CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.51227 of 2022 (SM)

(Arising out of Order-in-Appeal No.121 (SM)CE/JPR/2021 dated 21.10.2021 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur)

Mahindra & Mahindra Ltd. **Appellant**
Regional Distribution, Spares Business Unit,
Plot No.DTA001-009, 10 & 00,
Mahindra World City, Sanganer,
Jaipur-302 037, Rajasthan.

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
NCRB, Statue Circle,
Jaipur-302 005,
Rajasthan.

APPEARANCE:

Ms. Sukriti Das, Advocate for the appellant
Shri Divey Sethi, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51002/2022

DATE OF HEARING/DECISION:12.10.2022

ANIL CHOUDHARY:

The issue involved in this appeal is whether cenvat credit has been rightly denied on inputs, capital goods as well as on short payment of duty due to difference in assessable value in ER-I Return vis-à-vis with the sales register. Further, the issue is whether the show cause notice was rightly issued invoking the extended period of limitation.

2. The brief facts are that the appellant is engaged, *inter alia,* in the manufacture of Motor Vehicle/Tractors falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA) and has been

availing Cenvat Credit on various eligible inputs, capital goods and input services in accordance with the provisions of the Cenvat Credit Rules, 2004. Further, the appellant has been filing the monthly ER-1 Return without any default. The appellant has more than 80 spare divisions located across India to cater to the requirement of customers. The present dispute relates to spare division located in Jaipur.

3. After verification of the records, a show cause notice dated 22.08.2019 ('SCN') was issued to the appellant proposing to demand (i) Cenvat credit availed on – (a) paints /chemicals and (b) capital goods alleged as ineligible; (ii) duty on account of difference in the assessable value figure recorded in the ER-1 return (for May, 2016 and January 2017) vis-à-vis the sales register of the appellant. Credit has been denied on the following items or demand has been raised for the following reasons:-

(i) 'Floor Top Hardener' has been used by appellant for filling the gap between the tiles of floor, and, therefore, falls under the exclusion clause (B) of Rule 2 (l) of the Cenvat Credit Rules, 2004 ("Credit Rules"), and not eligible for credit as inputs;

(ii) The items namely , ' Long Spann Shelving', 'Packjing Mezz and Shelving", 'Induction Lamps' and 'Lift Table' , on which credit has been availed are not covered under the definition of 'capital goods' defined in Rule 2(a) of the Credit Rules. Thus, not eligible for Cenvat credit; and

(iii) Short payment of duty due to difference in assessable value shown in the ER-I Returns for May, 2016 and Jan. 2017, vis-à-vis Sales Register maintained by the appellant.

4. The ld. Counsel contends, the aforesaid demand has been proposed mentioning that extended period of limitation is invokable as recorded in para-11 of the show cause notice. However, without alleging fraud, suppression with intent to evade avail inadmissible credit/evasion of duty in the impugned show cause notice, which are essential requirement for raising a demand for extended period. Even the applicable provision of extended period under Section 11 A(4) of the Central Excise Act, 1944 has not been invoked in the impugned show cause notice.

5. The appellant filed a detailed reply vide its letter dated 9.12.2019 explaining the usage of the items/goods in dispute contending that credit has been availed in accordance with law and further, there is no short payment of excise duty as alleged by the Department. Further, the assertion in the impugned show cause notice is factually incorrect and is vague, as it does not spell out the allegation clearly.

6. The ld. Assistant Commissioner vide the order-in-original dated 4.9.2020 passed an *ex parte* order without hearing the appellant (with hearing dates fixed during the (Covid pandemic time), and adjudicated the matter based on the submissions filed on record. The entire demand was confirmed by the Assistant Commissioner on the reasoning which was not even alleged in the show cause notice and was beyond the contours of the show cause notice. Vide the said order-in-original dated 4.9.2020, the demand was confirmed with interest and equal penalty was imposed upon the appellant.

7. Being aggrieved with the aforesaid order-in-original, the appellant filed an appeal before the ld. Commissioner (Appeals), CGST, Jaipur. Vide the impugned order-in-appeal dated 21.10.2021, the ld. Commissioner (Appeals) allowed the cenvat credit amounting to Rs.6,20,109/- availed on

Long Span Shelving and Packing Mezz and Shelving as eligible capital goods under Rule 2 (a)(A) (vii) as they were used for storage purpose. However, demand on rest of the issues was confirmed with interest and penalty.

8. The appellant being aggrieved with the aforesaid impugned order to the extent it was prejudicial to their interest, have preferred the present appeal.

9. Heard the parties.

10. Having considered the rival contentions, I find that the items – Floor Top Hardener/Paint has been used for repair & maintenance of the floor of the factory for filling in the gaps between the floor tiles. Accordingly, I hold that this is an eligible input under Rule 2 (k) of the Cenvat Credit Rules and accordingly, cenvat credit on the same is allowable.

11. So far credit of capital goods viz. Induction lamps, Lift table are concerned, I find that these are essential for use in the factory, without which taxable finished goods cannot be manufactured.

12. Further, the contention of the appellant, these inputs or goods have been used inside the factory, has not been found to be untrue.

13. In the alternative, it appears that the items used in the factory are inputs as defined. In Rule 2 (k), as admittedly, the cenvat credit on the materials used in the factory of the appellant is allowable.

14. So far the demand of Rs.90,665/- is concerned, it is alleged in the show cause notice that during re-conciliation of the assessable value shown in ER-1 Returns vis-à-vis Sales Register, there was some apparent difference, on which duty has been demanded. The appellant have explained that this relates to the period May, 2016 and Jan. 2017. In order to arrive at the correct excise duty liability, they receive reports from the SAP

Programmes, which were duly verified from the Accounts for discharging the excise duty liability. It is explained that there is some difference in the assessable value as per data submitted to the Audit and as per ER-I Return, as the assessee is working under MRP basis, under which duty was paid on the MRP subject to abatement. The appellant has turnover of approximately Rs.30 plus crores p.m. and hence for such accounting difference, no adverse inference can be called for. Appreciating the minor difference, in reconciliation, I hold that no duty can be demanded as there is no case made out of any clandestine removal on the part of the appellant. Accordingly, this ground is also allowed.

15. In view of my findings and observations, I allow the appeal and set aside the impugned order. The ground of limitation is left open. The appellant is entitled to consequential benefits in accordance with law.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
Member (Judicial)

Ckp.