CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.E/689/2009

[Arising out of Order-in-Appeal No.79/2009 (M-IV) dt. 11.09.2009 passed by Commissioner of Central Excise (Appeals), Chennai]

HCL Infosystems Ltd. (Unit-III) Appellant

Versus

Commissioner of Central Excise,
Puducherry Respondent

Appearance :

Shri D. Santhana Gopalan, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 25.10.2018

FINAL ORDER No. 42682 / 2018

Per Bench

The facts of the matter are that appellants were a DTA unit and had cleared monitors of various models after availing cenvat credit thereon under AR-3As and CT-3 certificates to STP units / 100% EOUs. Department took the view that an user industry in STP / 100% EOU could bring excisable goods without payment of duty under CT-3 certificates only from the factory of manufacturer of the goods and such manufacturer should have followed procedures contained in Central Excise Rules 2002; that however it appeared that appellants had manufactured computer system alone in their unit and not the impugned monitors; hence appellants were not eligible to clear the said monitors under CT-3 certificates by availing exemption under Notification No.22/2003-CE dt. 31.03.2003; that instead, they were required under Rule 3 (5) of CCR to pay an amount equal to the credit taken on such monitors while clearing them to the 100% EOU / STP units. Proceedings initiated against the appellants culminated in order dt. 23.11.2007 which inter alia ordered recovery / reversal of an amount of Rs.7,63,997/- with interest thereon and also imposing penalty of Rs.75,000/- under Rule 15 (1) of CCR, 2004. In appeal, the Commissioner (Appeals) vide impugned order dt. 11.09.2009 relying upon the decision of the Tribunal's Larger Bench in the case of *Lakshmi Automatic Loom Works Ltd. Vs CCE Trichy* – 2008 (232) ELT 428 (Tri.-LB) upheld the order of original authority and rejected the appeal. Hence the appellants are before this forum.

2. The matter had been heard earlier also by this Tribunal on 25.09.2017 when it was brought to the notice of the Bench that an interim stay had been granted by the Hon'ble High Court of Madras against the Tribunal's Larger Bench decision in the case of *Lakshmi Automatic Loom Works Ltd*. (supra). On this ground, vide Final Order No.42223/2017 dt. 25.09.2017 this Bench had disposed of the appeal as file closed for statistical purpose, however making it clear that the appeal along with stay order / interim orders, if any, will continue before the Tribunal and that both the sides were at liberty to file application before the Tribunal to reopen the mater as and when the case is disposed by the Hon'ble

High Court or in case of any change of circumstance. Subsequently however, the Hon'ble High Court of Madras in C.M.A No.1046 of 2018 set aside the aforesaid final order dt. 25.09.2017 of this Bench and the High Court further remitted the matters back to the CESTAT either to dispose of the appeal on the basis of decision made by the Tribunal / High Court, proximate to the case on hand, or to keep the appeals pending, till the final outcome of the issues raised. Hence the matter has come up once again before this Bench.

3. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri D. Santhana Gopalan submitted that the very same issue that was the subject matter of Tribunal's Larger Bench in the case of *Lakshmi Automatic Loom Works Ltd*. (supra) has subsequently come up before the Hon'ble High Court of Karnataka in *CCE Bangalore Vs Solectron Centum Electronics Ltd.* in C.E.A No.49 of 2009 decided on 11.06.2014 and reported in 2014 (309) ELT 479 (Kar.) and the High Court has inter alia, held that credit could not be denied on the ground that the EHTP unit concern was not procuring the excisable goods directly from the factory of manufacturer or warehouse. Ld.Counsel further submits that the *Solectron Centum Electronics* judgement of the High Court would have the effect of overturning the Tribunal's Larger Bench decision in *Lakshmi Automatic Loom Works Ltd*. (supra).

4. On the other hand, Ld. A.R Shri S. Govindarajan supports the impugned order relying upon the Tribunal's LB decision in *Lakshmi Automatic Loom Works Ltd*. (supra). He submits that the Tribunal's Larger Bench decision has only been stayed by the High Court but however final outcome is still awaited. Further, he submits that in the *Solectron Centum Electronics* judgement, the issue concerns

Rule 3 (4) of CCR 2004 whereas the issue under dispute concerns reversal of cenvat credit on inputs removed as such as per Rule 3 (5) ibid.

5. Heard both sides and have gone through the facts.

6.1 Indubitably, the Tribunal Larger Bench in *Lakshmi Automatic Loom Works Ltd*. (supra) had held that condition of direct procurement from factory of DTA manufacturer to EOU / EHTP units etc. is not merely procedural, that inputs cleared as such by such DTA assessee to 100% EOU cannot be deemed to have been manufactured by them, hence such assessee was not entitled to remove the inputs without reversal of credit or payment of equivalent amount of duty.

6.2 We however note that the Tribunal Larger Bench decision pertained to the period of March 1996 to May 1998 when Rule 57F of the erstwhile Central Excise Rules,1944 was in force and the benefit of Notification No.1/95-CE dt. 4.1.1995 had been claimed by the appellants therein. However, the controversy in the present appeal relates to the period July 1996 to December 2006 when the concerned legal provision in force was Rule 3 (5) of Cenvat Credit Rules (CCR) 2004 and the notification that was sought to be availed was No.22/2003-CE dt. 31.03.2003.

6.3 Be that as it may be, we find that the matter in the *Solectron Centum Electronics* was referred to the Hon'ble High Court of Karnataka by the Hon. Apex Court to decide the case in the light of the judgment of the Larger Bench of the Tribunal in *Lakshmi Automatic Loom Works Ltd*. We find in paras 7 & 8 that the Hon'ble High Court of Karnataka has analyzed the applicability of the said Tribunal's Larger Bench decision in *Lakshmi Automatic Loom Works Ltd*. (supra). No doubt, as the Ld. A.R pointed out, the High Court in the *Solectron Centum*

Electronics judgement considered the requirement or otherwise or reversal of availed cenvat credit in respect of capital goods removed from the DTA to an EHTP unit. All the same, we find that the same relevant provisions in CCR 2004 namely Rule 3 (5) were applicable during the period of dispute in this appeal also, inter alia requiring the manufacturer of final products to pay an amount equal to credit availed in respect of inputs or capital goods on which cenvat credit had been taken, when such goods were removed as such. In our view therefore, the conjunction "or" between the words "inputs" and "capital goods" in Rule 3(5) is to be interpreted only as suggestive of the inclusive combinationof alternatives. In other words, the provisions and conditionalities of Rule 3 (5) ibid will apply to both 'inputs' and 'capital goods', unless otherwise qualified in the said sub-rule. Hence though the judgment of the High Court of Karnataka is in relation to capital goods, the ratio laid down will inevitably have to be followed *pari materia* in respect of 'inputs' also. This will only mean that as per the ratio laid down by the Hon.High Court of Karnataka, inputs of a DTA assessee / manufacturer on which cenvat credit had been taken which have been removed as such by the DTA unit to an EOU or EHTP unit or STP unit etc. there will not arise any legal requirement to effect payment of duty equal to the cenvat credit availed. The relevant portion of the Hon'ble High Court of Karnataka judgement of *Solectron Centum Electronics* (supra) is reproduced as under :

> **15.** In so far as the inputs are concerned, it is not in dispute that the assessee while purchasing the said goods for its DTA unit has paid duty. It is only when those inputs as such were removed to the EHTP unit, the Cenvat credit availed was reversed. It is because, if the assessee had purchased those inputs for its EHTP unit by virtue of aforesaid Notification, there was no duty payable, as the said inputs were removed with the previous permission of the department as

> reflected in CT-3. There was no liability to pay the duty and already Cenvat credit had been taken, it was reversed under protest and therefore, they were entitled to the refund of the said amount. That question is also answered in favour of the assessee and against the Revenue.

6.4 Viewed in this light, we find that the Ld. Advocate is correct in his assertion that the ratio laid down by the Tribunal Larger Bench in the case of *Lakshmi Automatic Loom Works Ltd. Vs CCE Trichy* – 2008 (232) ELT 428 (Tri.-LB) has surely been overturned and set aside by the Hon'ble High Court of Karnataka in their aforesaid judgment.

7. In view thereof, following the ratio laid down by the High Court of Karnataka in *Solectron Centum Electronics* (supra), we hold that the impugned order cannot be sustained, for which reason it is set aside. Appeal is therefore allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi, C.S)
Member (Judicial)

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