CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No.40462 of 2018-DB

[arising out of Order-in-Appeal No.381/2017 [CTA-II], dated 09.11.2017 passed by the Commissioner of Central Tax (Appeals-II), Chennai]

M/s.Mobis India Ltd. **: Appellant**
G-1, SIPCOT Industrial Park,
Irrugattukottai,
Taluk: Sriperumbudur,
Distt: Kancheepuram,
Tamil Nadu – 602 105.

VERSUS

Commissioner of Central Excise & Service Tax, **: Respondent**
Large Taxpayer Unit,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai – 600 101.

APPEARANCE:

Shri K. Senguttuvan , Advocate for the Appellant

Ms. Sridevi Taritla, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
Hon'BLE SHRI P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.41592/2021

DATE OF HEARING: 12.04.2021

DATE OF PRONOUNCEMENT: 04.06.2021

Per Smt. Sulekha Beevi C.S:

Brief facts:

The appellant is engaged in the manufacture of Motor Vehicle spares and holds Central Excise registration. They have Units in other locations and one among them is the Auto Division Unit at Kannur, Tiruvalluvar District. The appellant, which is an LTU filed rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT), dated 06.09.2004. While processing the rebate claims, it was noticed that the appellant had availed Cenvat Credit to the extent of Rs.8,34,13,798/- transferred to them from their Kannur Unit in August, 2015 by inter-unit transfer under Rule 12A(4) of Cenvat Credit Rules, 2004. According to department, inter-unit transfer of credit available to Large Taxpayer Unit has been restricted with effect from 11.07.2014 vide Notification No.21/2014-CE(NT), dated 11.07.2014.

2. Copy of letter dated 31.08.2015 was submitted by appellant, by which they intimated the department as to transfer of credit under Rule 12A(4) from Kannur Unit to its Irungattukotai Unit, appellant herein, from where exports have been done. Originally refund claims were filed by appellant under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27/2012-CE(NT), dated 16.06.2012. For the purpose of filing such refund claims, the appellant had debited Rs.8,34,13,798/- in their Cenvat account.

Later, vide Order-in-Original No.356/2015 and No.359/2015, dated 14.08.2015, these refund claims for amount of Rs.2,04,70,058/- Rs.3,37,37,585/- and Rs.2,92,06,155/- respectively were rejected on the ground of being time-barred. Consequent to the rejection of refund claims in August, 2015, the appellant became eligible to take back the credits in their books. The Kannur Unit credited the amount in their books of account to the tune of Rs.8,34,13,798/- and then transferred to Irungattukottai Unit after intimating the department vide letter dated 31.08.2015. The original authority held that this credit taken by Kannur Unit in August, 2015 is to be treated as fresh credit taken by the Kannur Unit and, therefore, the transfer of such credit later to Irungattukottai Unit is against the amended provision laid in Rule 12A(4) of Cenvat Credit Rules, 2004 and that such credit is not available to Irugattukottai Unit. After adjudication, the original authority held that the inter-unit transfer of credit made by the appellant is not in accordance with law as such transfer is not allowed after 11.07.2014. The rebate claims were rejected. Against such order, the appellant preferred appeal before the Commissioner (Appeals), who upheld the same. Hence this appeal.

3. On behalf of the appellant, the learned counsel Shri K. Senguttuvan appeared and argued the matter. He filed detailed synopsis and submitted that the restriction of inter-unit transfer of credit will apply only in respect of credit availed on or after 11.07.2014. In the present case, the credit has been originally availed prior to 11.07.2014 by the Kannur Plant. Appellant's Kannur Unit availed credit prior to June, 2013. While filing refund claim of unutilized credit

under Rule 5 of Cenvat Credit Rules, 2004 it is a procedural requirement to debit the claim amount in their Cenvat account. The appellants debited Rs.8,34,13,798/- in their Cenvat account. However, the refund claims were rejected being time-barred. Consequently, appellants took re-credit of the same amount. The credit of Rs.8,34,13,798/- is not a fresh credit bur re-credit in accounts. He relied upon Circular No.990/14/2014, dated 19.11.2014 to support his contention. Since the credit was availed prior to June, 2013, the credit so accrued before 11.07.2014 has been saved by section 38A of Central Excise Rules, 1944. The credit has not been utilized for payment of duty. The reversal of credit for the purpose of filing refund under Rule 5 of Cenvat Credit Rules, 2004 cannot be equated with payment of duty. There is no outflow of credit from their books of account. It is virtually in their Suspense Account. After the refund claims filed under Rule 5 of Cenvat Credit Rules, 2004 were rejected the appellant has taken re-credit, which is permissible under law. Such re-credit cannot be considered as fresh credit. For the same reason, the inter-unit transfer is not hit by the amended provision of Rule 12A(4). That the rejection of rebate is erroneous and prayed that the appeal may be allowed.

4. The Bench raised queries as to whether the Tribunal would has jurisdiction to consider the issue of rejection of rebate claims. This was countered by the learned counsel explaining that the present issue is not with regard to rejection of rebate claim and the question for consideration is whether the re-credit taken by the appellant can be considered as a fresh credit or not and also whether

the transfer of credit from Kannur Unit to Irungattukottai Unit is hit by Rule 12A(4) of Cenvat Credit Rules, 2004. He argued that this issue would fall within the jurisdiction of the Tribunal.

5. The learned Authorised Representative Ms. Sridevi Taritla raised strong objections with regard to the jurisdiction of the Tribunal in deciding the appeal. She adverted to section 35B of Central Excise Act, 1944 and submitted that if the impugned order relates to rebate of duty of excise of goods, the Tribunal does not have jurisdiction to decide the appeal. In the present case, the appeal arises out of rejection of rebate claim filed under Rule 18 of Central Excise Rules, 2002. The appeal ought to have been filed before the Revisional Authority by the appellant. She prayed to dismiss the appeal.

6. Heard both sides.

7. We shall first address the issue of jurisdiction. Section 35B reads as under:-

Section 35B in the Central Excise Act, 1944

35B. Appeals to the Appellate Tribunal.—

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) a decision or order passed by the 1[Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the 2[Commissioner (Appeals)] under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the 3[Appellate Commissioner of Central Excise] under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the 4[Commissioner of Central Excise], either before or after the appointed day, under section 35A, as it stood immediately before that day:

5[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty; 6[(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:] Provided further that] the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

8. From sub-clause (b) of the first proviso, it can be seen that the Tribunal does not have jurisdiction to decide any appeal if such order relates to a rebate of duty of excise on goods exported. In the present case, the rebate claims filed under Rule 18 of Central Excise Rules, 2002 has been rejected by the department. Whatever may be reason for rejection, since the order relates to a claim of rebate, in our view this Tribunal does not have jurisdiction to decide the appeal.

9. From the foregoing, we dismiss the appeal for lack of jurisdiction. The appellant is at liberty to approach the correct forum for remedy of his grievance.

(Pronounced in Open Court on **4th June, 2021**)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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