

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

EXCISE APPEAL No.40067 of 2023

(Arising out of Order-in-Original No.04/2022-C.Ex (Commr) (Denova) dated 25.02.2022 passed by Commissioner of GST and Central Excise, No.1, Foulks Compound, Anai Road, Salem 636 001).

M/s. Luk India Private Limited,
Presently called as M/s. Schaeffler India Ltd.
PB No.20, Survey No.950, Royakottah Road
Hosur 635 109

...Appellant

Versus

The Commissioner of GST & Central Excise,
Salem Commissionerate
No.1, Foulkes Compound,
Anaimeedu, Salem 636 001

...Respondent

APPEARANCE:

Shri Prakash Shah, Advocate
Shri S. Durairaj, Advocate
For the Appellant

Shri R. Rajaraman, Assistant Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing : 15.02.2024

Date of Decision : 21.02.2024

FINAL ORDER No. 40187/2024

ORDER : Per Ms. SULEKHA BEEVI C.S.

1. Brief facts are that the appellant holds Central Excise Registration for the manufacture of Clutches falling under Chapter

Sub Heading 87089300, which are assessed under Section 4A of Central Excise Act, 1944 read with Sl. No.100 of Third Schedule to Central Excise Tariff Act, 1985 and Serial no. 108 of Notification No.49/2008 – C.E (N.T) dated 24/12/2008. The appellant has two Units and their Unit 1 is located at Royakottah Road, Hosur which also holds separate Central Excise Registration for the manufacture of the same products.

1.1. The appellant (Unit 2) procured goods in two ways (i) from other vendors (ii) from Unit I. The finished Clutch Assemblies manufactured and supplied by other manufacturers (herein after referred as 'vendors') were received by the appellant in bulk packings on payment of duty under Section 4 of the Central Excise Act, 1944. The appellant, in turn, re-packed them into retail packs and affixed the MRP price on the retail packs and cleared them on payment of duty by adopting the price under Section 4A for the spare markets.

1.2. Finished Clutch Assemblies manufactured and supplied by the Unit I were received by the appellant on payment of duty. However, the above said packed and MRP marked goods received from Unit-1, Hosur were cleared as such to spare market by the appellant. Retail packing by affixing the brand name "M/s. LUK India" and MRP etc. was carried out the appellant only on those goods that were supplied by other vendors.

1.3. The appellant had taken credit of CENVAT paid on the goods received from both unit I and other vendors. However, it appeared that the goods received from Unit-I was merely for the logistics purpose and did not qualify as an "input" for the appellant, since they did not under go any deeming manufacturing activities such as packing / re-packing, labelling/ re-labelling, affixing of new MRP labels.

1.4. Further, it also appeared that to fall within the scope of Section 2 (f) (iii), the activity carried out should confer upon the product the attributes of marketability which it did not possess earlier.

Section 2 Definitions:- In this Act, unless there is anything repugnant in subject or context

[(f) manufacture" includes any process, -

- (i) incidental or ancillary to the completion of a manufactured product;
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]
- (iii) (which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of

retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,]

1.5. The goods received from Unit I were already marketable since they were cleared as such by the appellant i.e. without subjecting them to any process viz. packing or repacking, labelling or re-labelling. Since clearance of the goods as such, does not amount to manufacture in terms of Section 2 (f) (iii) of Central Excise Act, 1944 the appellant is not eligible to avail the CENVAT credit on the goods received from Unit I.

1.6. Besides, CENVAT credit on inputs can be availed only when used in or in relation to manufacture of final products in terms of Rule 3 read with Rule 2 (k) of CENVAT Credit Rules, 2004.

1.7. The goods received from the unit I were not used by the appellant in or in relation to the manufacture of final products because the goods themselves were final products and were cleared as such to the spare market by the appellant.

1.8. Therefore, the credit Rs 11,54,59,277/- wrongly availed by the appellant on the goods received from the Unit-1 during the period from September 2010 to March, 2012 was liable to be recovered along with interest under Rule 14 of CENVAT Credit

Rules, 2004 read with Sections 11A and 11AB of Central Excise Act, 1944 respectively.

1.9. Further, the appellant had utilized an amount of Rs.90,85,559/- from the CENVAT credit of Rs. 11,54,59,277/-, towards payment of duty on the clearances of goods manufactured involving the process packing/re-packing, labelling/re- labelling, affixing of new MRP labels etc. in their unit. The said clearances were made during the period from September, 2010 to March, 2012, and had thus resulted in the clearance of goods without payment of duty.

1.10. The appellant did not disclose facts to the department that the goods received from Unit-I were only for logistics purpose and that such goods did not require any manufacturing activity such as packing / re-packing, labelling/ re-labelling, affixing of new MRP labels etc at the hands of the appellant.

1.11. The appellant suppressed the fact that the goods received from Unit-1 were only for logistics purpose which did not undergo any manufacturing activity in their ERI returns. But for the detailed audit conducted, the clearance as such would not have come to light for which proviso to Section 11A/11A (5) of Central Excise Act, 1944 is invokable.

1.12. The appellant was issued Show Cause Notice dated 31/08/2012 proposing to demand the wrongly availed CENVAT credit of Rs.11,54,59,277/- taken by them on the goods received from Unit 1 during the period from September 2010 to March 2012 along with interest and also for imposing penalties. The Show Cause Notice also proposed to recover an amount of Rs.90,85,559/- along with interest and for imposing penalties. After due process of law, the original authority vide Order dated 12/12/2012 confirmed the demand of Rs,11,54,59,277/- as well as the demand of Rs.90,85,559/- along with interest and imposed equal penalties. Against such order, the appellant preferred an appeal before the Tribunal. As per Final Order No.43004/2018 dated 08/10/2018, the Tribunal remanded the matter for reconsideration in regard to the demand of duty of Rs.11,54,59,277/-. However, the demand of Rs.90,85,559/- was set aside. The penalties imposed on the above two demands were entirely set aside. In such *denova* adjudication, the adjudicating authority disallowed the credit of Rs.11,27,80,377/- and confirmed the demand along with interest. The demand to the tune of Rs.26,78,900/- was set aside. The present appeal is filed by the appellant against such order.

2. The Ld. Counsel Shri Prakash Shah and Shri S. Durairaj appeared and argued on behalf of the appellant. It is submitted that the appellant having paid duty on the clearances, the

department cannot deny the credit alleging that the process does not amount to manufacture.

2.1. The department has denied the CENVAT credit of duty paid on the clutches received from the Unit 1 on the sole ground that the appellant did not carry out any manufacturing activities and removed these goods as such.

2.2. It is asserted by the Ld. Counsel that every piece of clutch cleared from Unit II was duly assessed and cleared on payment of duty against invoice issued under Rule 11 of the Central Excise Rules, except the clutches cleared for export under bond, for which demand is already dropped. The details of clearances and payment of duty there was duly reflected in the ER I returns. Duty payment details of such removals were shown under "credit utilized for payment of duty on goods" in column 8 of the ER-1 returns. The department accepted the duty payment and returns filed by the appellant without demur.

2.3. The self-assessed duty paid by the appellants was duly accepted by the department and the assessment of duty is not set aside by process known to law. The term assessment includes self-assessment. Having accepted the duty from the appellants on the clutches removed from Unit II, it is not open for the department to deny the CENVAT credit alleging that there was no manufacture.

The appellant was affixing MRP on account of price revision and required activities.

2.4. The department having accepted the duty paid at the time of clearance as valid payment of duty, cannot contend that no manufacturing was done to deny the CENVAT Credit. The appellant always contended that the goods were cleared on payment of duty and details of clearances and payment of duty was duly disclosed in the monthly return. There is no denial or dispute of the fact of payment of duty and filing of return.

2.5. Appellants had furnished the details of duty payments for the clearances for home consumption and details of goods cleared exports in their dated 19.01 2022. There is no dispute as to the correctness of the details provided by the appellant. In fact, details were verified and found to be correct. Goods manufactured, out of the procurements from other Vendors and the goods procured from Unit-I were duly accounted in the common finished goods stock register. On a comparison of invoices issued by the Unit II and ER-1 returns, the duty payment was verified by the department and no dispute appears to have taken by the department. Based on the comparison of invoices and ER 1 returns, the work sheet dated 19.01.2022 was furnished by the appellants.

2.6. On verification of the invoices and ER-1 returns, duty payments are confirmed by the Range Officers in their reports dated 28.2013 (page 120-124 of appeal) and 21.09.2020 (page 125 of appeal).

2.7. The Ld. Counsel relied on the decision in the case of **CCE, Pune III Vs. Ajinkya Enterprises reported in 2013 (294 ELT 203)** as well as the decision in the case of **CCE and C, Surat III Vs. Creative Enterprises 2009 (235) ELT 785, Gujarat**. The Ld. Counsel argued that the Hon'ble of High Court of Karnataka in the case of **CCE, Bangalore Vs. Vishal Precision Steel Tubes and Strips Pvt. Ltd. 2017 349 (ELT 686) (Karnataka)** has held that if the final product is treated as dutiable and duty is paid by the appellant, the credit cannot be denied by alleging that the activity does not amount to manufacture.

2.8. The Ld. Counsel advanced arguments on the ground of limitation also. The *provisio* to Section 11 A would be attracted only when there is an intend to evade payment of duty. The appellant has paid duty and on the finished products and therefore there is no intention to evade payment of duty. The invocation of extended period alleging that the appellant has suppressed facts with intend to evade duty is without any basis. The Ld. counsel prayed that the appeal may be allowed.

3. The Ld. AR Shri Rajaraman supported the findings in the impugned order.

3.1. The issue to be considered is whether the demand raised alleging that the credit availed by the appellant is ineligible for the reason that there is no manufacturing process undertaken by the appellant on goods received from Unit I and cleared by them is sustainable or not. The facts reveal that the appellant has paid duty on all goods cleared by them. The allegation of the department is that the goods received from Unit 1 are complete as to their packing and fixation of MRP. Therefore, there is no activity of manufacture undertaken by the appellant so as to packing or relabelling and there is no activity of deemed manufacture as per 2 f (iii) of Central Excise Act, 1944. The Ld. counsel has argued that they do fixation of MRP, labelling etc. and therefore the activity undertaken by the appellant amounts to manufacture.

3.2. The issue is only with regard to the eligibility of credit availed on the goods cleared from Unit 1 to Unit 2. It is an undisputed fact that the appellant has cleared all goods from unit 2 by payment of duty. When the department has collected duty on the finished products, the credit availed on the inputs cannot be denied alleging that the activity does not amount to manufacture. This issue is settled by the decisions in the case of Ajinkya Enterprises (supra) wherein the Hon'ble High Court of Bombay held as under.

"10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory

*of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of **Ashok Enterprises – 2008 (221) E.L.T. 586 (T), Super Forgings – 2007 (217) E.L.T.559 (T), S.A.I.L. – 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited – 2004 (178) E.L.T. 167(T)** and a decision of the **Gujarat High Court in the case of CCE Vs. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.)** has held that once the duty on final products has been accepted by the department. CENVAT credit availed need not be reversed even if the activity does not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A 121] by dismissing the SLP filed by the Revenue.”*

3.3. The Tribunal in the case of “**Domino Printech India Pvt. Ltd. Vs. CCE & ST Gurgaon, Haryana 2019-TIOL-3428-CESTAT-Chandigarh**” had occasion to consider similar issue and observed as under:

11. We find that the imported ink container, the appellant has availed credit of CVD paid by them on the premise that the activity of refilling / relabelling. As discussed above, as per Chapter Note 7 to Chapter 32, the activity undertaken by the appellant does not amount to manufacture. Therefore, the appellant is not entitled to avail credit of CVO paid by them at time of import. But as per the decision of the Hon'ble Bombay in the case of Ajinkya Enterprises (supra), by upholding the finding of this Tribunal that if the activity does not amount to manufacture and the goods have been cleared on payment of duty, in such case, the duty paid by the assessee which has been accepted by the department and more than the credit availed. In that circumstances, the duty paid by the assessee shall amount to reversal of credit and the assessee is not required to reverse the credit. Admittedly in this case, the appellant cleared the said imported goods after refilling on payment of duty. Therefore, if the activity does not amount to manufacture, in that case, the duty paid by the appellant shall amount to reversal of credit. Therefore, the appellant is not required to reverse the credit of CVD availed by the appellant at the time of import.

3.4. In the case of **M/s. R K Packaging Vs. CCE, Mumbai 2019-TIOL-988-CESTAT, Mumbai**, the issue considered was

whether the credit availed has to be reversed when the activity is alleged to be not manufacture. The demand was set aside by the Tribunal following the decision of the Hon'ble High Court of Bombay in Ajinkya Enterprises. The relevant para reads as under:

"5. We have carefully considered the submissions advanced by both sides. The short issue involved for determination in the present case is whether the appellant is entitled to CENVAT Credit of duty paid on various inputs used in or in relation to assembly of packing kits, on which appropriate duty was paid by the appellant. The Revenue proposed to deny the credit only on the ground that the assembly of various inputs into packing kits does not amount to manufacture. However, there is no dispute of fact that appropriate duty has been paid and collected by the Revenue on the packing kits. The issue, in our view, is no more *res integra* and covered by the decision of Hon'ble Bombay High Court in the case of Ajinkya Enterprises (supra) and dealing the similar issue the Hon'ble Bombay High Court has held as under:-

"10 Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises 2008 (221) E.L.T. 586 (T) = **2008-TIOL-312-CESTAT-MAD**

"Super Forgings **2007 (217) E.L.T. 559 (T) = 2007-TIOL-2040-CESTAT-MAD**

"S.A.I.L 2007 (220) E.L.T. 520 (1) 2009 (15) ST.R. 640 (Tribunal), M.P. Telcelinks Limited - 2004 (178) E.L.T. 167 (T) = **2004-TIOL-77-CESTAT-DEL** and a decision of the Gujarat High Court in the case of CCE Vs. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) = **2008-TIOL-784-HC-AHM-CX**

has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity does not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court (see 2009 (243) E.L.T. A121) by dismissing the SLP Bled by the Revenue."

6. In view of the judgement of the Hon'ble Bombay High Court, the impugned order is devoid of merit and consequently, the same is set aside and the appeal is allowed with consequential relief, if any, as per law.

3.5. Similarly, in the case of ***M/s. Tristar Enterprises Vs. CCE Mumbai, 2019-TIOL-3247-CESTAT, Mumbai***, it was held that once duty is paid on finished products and accepted by the

department, the CENVAT credit availed on the inputs need not be reversed even if the activity does not amount to manufacture.

5. "We have carefully considered the submissions advance by both sides. The short issue involved in the present appeal for determination is whether the assessee is entitled to CENVAT credit of duty paid on raw materials which were processed and resulted into finished product and cleared on payment of duty. The allegation of the Revenue is that since the process of manufacture undertaken on the raw material did not amount to 'manufacture', within the definition of Section 2 (f) of the Central Excise Act, 1944, hence, the appellant was not required to discharge duty, accordingly, not entitled to avail credit on the inputs. We find that the issue is no more *res integra* being covered by the judgement of the Hon'ble Bombay High Court in the case of Ajinkya Enterprises (supra). The Lordships, after taking note of the relevant provisions of law, observed as follows:-

"10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises- 2008 (221) E.L.T. 586 (T) = 2008-TIOL-312-CESTAT-MAD.

'Super Forgings-2007 (217) E.L.T. 559 (T) 2007-TIOL 2040-CESTAT-MAD

'S.A.L.L.-2007 (220) E.L.T. 520 (T) 2009 (15) ST.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) = 2004-TIOL-77-CESTAT-DEL

and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj)=2008-TIOL-784-HC AHM-CX

has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court (see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue."

5.1 The principle laid down by the Hon'ble Bombay High Court has also been followed by this Tribunal in a number of cases including in t case of Shripad Engineering Works (supra). Also, the demand under Section 11D of the Central Excise Act, 1944 is untenable in law in view the ratio laid down in Shivam Metals case (supra)

6. Thus, following the aforesaid precedents, we do not find merit in the impugned order. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

4. After considering the facts, evidence and following the decisions as above, we are of the opinion that the demand cannot

sustain and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential reliefs if any.

(Pronounced in court on 21.02.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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