

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal No. 42064 of 2014

(Arising out of Order-in-Original No.LTUC/159/2014-(C) dated 18.06.2014 passed by Commissioner, Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101.)

M/s.Turbo Energy Limited,

.... Appellant

TVS Zamin,
Old Mahabalipuram Road,
Paiyanoor 603 104.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri S. Murugappan, Advocate for the Appellant
Shri Sanjay Kakkar, Authorized Representative
for the Respondent

CORAM :

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER No.41167/2025

DATE OF HEARING : 09.05.2025
DATE OF DECISION : 28.10.2025

Per: Shri P. Dinesha

The brief facts of the case are that Appellant is engaged in the manufacture of Turbo Chargers and Parts thereof under Chapter Heading 84148030 and 84149090 respectively of the CETA, 1985. They were availing CENVAT credit of the central excise duty paid on the inputs / capital goods and service tax paid on the input services in terms of Cenvat Credit Rules, 2004 (CCR, 2004). During scrutiny of the CENVAT documents of the Appellant, it was found that they had *inter-alia*, availed CENVAT credit of Excise duty paid on defective goods returned for Repair, Re-conditioning etc. under Rule 16 of the Central Excise Rules, 2002. (CER, 2002). It was pointed out by Audit that credit is not permissible in respect of goods scrapped and cleared as there is no 'manufacturing activity' in respect of such goods. A SCN dated 05.09.2013 was issued to the Appellant proposing to recover the credit to the extent of Rs.63,77,197/- along with interest pertaining to the period from April 2010 to November 2012 under Rule 14 of CCR 2004 read with Section 11A (4) of the Central Excise Act, 1944 and also to impose penalty under Rule 15(2) of CCR 2004 read with Section 11AC of the Act *ibid*. The Appellant

filed its detailed reply to the SCN. After due process, the Original Authority vide impugned Order-in-Original No.LTUC/159/2014(C) dated 18.06.2014 confirmed the demand along with interest and imposed equal penalty. Aggrieved by this order, the present appeal has been filed by Appellant before this forum.

2. Heard Shri S. Murugappan, Id. Advocate for the Appellant and Shri Sanjay Kakkar, Id. Deputy Commissioner for the Respondent. Ld. Advocate made submissions both on merits as well as on limitation.

3.1 Ld. Advocate would contend that defective goods can be returned to the factory for refining remaking etc. and for any other reason and credit can be taken in respect of the duty paid on such goods subject to the conditions prescribed in Rule 16 of CER, 2002; the contention made in the impugned order that the goods should be eventually returned to enable the Appellant to take credit is not specified as such in Rule 16 and hence not legally tenable.

3.2. It is submitted by Ld. Advocate that conversion of turbochargers, while carrying out repair/reconditioning work on them, into scrap, when they cannot be reconditioned, satisfies

the test of manufacture. There is emergency of a new commodity with a different name, different character and different use.

3.3 The Revenue failed to address the issue relating to wrong calculation of the number of pieces scrapped.

3.4 Ld. Counsel placed reliance on the following decisions :

(i) **Classic Stripes Pvt. Ltd. Vs Commissioner** - 2018 (8) GSTL 442 (Tri.-Mum.)

(ii) **Bunty Foods (India) Pvt. Ltd. Vs Commissioner** - 2009 (240) ELT 306 (Tri.-Mum.)

(iii) **Bunty Foods (India) Pvt. Ltd. Vs Commissioner** - 2018 (359) ELT 267 (Tri.-Mum.)

(iv) **Sundaram Industries Ltd. Vs Commissioner** - 2006 (202) ELT 538 (Tri.-Chennai)

(v) **VFC Industries Pvt. Ltd. Vs Commissioner** - 2017 (347) ELT 189 (Tri.-Ahmd.)

(vi) **S.S. Steels Vs CCE** - 1991 (56) ELT 446 (Tri.)

(v) **Casting Combines Vs CCE** - 1989 (42) ELT 501 (Tri.)

3.5 Ld. Counsel also submitted that reliance placed by Revenue on Tribunal's Interim order dt. 09.01.2025 on

Emson Tools Mfg Corporation Ltd. by Revenue is not that of a Larger Bench consisting of more than two Members but is a decision given by a DB of Two Members only and will not preclude another Bench of Two Members taking a different view.

4.1 *Per contra*, Ld. A.R submitted that since no specific manufacturing process was carried out on 'returned goods', the 'scrap' cannot be taken as 'manufactured goods'. Only part of the returned/rejected goods were re-cleared after repair / reconditioning and the goods relating to credit to the extent of Rs.63,77.197/- were never re-cleared but were either scrapped or dismantled and salvageable parts diverted to the production line. Ld. A.R placed reliance of this Bench decision in the case of **Balmer Lawrie & Co. CGST & CE - 2023 (9) TMI 518-CESTAT CHENNAI**. He also placed reliance Tribunal's Interim Order dt. 09.01.2025 in **Emson Tools Mfg. Corpn. Ltd. Vs CGST & CE Ludhiana** in Excise Appeal No.60915/2017.

4.2 Ld. A.R also submitted that Appellant belong to a large corporate and is expected to maintain the highest standards of tax compliance and transparency. In the present case, the

facts were only brought out consequent to verification carried out by the LTU Internal Audit and hence, the Ld. Commissioner has rightly confirmed the demand by invoking the proviso to Section 11A/Section 11A(4) of the Act and also imposed penalty under Rule 15(2) of CCR. He prayed that Appeal may be dismissed.

5. Heard the rival contentions and after perusing the documents placed on record, the short point that arises for our consideration is, whether the demand as upheld in the impugned order is sustainable ?

6. The issue on hand revolves around interpretation of Rules 16 (1) & 16 (2) of Central Excise Rules, 2002 and for convenience, the same are extracted herein below :

“RULE 16. Credit of duty on goods brought to the factory. —

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.”

7. A conjoint reading of Rules 16(1) and 16(2) is required to be considered. In terms of 16(1), the return of the goods which are manufactured on which duty is paid which is for being remade, refined, reconditioned, or for any other reason, entitles the manufacturer/Assessee to avail CENVAT credit of the duty paid.

8. In terms of 16(2), to our mind and understanding, the above goods which have suffered duty and such goods are not subjected to ‘manufacture’ when cleared initially, the assessee/manufacturer is required to pay an amount equal to the credit availed under above Rule 16(1).

9. From the above provisions, an Assessee is not required, once the duty paid goods are returned for being remade, etc. to subject such goods for process of

manufacture once again; and the only requirement is that at the time of initial/first removal on which the duty is undisputedly paid, such goods shall be subjected to 'process' of manufacture. The only natural consequence/Corollary that may follow when such returned goods are cleared as 'scrap' is the subject matter of present Appeal.

10. From the above, we find that the issue involves both question of facts as well as interpretation of law and hence, any suppression, that too, with an intention to suppress facts and evade duty cannot be alleged and therefore, at the outset, we are of the clear view that the allegation as to suppression of any facts with an intent to evade duty and thereby invoke the extended period of limitation cannot stand. On this ground alone, the demand confirmed in the impugned order for the extended period is required to be set aside, which we hereby do. The Hon'ble Allahabad High Court in the case of **Commissioner of Customs, C.Ex and Service Tax Vs M/s.Monsanto Manufacturer Pvt. Ltd.** [2014 (35) STR 177 (All.)] has held that once the demand is time-barred, there would be no occasion for the Tribunal to enquire into the merits of the issue raised by Revenue. The said decision has also been relied by the jurisdictional

Hon'ble Madras High Court in the case of **E.T.A. General Pvt. Ltd. Vs Addl. Commissioner of C.Ex., Chennai** – 2016 (44) S.T.R. 409 (Mad.).

11. There was also an issue regarding the correct quantification which was also argued before us and which fact was also raised in response to the Show Cause Notice, it is very unfortunate that the lower authority has ignored this plea and has chosen only the other part of the reply which, according to us, is not the correct and judicious approach, especially for an officer of rank of a Commissioner. An Authority in discharging *quasi-judicial* powers is duty bound to consider all the arguments and answer them judiciously, with an open mind. From the perusal of the reply, we find that insofar as scrap was concerned, the quantity was very much less and hence, the demand if at all sustainable as against the proposed demand in the SCN would only be very much less. But in any case, we are not going into this aspect since we find that the entire demand confirmed pertains to the period beyond the normal period and thus, any discussion on this aspect would only be an academic in nature.

12. In view of the above, we do not find any justifiable reasons made out by the Revenue to sustain demand for the extended period and hence, we set aside the demand and allow the Appeal.

(Order pronounced in open court on 28.10.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)