CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Excise Appeal No.E/3633/2012- [SM]

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/190/12 dated 26.07.2012 passed by the Commissioner Central Excise, Indore.]

M/s. Hindustan Motors Ltd. …Appellant

Vs.

C.C.E. & S.T., Indore … Respondent

Appearance:
Mr. Manish Saharan, (Advocate) for the Appellant
Mr. K. Poddar, DR for the Respondent

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

Date of Hearing.17.11.2017
Date of Decision.11.12.2017

Final Order No. 58328/2017

Per S.K. Mohanty:

This appeal is directed against impugned order dated 26.07.2012 passed by the Commissioner (Appeals), Customs Central Excise, and Service Tax, Indore.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Passenger Vehicle, Load Body Vehicle, Drive Away Chassis falling under Chapter Heading No. 8702, 8704 and 8706 respectively of the schedule to the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of Central Excise duty paid on the inputs, used in or in relation to manufacture of the said final products. During the course of audit of the records, the

internal audit wing of the Central Excise Department observed that the appellant had not reversed the input credit on the written off inputs. Accordingly, the Department initiated Show Cause Proceedings against the appellant for denial of cenvat credit on written off input. The SCN issued by the Department was culminated in the order dated 19.01.2012, wherein cenvat credit amounting to Rs. 4, 68,808/- was disallowed along with interest and equal amount of penalty was imposed on the appellant. The ld. Commissioner (Appeals) vide the impugned order has upheld the adjudication order.

3. The ld. Advocate appearing for the appellant submitted that the written off inputs in the books were not removed outside the factory and the same are still lying in the factory for use in the manufacture of the final product. Thus, he submitted that since the appellant had no intention to remove the same clandestinely, the extended period of limitation cannot be invoked for disallowance of the cenvat credit and for imposition of penalty. The ld. Advocate has submitted the certificate dated 06.10.2010 issued by the Chartered Accountant, to show that though the value of inputs were written off in the books of accounts, but the same are still lying in stock for future production of the finished goods.

4. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. In this case, the appellant had written off the value of inputs lying in the factory unutilized for the period from 2005-06 to 2008-09. The written off particulars were duly reflected in the Balance Sheet for the respective years. Further, the written off inputs as reflected the books of accounts were not removed from the factory.

7. I find that SCN in this case was issued on 05.05.2010, which is beyond the normal period as provided under Section 11A of the Central Excise Act, 1944. Since the appellant had reflected the value of written off inputs in its books of accounts and such particulars were reflected in the Balance Sheet for the respective years, the charges of suppression, willful mis-statement, fraud etc. cannot be leveled against the appellant. Thus in such circumstances, the proviso to Section 11 A of the Act cannot be invoked for issuance of SCN beyond the normal period of limitation of one year.

8. Therefore, I am of the view that the demand confirmed against the appellant will not sustainable on the ground of limitation. Accordingly, the impugned order is set aside and the appeal is allowed in favor of the appellant.

(Pronounced in the open court on __11.12.2017__)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi