

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

**Appeal No.E/42314/2018**

[Arising out of Order-in-Appeal No.329/2018 (CTA-I) dt. 03.07.2018 passed by Commissioner of GST & Central Excise (Appeals), Chennai]

Lucas TVS Ltd., Unit I

Appellant

Versus

Commissioner of Central Excise,  
Puducherry

Respondent

Appearance :

Shri D. Santhana Gopalan, Advocate  
For the Appellant

Shri L. Nanda Kumar, AC (AR)  
For the Respondent

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**

Date of hearing / decision : 28.12.2018

**FINAL ORDER No. 43193 / 2018**

The appellants are engaged in manufacture of automobile electrical components. Pursuant to verification of records, it emerged that they had availed cenvat credit to the tune of Rs.20,43,218/- based on invoice raised by M/s.CHEP India Pvt. Ltd. (hereinafter referred to as CHEP). It appeared to the department that CHEP had been employed only to deliver the appellant's finished goods i.e. various automobile parts to their customer situated at various places. Accordingly proceedings were initiated against the appellants proposing denial of the above

mentioned credit amount with interest thereon and also imposition of penalty under various provisions of law. In the first round of adjudication, original authority confirmed the said proposals in the SCN which, on appeal, were upheld by the Commissioner (Appeals). The appellants had then filed appeal E/41590/2017-SM before the Tribunal which culminated in Final Order No.42760/2017 dt. 02.11.2017. The said order took note of the fact that allegation raised in the SCN is that credit has been availed on outward transport / GTA services whereas, according to the appellants, the impugned amount pertains to hiring of packing materials. For these reasons, the matter had been remanded to the original authority to reconsider the issue after examining the evidences adduced. In de novo adjudication, the Joint Commissioner vide order dt. 21.03.2018 held that the services provided by CHEP appeared to have no direct nexus with the manufacture of the final products and that the intended purpose of equipment supplied by CHEP is only for movement of electrical components upto buyer's premises which is not admissible in view of the amended definition of input services in Rule 2(l) of the CCR 2004, w.e.f. 1.4.2011. Original authority once again disallowed the disputed cenvat credit of Rs.20,43,218/- with interest thereon and also imposed equal penalty under rule 15 (1) of the CCR 2004. In appeal, the Commissioner (Appeals) by the impugned order dt. 03.07.2018 upheld the de novo order of original authority and rejected the appeal. Hence appellants are once again before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri D. Santhana Gopalan made oral and written submissions which can be broadly summarized as under :

i) The agreement dated 25.01.2011 between the Appellant and CHEP India clearly evidences the nature of service is only hiring of equipment. Nowhere

from the agreement it can be inferred that CHEP would receive the finished goods of the Appellant and transport the same to the Appellant's customers.

ii) The only clause in the agreement dealing with transportation is clause 5, viz., the clause provides that the cost of transporting the packing materials between CHEP premises and the Appellant's premises is included in the hire charges . This clause cannot be construed to be transportation of Appellant's finished goods.

iii) The Appellant engaged independent transporters to transport their finished goods, packed in the equipment supplied by CHEP, which goes to prove that CHEP was not transporting the finished goods.

iv) The O-I-A, in para 7, admits this factual position as follows :

*"..the Schedule 1A at point 5 clearly specifies the intended purpose of the equipment hired by the Appellant..."*

v) Only the service of outward transportation is restricted upto the place of removal under Rule 2(1) of the CCR. The O-I-A denies the impugned credit on the ground that the services of CHEP is related to outward transportation which is incorrect.

2.2 Ld. Advocate further submits that show cause notice issued for identical dispute for the subsequent period July 2016 to June 2017 had been dropped by the Asst. Commissioner vide an OIO No.112/2018 dt.19.11.2018 holding that the impugned services was hiring of packing material and not outward transportation of goods.

3. On the other hand, Ld. A.R Shri L. Nanda Kumar supports the impugned order.

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

5.1 From perusal of the impugned order, it emerges that LAA has found from that perusal of the agreement between the appellants and CHEP that there is clear provision for 'Transportation Charges' in para 5.4 of the agreement; that intended purpose of the equipment hired by the appellant was only for movement of automobile components in FLS, FLC units and inserts between the appellant company and their various customers. On these findings, the LAA has concluded that the services rendered by CHEP to the appellant was not merely hiring of equipment but also involved transport of the automobile components and transportation charges were accordingly paid by appellant.

5.2. On perusal of the agreement filed in page 56 onwards of the appeal book, it is seen that the agreement is called "Equipment Supply Agreement". In the recital portion in second page of the agreement, it is indicated that appellant "wishes to hire Equipment from CHEP for use in the Company's business on the terms of this Agreement". Further, in Schedule IB, the equipments hired have been indicated as "FLC - 48, FLC Lid - 13048, Insert LucTML and FLC Separator". The intended purpose of the equipment has also been given in the same schedule as "For the movement of Automotive Components in FLC, FLC Lids and Inserts between Lucas TVS Ltd. and Tata Motors Ltd. Pune, BIC Logistics Ventures Ltd., TVS Logistics Services Ltd., Pune, Lucas TVS Ltd., Chakan. Further in page 8 of the agreement under the head 'Transport', pricing covers costs associated with CHEP delivering (Issue) Equipment to sites and for picking up (Collect / Return) Equipment that had been issued to the company from this Agreement other sites listed in item 7B.

5.3 It is also pertinent to note the submission of the Ld. Advocate that for transportation of the finished goods appellant had independent transporters, outward transport goods packed in the equipment supplied by CHEP.

5.4 Viewed in this light, it is but evident that the services provided by CHEP, appellants were nothing but hiring of specialized packing equipment to the appellant to enable safe and secure transportation of the goods manufactured by them and not for transportation of the finished goods per se.

6. In the circumstances, the findings, conclusions of the lower authorities to the contrary will not sustain and will require to be set aside, which I hereby do. Appeal is therefore allowed with consequential benefits if any, as per law.

(dictated and pronounced in court)

**(Madhu Mohan Damodhar)**  
**Member (Technical)**

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