CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Excise Appeal No.282 of 2001

(Arising out of Order-in-Appeal No.75/2000 (CBE) (GVN) dated 22.11.2000 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli)

M/s. Lakshmi Automatic Loom Works Ltd. **: Appellant**
Knitting Machinery Division,
Singarampalayam,
Kinathukadavu,
Pollachi 642 109.

VERSUS

The Commissioner of CGST & Central Excise **: Respondent**
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

WITH

(i) Excise Appeal No.283 of 2001

(Arising out of Order-in-Appeal No.76/2000 (CBE) (GVN) dated 22.11.2000 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli)

M/s. Lakshmi Automatic Loom Works Ltd. **: Appellant**
Knitting Machinery Division
Singarampalayam
Kinathukadavu,
Pollachi 642 109

VERSUS

The Commissioner of CGST & Central Excise **: Respondent**
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

(ii) Excise Appeal No.440 of 2003

(Arising out of Order-in-Appeal No.57/2003-CE dt.21.03.2003 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Lakshmi Automatic Loom Works Ltd. : Appellant
Knitting Machinery Division,
Singarampalayam,
Kinathukadavu,
Pollachi 642 109

VERSUS

The Commissioner of CGST & Central Excise : Respondent
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

(iii) Excise Appeal No.476 of 2003

(Arising out of Order-in-Appeal No.114/2003-CE dt.30.04.2003 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Lakshmi Automatic Loom Works Ltd. : Appellant
Knitting Machinery Division,
Singarampalayam,
Kinathukadavu,
Pollachi 642 109.

VERSUS

The Commissioner of CGST & Central Excise : Respondent
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

APPEARANCE:

Shri D. Santhanagopalan, Advocate
For the Appellant

Ms.Sridevi Taritla, ADC (AR)
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 42161-42164 / 2021

DATE OF HEARING: 16.08.2021
DATE OF PRONOUNCEMENT: 30.08.2021

Per : P. VENKATA SUBBA RAO

These four appeals were filed by M/s. Lakshmi Automatic Loom Works Ltd.

2. Heard both sides and perused the records.

3. The appellant herein is a manufacturer of knitting machines. They manufactured and cleared knitting machines to 100% EOU without payment of duty in terms of Notification No.1/95-CE dt. 04.01.1995. Along with the final products, they also cleared some inputs which they have received as such to the 100% EOU. All these clearances were made against Form CT-3 issued by the jurisdictional Central Excise officer having control over the 100% EOU. As far as the clearances of the final products by the appellant are concerned, there is no dispute. What is in dispute is whether appellant could avail modvat credit on the inputs which they have received and thereafter cleared them as such to a 100% EOU without reversing the Modvat credit availed by them. Show cause notices were issued and Orders-in-Original were passed after due process seeking to deny the modvat credit so availed by them and recover the same under Rule 57I of Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944. Aggrieved by the Orders-in-Appeal, appellant appealed to the first appellate authority

who vide the Orders-in-Appeal rejected their appeals and upheld the orders of the lower authority. In appeals E/440/2003 and E/476/2003, the appellant reversed the Modvat credit initially and they have subsequently filed refund claims of the amounts so debited which were rejected. The details of these four cases are as follows :

Particulars	**E/282/2001**	**E/283/2001**	**E/440/2003**	**E/476/2003**
Order-in-Appeal	75/2000-CBE(CVN) dated 22.11.2000	76/2000-CBE(CVN) dated 22.11.2000	57/2003-CE dated 21.03.2003	114/03-CE dated 30.04.2003
Order-in-Original	92/98 dated 11.08.1998	98/87 dated 24.10.1997	7/98 dated 13.03.1998	55/97 dated 09.09.1997
Amount involved	1,585 (Demand)	1,28,524 (Demand)	1,92,688 (Refund)	2,57,430 (Refund)
Period	01.01.1998 to 31.05.1998	14.02.1997 to 31.07.1997	01.03.1996 to 31.08.1996	25.09.1996 to 13.02.1997

4. In this matter, in view of the conflicting decisions of the Chennai and Mumbai Benches, the matter was referred to a Larger Bench of the Tribunal who vide Misc.Order No.430/2008 dt. 10.10.2008 held against the assessee. The issue identified by the Larger Bench is in para-1 of the order as follows :

> "Whether, during the period March, 1996 to May, 1998, a manufacturer of final product, who procured inputs and availed MODAT credit thereon, was entitled to remove the inputs a such, without reversal of the credit or payment of equivalent amount of duty, to a 100% EOU under CT-3 certificate in terms of Notification No.1/95-CE dated 04.01.1995''

and the decision was made in paras 6.8 and 7 of the order which read as follows :

> "6.8 We hold that the Notification 1/95 is not applicable to the present case and the clearances are governed only by the provisions of Rule 57F. We hold that the inputs cleared as such by the appellants to 100% EOUs cannot be deemed to have been manufactured by the appellants; the

> supplies (which are deemed exports) cannot be treated on par with export under bond for the purpose of Rule 57F. There is no warrant or justification to extend the instructions dated 31-12-1996 issued by the Ministry/Board to cover supplies to 100% EOU which are treated as deemed exports for certain purposes under EXIM Policy. The appellants are not entitled to remove the inputs without reversal of the credit or payment of equivalent amount of duty.
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> 7. Under these circumstances, the contrary view taken by the Tribunal in the case of Gharda Chemicals ltd. cited supra and other cases is overruled and the reference is answered against the appellants and in favour of the Revenue."

The appellant challenged the order of the Larger Bench before Hon'ble High Court of Madras by filing Civil Miscellaneous Appeal No.75 of 2009 and Miscellaneous Petition No.1 of 2009 which was disposed of by the Hon'ble High Court vide its judgment dt. 21.02.2019. The Hon'ble High Court relied on the judgment of the High Court of Karnataka in *CCE, Bangalore-II Vs. Solectron Centum Electronics Ltd.*[2014 (309) ELT 479 (Kar.)] and ordered as follows in para-8 :

> "For the above reasons, this civil miscellaneous appeal is allowed, the order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for fresh consideration in terms of the observations in M/s. Lakshmi Machine Works Limited (supra) and the matter shall be clubbed and heard together with other connected matters. No costs."

5. Hence these appeals have come before us.

6. The argument of the Ld. Counsel for the appellant is that inputs cleared as such to 100% EOU are eligible for Exemption Notification No.1/1995-CE dt. 04.01.1995 even though they did not fulfill condition No.(1) (b) of the Notification which reads as follows:

> "In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act/ 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods, specified in Annexure I to this notification (hereinafter referred to as the said

goods), when brought in connection with –

(a) the manufacture and packaging of articles into a hundred percent export oriented undertaking (hereinafter referred to as user industry); or

(b) manufacture or development of electronics hardware and software by a unit in Electronics Hardware Technology Park (hereinafter referred to as user industry) under Electronic Hardware Technology Park (EHTP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 42 (N-8)/92-97, dated the 14th September, 1992; or

(c) manufacture or development of software by a unit in Software Technology Parks (hereinafter referred to as user industry) under Software Technology Parks (STP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 33/(RE)/92-97, dated the 22nd March, 1994, from the whole of,

(i) the duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944), and

(ii) the additional duty of excise leviable thereon under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), subject to the following conditions, namely :-

(1) the user industry, in the case of,

(i) hundred per cent export oriented undertaking has been approved by the Board of Approval for hundred per cent export oriented undertaking (hereinafter referred to as the said Board) appointed by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and the rules made under that Act;

(ii) unit in Electronic Hardware Technology Park (EHTP) Scheme has been approved by the inter-Ministerial Standing Committee (hereinafter referred to as the said Committee) appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 117(E), dated the 22nd February, 1993;

(iii) unit in Software Technology Parks (STP) Scheme, has been approved by the said Committee;

(b) the user industry brings the excisable goods directly from the factory of manufacture or from the warehouse and uses them for purposes as specified in clauses (a) to (c) above solely for export;"

He admits that they have not manufactured the goods in question nor have they removed them from warehouse. However, despite the condition not being satisfied, they are entitled to benefit of the exemption notification. He further argued that they are entitled to the benefit of Modvat credit under Rule 57F and they need not reverse the

Modvat credit taken on the inputs received as such for supply to a 100% EOU. On specific query from the Bench if there was any provision within the Rule which permits them to take Modvat credit and still clear the goods without payment of duty to 100% EOU, Ld. Counsel submits that Hon'ble High Court of Karnataka has decided so in the case of *Solectron Centum Electronics Ltd*. (supra) and the ratio has been followed by this Bench in the case of *Emerson Process and Management Chennai Ltd. Vs CCE Chennai* [2018 (3) TMI 252-CESTAT CHENNAI]. We find that in the case of *Solectron Centum Electronics Ltd.*(supra), the Hon'ble High Court has framed the following question of law :

> **"5.** In the light of the aforesaid facts and rival contentions, the questions of law that arise for our consideration in this appeal are as under :
>
> (1) Whether the Tribunal is correct in holding that the Notification No. 22/2003 would be applicable to the present case i.e., the imported capital goods on which Cenvat credit was availed and removed without payment of duty, under the cover of CT-3, is correct and legal?
>
> (2) Whether the Hon'ble Tribunal is correct in holding that the terms "Capital goods as such" occurring in Rule 3(4) of Cenvat Credit Rules 2002 refers to only "Unused cenvated capital goods?
>
> (3) Whether the assessee was entitled to the benefit of Cenvat credit availed in respect of inputs?"

As far as inputs are concerned, the judgement was as follows :-

> **"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."

7. Since the jurisdictional High Court has, in the Civil Miscellaneous Application, referred to the judgement of the Hon'ble Karnataka in the case of *Solectron Centum Electronics Ltd.* (supra), following the judicial discipline, we hold that the appellant is entitled to avail modvat credit / cenvat credit on inputs and entitled to clear the same without payment of duty to 100% EOU without reversing the input credit so availed.

8. In view of the above, all four appeals are decided in favour of the appellant and against the Revenue with consequential relief.

(Order pronounced in open court on 30.08.2021)

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

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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