**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH, CHENNAI**

**E/40597 to 40598/2017**

[Arising out of Order-in-Appeal No.282/2016 (CXA-I), dated 30.12.2016 passed by the Commissioner of Central Excise (Appeals-I), Chennai]

M/s. HARITA SEATING SYSTEMS LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-III RESPONDENT

Appearance:

For the Appellant Shri G. Natarajan, Adv.
For the Respondent Shri S. Govindarajan, AC (AR)

**CORAM:**

**Hon'ble Smt. Archana Wadhwa, Member (Judicial)**

Date of hearing **01-08-2017**
Date of Pronouncement 04-08-2017

FINAL ORDER NOs. 41461-41462/2017

**Per Archana Wadhwa:**

Briefly stated facts of case are that appellants are manufacturers of seats for motor vehicles and they avail Cenvat credit of duty paid on inputs/capital goods and service tax paid on input services and utilise towards payment of Central Excise duty on the clearances of finished excisable goods. During audit of accounts of appellant, it was noticed that they made provisions, namely, 'consumption-Phy.Inv.Diff-Dire.Mati-others' in their ledger and accounted the stock for shortages/excesses. Such provisional entries were made after completion of periodical internal stock takings. Verification further revealed that there was shortage of inputs valued at Rs.2,77,334/- during the period from 2014-15 to 2015-16.

A.Wadhwa

Customs, Excise & Service Tax Appellate Tribunal

Hence, Statement of Demand (SOD) No.21/2015, dated 23.10.2015 was issued to them proposing for recovery of Cenvat credit amounting to Rs.34,447/- along with interest with proposal for penalty. After due process of law, respondent, vide impugned order confirmed the recovery of Rs.34,447/- along with interest and imposed equal penalty. The said order was upheld by Commissioner (Appeals) and hence, the present appeal.

2. After hearing both sides and after going through the impugned order, I find that the total net shortage compared to inventory was only 0.56%. ~~For~~ They contented ~~ing~~ that such small percentage of shortage has occurred on account of the fact that the credit was taken on the basis of numbers whereas at the time of issuance of the inputs, the same was done on the basis of weight. The appellants contended that their being no proof or allegation for clearance of the raw materials from their factory, the denial of credit is not justified. They relied upon the Tribunal's decision in the case of *Maruti Udyog Ltd. Vs Commissioner of Central Excise, Delhi-III* reported as *2004 (173) E.L.T.382 (Tri.-Del.)*. The Commissioner has not followed the said decision on the ground that Bombay High Court has not approved the ratio of law, in the~~ir~~ decision reported as *Commissioner of Central Excise & Customs, Aurangabad Vs Greaves Cotton Ltd.* reported as *2008 (225) E.L.T. 198 (Bom.)*.

3. However, it is seen that being aggrieved with the decision of the Tribunal in the case of *Maruti Suzuki Ltd.*, the Revenue filed an appeal there against before the Hon'ble Supreme Court. The Hon'ble Apex Court in their decision reported as *Commissioner of Central Excise Vs Maruti Suzuki India Ltd.* reported as *2015 (319) E.L.T.549*

Customs, Excise & Service Tax Appellate Tribunal

*(S.C.)* has rejected the Revenue's appeal on the ground that such shortages of inputs are due to accounting error and there being no physical shortage ~~which allows~~ with any allegation of clandestine removal, the credit cannot be disallowed. Inasmuch as, the Tribunal's decision in the case of *Maruti Suzuki India Ltd.* (supra) stands approved by the Hon'ble Supreme court, and the issue stands finally decided, I find no merits in the impugned orders of the authorities below. The same is accordingly set aside and appeal allowed with consequential relief.

(Pronounced in open court on 4/8/17

4/8/17
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

**ksr**
04-08-2017

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
24/8
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai