7. In view of the above, we find that the impugned order does not stand the scrutiny of law. The same needs to be set aside and we are of the considered opinion that it requires to be set aside.

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

(Pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

RM