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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/844 /2005 - EX[DB]

Date **28/12/2010**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.INDORE (M.P.)
P.B.NO-10 MANIK BAGH PALACE INDORE (M.P)

C.C.E.INDORE (M.P.) Appellant

Vs

HINDUSTAN MOTORS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 878/ 2010 EX[DB]** dated 13-12-10 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
HINDUSTAN MOTORS LTD.
SECTOR-III,PITHAMPUR DISTT-
DHAR M.P
2. Adv. / Consult SH MANISH SAHARAN, ADV.,
"LAKSHMI VIHAR"
AG-192, SCHEME NO. 54,
VIJAY NAGAR, INDORE (MP)
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93, Marg. 46, Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Central Excise Appeal No.844 of 2005
(Arising out of Order-in-Appeal No.IND-I/438/04 dated 13.12.2004 passed by the CCE (A), Indore)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Indore Appellants

Vs.

M/s.Hindustan Motors Ltd. Respondent

Present for the Appellant: Shri Nittin Anand, DR
Present for the Respondent: Shri Manish Saharan, Advocate

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/Decision: 08.12.2010

FINAL **ORDER NO.** 878/10-EX

PER: RAKESH KUMAR

The facts leading to this appeal are, in brief, as under:

1.1. The respondents in their factory situated at Sector III, Sagore Pithampur, Indore manufacture motor vehicle chassis and motor vehicle parts, chargeable to Central Excise duty under chapter sub heading No.8702.90 and 8706.29 respectively of the Central Excise Tariff. They also availed the facility of Modvat/Cenvat credit of duty paid on inputs and capital goods received in the factory under the provisions of Central

Excise Rules, 2004 and Cenvat Credit Rules, 2001. The period of dispute in this case, is from 1.12.1998 to 31.12.2001. During this period, the respondent purchased the brake assemblies from M/s.Kalyani Brakes Ltd., Jalgaon and took the credit on the basis of invoices issued by them. But the goods, instead of being sent to the factory of the respondent, were despatched, on the instruction of the respondent, to M/s.Spicer India Ltd., Pune from whom the respondents were getting rear/front axles. The brake assemblies received by M/s.Spicer India Ltd. from M/s.Kalyani Brakes Ltd., Jalgaon were fitted with rear/front axles and thereafter the same were sent to the factory of the respondent where the same were used for the manufacture of finished goods. The credit of Rs.10,59,238/- taken by the respondent during the period from 1.12.1998 to 31.12.2001 in respect of brake assemblies purchased from M/s.Kalyani Brakes Ltd. was used by them for payment of duty on the chassis and motor vehicle parts. The department was of the view that the respondent was not eligible cenvat credit as the brake assemblies had not been physically received in their factory.

1.2 Subsequently, the officers of Pune Commissionerate, booked a case against M/s.Spicer India Ltd., Pune on the ground that they have not included the value of the brake assemblies in the assessable value of rear/front axles sold to the respondent and in view of this, M/s.Spicer India Ltd., Pune paid duty of Rs.10,59,169/- on the value of brake assemblies under supplementary invoices issued to the respondent and on the basis of the said invoices, the respondent also took credit of Rs.10,59,169/-. However, subsequently, show cause notice was issued to M/s.Spicer India Ltd., Pune for confirmation of duty demand of Rs.10,59,169/- and imposition of penalty which was adjudicated and the duty demand against them was confirmed holding that they have suppressed the relevant information with regard to the value of rear/front axles with intent to evade the duty. The department was of the view that in view of this, the respondent in view of the provisions of Rule 7(1) (b) of Cenvat Credit Rules, 2001, were not eligible to cenvat credit of Rs.10,59,169/- taken on the basis of supplementary invoices issued by M/s.Spicer India Ltd., Pune.

1.3 In view of the above facts, a show cause notice dated 12.11.03 was issued to the respondent for –

(a) Recovery of Modvat/Cenvat Credit amounting to Rs.10,59,238/- taken by them during the period from 1.12.1998 to 31.12.2001 on the basis of invoices issued by M/s.Kalyani Brakes Ltd., Jalgaon under Rule 57-I(1) (ii)/57AH (2) of Central Excise Rules,2001 and Rule 12 of Cenvat Credit Rules, 2001 read with Proviso to Section 11A(1) of Central Excise Act, 1944, alongwith interest on it at the applicable rate;

(b) Recovery of Modvat/Cenvat Credit amounting to Rs.10,59,169/- taken by them on the supplementary invoices issued by M/s.Spicer India Ltd., Pune under 57AH (2) of Central Excise Rules,2001 and Rule 12 of Cenvat Credit Rules, 2001 read with Proviso to Section 11A(1) of Central Excise Act, 1944, alongwith interest on it at the applicable rate; and

(c) Imposition of mandatory penalty on the respondents under Rule 57-I(4)/57AH(2) of Central Excise Rules, 1944 and Rule 13 of Cenvat Credit Rules, 2001 read with Section 11A(1) of Central Excise Act, 1944.

1.4 The above show cause notice was adjudicated by the Additional Commissioner of Central Excise vide Order-in-Original no.38/ADC/CEx/IND/2004-05 dated 22.9.2004 by which –

(a) Modvat/Cenvat Credit demands as made in the show cause notice were confirmed alongwith interest against the respondent and

(b) Penalty of Rs.10,59,238/- was imposed on the respondent under Rule 57-I (4) of Central Excise Rules, 1944 and Rule 13 of Cenvat Credit Rules, 2001 read with Section 11AC of Central Excise Act, 1944.

1.5. On appeal being filed by the respondent against the order of the Additional Commissioner before the Commissioner (Appeals), the Commissioner (Appeals) vide order in appeal dated 13.12.04 set aside the order confirming Modvat/Cenvat Credit demand of Rs.10,59,238/- alongwith interest and imposition of penalty of equal amount. As regards cenvat credit demand of Rs.10,59,169/- taken on the basis of the supplementary invoices issued by M/s.Spicer India Ltd., Pune in 2001, the Commissioner (Appeals) observed that there was no case for the excise authorities to issue notice to the respondent relating to the credit of Rs.10,59,169/- which had already been reversed by them based on the adjudication order passed at the Spicer India Limited's end. The Commissioner (Appeals) also observed that though the department had chosen to issue notice for disallowing the credit and the same was also confirmed in the order by the Additional Commissioner, he was of the view that the eligibility of the respondents to take credit would finally depend upon the outcome of the appeal at the Spicer India Limited's end and there was no question for demand at this end. The Commissioner (appeals), therefore also set aside the order disallowing the credit of Rs.10,59,169/-.

1.6 The department has filed this appeal against the above order dated 13.12.2004 of the Commissioner (appeals), challenging setting aside the Modvat/Cenvat Credit demand of Rs.10,59,238/- and imposition of penalty of equal amount. The appeal has been filed on the ground that since brake assemblies purchased by the respondents from M/s.Kalyani Brakes Ltd.,Jalgaon had not been received but had despatched to M/s.Spicer India Ltd., Pune for being fitted with rear/front axles being supplied to the respondent, the respondent were not eligible for cenvat credit in respect of brake assemblies.

2. Heard both sides.

3. Shri Nittin Anand, learned DR assailed the impugned order reiterating the grounds of appeal in the Revenue appeal emphasised that since the respondents had not physically received the brake assemblies, they could not take credit in respect of the same.

4. Shri Manish Saharan, Advocate, the learned Counsel representing the respondent, defended the impugned order reiterating the findings in the order of the Commissioner (Appeals) and pleaded that while the brake assemblies purchased by the respondents had not been received in the factory of the respondent at Indore, M/s.Kalyani Brakes Ltd., Jalgaon had sent the same directly to M/s.Spicer India Ltd., Pune for being fitted with rear/front axles on the instrucstion of the respondent and this had been done only to avoid the unnecessary transport expenses, that the respondent, in any case, after physically receiving brake assemblies in their factory could send the same to M/s.Spicer India Ltd., Pune for job work and avail cenvat credit in respect of the same, that only to avoid the unnecessary transport expenses, the brake assemblies were directly sent from M/s.Kalyani Brakes Ltd., Jalgaon to M/s.Spicer India Ltd., Pune, and that since in any case, the respondent had ultimately received the brake assemblies alongwith rear/front axles, Modvat/ Cenvat Credit cannot be denied to them.

5. We have carefully considered the submissions from both the sides and perused the records. The respondent had purchased the brake assemblies from M/s.Kalyani Brakes Ltd., Jalgaon. If they had first transported the brake assemblies to their factory at Pithampur Indore and thereafter, sent the same to M/s.Spicer India Ltd., Pune for being fitted with rear/front axles being supplied by them, they would be entitled for cenvat credit in respect of brake assemblies on the basis of invoices issued by M/s. M/s.Kalyani Brakes Ltd., Jalgaon. Just because in order to avoid unnecessary transportation, the brake assemblies purchased by the respondent from M/s.Kalyani Brakes Ltd., Jalgaon were sent directly to M/s.Spicer India Ltd., Pune, the cenvat credit cannot be denied to the respondents as there is no dispute about the fact that the brake assemblies were ultimately received in the respondent's factory alongwith rear/front axles and were used in the manufacture of finished goods. Besides this, we also agree with the findings of the Commissioner (Appeals) that the demand is time barred as longer period of limitation is not available to the department for the reason there is nothing to indicate that the respondents had any intent to evade payment of duty by taking wrong cenvat credit. In view of the above, we do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(The operative portion of this order was already pronounced in the open court on 08.12.10)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMEBR (TECHNICAL)

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