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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

STAY Application No. : E/Stay/600/2012, E/Stay/601/2012
Appeal No. : E/527/2012-EX[DB], E/528/2012-EX[DB]

Dated: **27/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
HERO MOTOCORP LTD.
69, K.M. STONE, DELHI-JAIPUR
HIGHWAY, DHARUHERA, DELHI.

HERO MOTOCORP LTD. (Appellant)

VS

C.C.E. DELHI III (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/978-979/2012-EX[DB]**, StayOrder No. **SO/1383-1384/2012** dated **21/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. DELHI III
Udyog Minar, Udyog Vihar, Vanijya
Nikunj, Phase V, Gurgaon - 122016
(Haryana)

2. Advocate(s) / Consultant(s):
PATRI KODANDA RAM,ADVOCATE
12-B, DDA, MIG FLATS, SARAI
JULLENA , NEW DELHI.110025

3. C.D.R
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

14. **HERO MOTOCORP LTD.**
37 K.M. STONE, DELHI-JAIPUR
HIGHWAY, SECTOR-33, GURGAON
(HARYANA)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay application No.600, 601 of 2012
in Excise Appeal No.527, 528 of 2012

(Arising out of Order-in-Original No.20/SSS/CE/2011 dt.30.11.2011 passed by the CCE, Delhi-III, Gurgaon)

Date of Hearing/Decision: 21.8.2012

For approval and signature:

Hon'ble Mr.Justice Ajit Bharihoke, 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?	

Hero Motocorp Ltd. Appellants

Vs.

CCE, Delhi-III, Gurgaon Respondent

Present: Shri P.K. Ram, Advocate for the Appellant
Present Shri A.K.Jain, AR (Jt.CDR) for the Respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

STAY ORDER No. 1383-1384/2012-Ex (BR)
FINAL **ORDER No.** A/978-979/2012-Ex(BR)

Per: Justice Ajit Bharihoke (oral):

These appeals are directed against the common order in original dated 30.11.2011 whereby the Commissioner (Adjudication) has disallowed cenvat credit amounting to Rs.4,19,58,916/- availed by the appellant M/s Hero Honda Motors Ltd. situated at 37 KM Stone, Delhi-Jaipur Highway , Sector 33, Gurgaon, Haryana and ordered recovery to that extent with interest with equal amount of penalty and also disallowed cenvat credit to the tune of Rs.3,71,98,802/- availed by the appellant M/s Hero Honda Motors Ltd. , 69 KM Stone, Delhi-Jaipur Highway, Dharuhera, Distt., Rewari, Haryana and ordered recovery against the appellant to that extent with interest and also imposed equal amount of penalty.

2. Briefly stated the facts relevant for the disposal of these appeals are that the appellants are engaged in the manufacture of two wheelers falling under chapter 87 of the Central Excise Tariff Act, 1985 and was availing cenvat credit facilities in respect of tool kits sold alongwith two wheelers. Appellants for the purpose of excise duty included the value of tool kits in the invoices issued for sale of motor cycles. Tool kits were purchased by the appellants from the market and they availed and utilized the cenvat credit in respect of excise duty paid for the took kits.

3. The department was of the view that the cenvat credit availed by the appellant in respect of tool kits was not permissible under Rule 3(i) of Cenvat Credit Rules, 2004. Accordingly, show cause notices were issued to the appellant raising the demand in respect of above referred appeals relating to different periods. The Commissioner has disallowed the cenvat credit availed by the appellant and penalty of equal amount was also imposed.

4. These appeals were listed today for hearing of stay applications. On going through the record we are of the view that this is a fit case for waiver of pre-deposit and the appeals can be disposed of at this stage. Therefore, after dispensing with the condition of pre-deposit, with the consent of the parties we have heard final arguments.

5. Shri P.K. Ram, learned Advocate appearing for the appellants assailed the impugned order on the ground that the order has been passed ignoring the basic provisions of law. Expanding onthe arguments, learned Counsel pleaded that the tool kits were sold alongwith two wheelers are inputs as defined under Rule 2 (k) of Cenvat Credit Rules, 2004. Learned Counsel contended that as per definition, "inputs" means the goods used in or in relation to the manufacture of final product and includes the accessories of the final products cleared alongiwh final product. Learned Counsel has referred to Rule 138 of Central Motor Vehicle Rules, 1999 as amended makes it mandatory for the manufacturer to clear every vehicle alongwith a set of tool kit. Therefore, the tool kit is essential component/ accessories sold along with two wheelers to meet the requirement of Rule 138 of Central Motor Vehicle Rules, 1999. Thus, these inputs entitle the appellants to claim cenvat credit in respect of excise duty paid on purchase of tool kits and first aid kits in view of Rule 3(i) of Cenvat Credit Rules, 2004.

6. Thus, learned counsel for the appellants have thus concluded that the appellant has correctly availed the cenvat credit on tool kits and strongly urged for setting aside of the impugned order.

7. In support of his contention, ld. Counsel for the appellants has relied upon the various decisions of the Tribunal namely – (i) *C.C.E., Indore vs. Bajaj Tempo Ltd. , 2008 (205) ELT 404 (Tri-Del.) (ii) Bajaj Tempo Ltd. vs. C.C.E., Pune – I, 2008 (230) ELT 506 (Tri-Mumbai)* and (iii) *Kinetic Motor Company Ltd. vs. C.C.E., Indore , 2001 (129) ELT 366 (Tri-Del.)*

8. Shri A.K. Jain, learned Jt. C.D.R. for Revenue on the contrary has argued in support of the impugned order. He submitted that tool kits are not inputs as envisaged under Rule 2(k) of Cenvat Credit Rules, 2004. Learned Jt.CDR for the Revenue has emphasised that the aforesaid tool kits are "bought out items" which are neither fitted with motorcycle/two wheelers nor are used in or in relation to the manufacture of motorcycles by the appellant. Thus it is contended that the adjudicating authority has rightly disallowed the cenvat credit availed in respect of tool kit as inputs and confirmed the duty demand against the appellant.

9. In support of his contention, learned DR has relied upon the judgement of the Patna High Court in the matter of Tata Engineering & Locomotive Co.Ltd. vs. Union of india-1994 (72) ELT 525 and also the judgement of the co-ordinated bench of the Tribunal CESTAT in the matter of CCE, Delhi vs. Maruti Udyog Ltd.-2000 (120) ELT 580 (Tribunal)

10. We have considered the rival contentions and perused the record. In order to appreciate the arguments of the parties, it is necessary to have a look at relevant Cenvat Credit Rules, 2004. Rule 3 of Cenvat Credit Rules, provides that a manufacturer or producer of final product shall be allowed to take cenvat credit on the excise duty or additional excise duty paid on any input or capital goods received in the factory for manufacture of final products.

11. 'Input' has been defined in Rule 2(k)(i) which reads thus –

"all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not ***and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods*** *used as paint, or as*

packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production.

On bare reading of the aforesaid provision, it is clear that 'input' means and includes accessories of final product cleared along with final product.

12.. Now, the question arises whether tool kit can be termed as accessories of final product as envisaged in the definition of 'input' in Rule 2(k)(i) of Cenvat Credit Rules, 2004?

13. Undisputedly, the tool kits were sold by the appellant along with final product and their cost is included in the price charged from the customers.

14. Rule 138 of Central Motor Vehicle Rules, 1989 (as amended) deals with "signals and additional safety measures" for motor vehicle. Clause 4(b) of Rule 138 makes it incumbent on driver of every vehicle to carry the tool kit prescribed by the manufacturer. Since carrying of the tool kit in the vehicle is obligatory for the driver, it can be safely inferred that tool kit is necessary accessory of the motor vehicle because driving of the vehicle without those accessories would be violative of Rule 138 (4) (b) of Central Motor Vehicle Rules, 1989. Thus, we are of the view that the appellants have supplied the tool kit as per statutory requirements under Central Motor Vehicle Rules, 1989 as accessories to be used in relation to the manufacture of vehicle. Thus, 'tool kit' is squarely covered by the definition of 'input' given under Section 2(k)(i) of Cenvat Credit Rules and that the appellants have rightly availed the cenvat credit in relation to tool kits. In our aforesaid view, we find support from the earlier orders of the Tribunal in the matter of Bajaj Tempo Ltd. vs. C.C.E., Indore – 2007 (207) ELT 600

(Tri - Del.) as also Bajaj Auto Ltd. vs. C.C.E., Pune - 1996 (88) ELT 355 (Tri).

15. As regards the judgements relied upon by the respondent, we may note that the judgement of Patna High Court in TELCO is not applicable to the facts of this case for the reason that the aforesaid judgement was passed in relation to interpretation and scope of the Rule 57A of Central Excise Rules, 1994 which did not include accessories of the final product in the definition of input. This case is governed by Cenvat Credit Rules, 2004 wherein accessories have also been included in the definition of input. Similarly, the judgment of the Tribunal in the matter of Maruti Udyog Ltd. is not applicable as it relates to provisions prior to coming into operation of Cenvat Credit Rules, 2004.

16. In view of the above discussion, the impugned order of the Commissioner disallowing the credit in respect of tool kits sold alongwith the vehicle to enable the customer to comply with statutory provisions of Rule 138 of Motor Vehicles Rules is not sustainable in law. The impugned order is set aside.

17. Stay applications as well as the appeals are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

scd/