IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 58910 of 2013

[Arising out of Order-In-Appeal No. LTU/APPEAL/16/2013 dated 28.2.2013 passed by Commissioner (Appeals) Central Excise & Service Tax, New Delhi]

M/s. Hindustan Insecticides Ltd. **Appellants**

Vs.

Commissioner of Central Excise **Respondent**
ST, LTU, Delhi

Appearance:
Ms Sukriti Das, Advocate for the Appellants
Shri R K Mishra, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)

Date of Hearing/ Decision: 29.12.2016

FINAL ORDER NO . 56506 /2016

Per S K Mohanty :

The short issue involved in this appeal for consideration by the Tribunal is, as to whether, the appellant is required to pay Central Excise duty /reverse the Cenvat Credit, so availed on the goods (inputs and finished products) written off in the books.

2. Heard both sides and examined the records.

3. The period involved in this case is from 2002-2003 to 2003 - 2004. The provisions for writing off the value of inputs / capital goods were inserted under Rule 3(5B) in the Cenvat Credit Rules, 2004 by notification No. 26 /2007 CE (NT) dated 11.5.2007. Since the period covered in this case is prior to insertion of sub rule (5B) in Rule 3 of Credit Rules, 2004, the embargo created therein is not applicable retrospectively for denying the cenvat credit to the appellant. This Tribunal in the case of ***GKN Driveline (India) Ltd. vs. CCE Delhi IV (Final Order NO. A/54156/2015-SM(BR) dated 6.8.2015*** has dealt with the identical situation and has held that reversal of cenvat credit cannot be insisted upon in absence of non-existent statutory provisions.

4. Relevant paragraph in the said decision is extracted herein below:

> "*7. The credit availed by the appellant was in accordance with the CENVAT statute, and in absence of any specific provision requiring the appellant to reverse the credit availed on the inputs, confirmation of duty demand is against the principles of law. Rule 3(5B) was inserted in the CENVAT Credit Rules, 2004 with effect from 11.05.2007 vide Notification No.26/2007-CE(NT), dated 11.05.2007, requiring payment of amount equal to CENVAT credit taken, in respect of inputs or capital goods, if the same are written off fully or whether any provision to write off fully has been made in the books of accounts. In the present case, the dispute relates to*

the period 2000-01 to 2003-04 when sub-Rule (5B) was not inserted in Rule 3 of the Cenvat Credit Rules, 2004, requiring reversal of CENVAT credit, attributable to the inputs written off. Since there is no provision existed in the CENVAT Credit Rules for reversal of CENVAT credit at the material time, reversal of credit cannot be insisted, relying upon the circular issued by CBEC. In this context, the Hon'ble Gujarat High Court in the case of CCE Vs. Ingersoll Rand (India) Ltd. (supra) have held that reversal of credit in the absence of any statutory provisions is not proper and justified. The relevant paragraph of in the said judgement is extracted herein below:-

> *14. To our mind, such a circular could not provide for the reversal of Modvat credit in cases which are covered prior to introduction of Rule 5B of the Cenvat Credit Rules. As already noted, there was no provision under which the Modvat credit already taken under the Rules of 1944 could be directed to be reversed simply because the input goods were not utilised for a certain period of time. We also note that there is significant difference in the accounting approach for the income-tax purpose and the approach for stock maintenance for the purpose of manufacturing activities relevant for the question of excise. Therefore, merely because the value of goods diminished in the books of account of the assessee would not by itself permit the Department to insist on reversal of the credit particularly when such goods were still available in the factory in usable condition."*

5. In view of the above, demand confirmed in the impugned order on the ground of writing off the value of inputs / capital goods cannot

be sustained. With regard to the finished goods and packing material, the appellant had made a provision in the books of accounts for writing off the value of inputs and finished goods.

6. With regard to packing material, inputs and finished goods, the learned advocate submits that embargo under Rule 3(5B) ibid will not have any application inasmuch as those goods are very much available and were not removed from the factory. However, this particular aspect was not dealt with by the lower authorities. Therefore, I am of the view that matter should go back to the original adjudicating authority for verification of the fact regarding availability of the said goods in the factory during the relevant time. If the goods were not removed and were available in the factory, the benefit of such cenvat credit should be available to the appellant. The appeal is disposed of in the above terms.

(dictated and pronounced in the open court)

(S K Mohanty)
Member(Judicial)

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