

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
EASTERN ZONAL BENCH: KOLKATA**

**Ex.Appeal Nos.124,149,152,166/09
& 78230,78231/18**

(Arising out of Order-in-Original No.01/Commissioner/09 dated 02.01.2009 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur)

- (1) M/s Bhawani Press Metal & Body Building Pvt. Ltd.
- (2) M/s Garg Steel Traders
- (3) M/s PPG Steel Pvt. Ltd.
- (4) M/s Chiuar Steel Segment Centre
- (5) Shri Raj Kishore Agarwal
- (6) Shri Sunil Kumar Agarwal

Applicant (s)/Appellant (s)

Vs.

CCEx., Jamshedpur

Respondent (s)

Appearance:

S/Shri Ravi Raghavan & Deepro Sen, both Advocates at Sl.No.(1), (5) & (6) & Shri B. N. Chattopadhyay, Consultant at Sl.No.(2),(3) & (4) for the Appellant (s)

Shri D. Halder, Asstt.Commr. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 04.12.2018

Date of Decision : 04.12.2018

ORDER NO. FO/A/77081-77086/2018

Per Bench :

These appeals are filed against the Order-in-Original No.01/Commissioner/09 dated 02.01.2009.

- 2.1 The present dispute covers the period from 2002-2003 to 2005-06. The allegation against the main appellant, (1) M/s Bhawani Press

Metal & Body Building Pvt. Ltd., (M/s Bhawani for short) is that they have purchased a total quantity of 3107.241 MT of steel metal, during the period under dispute, but required only 1421.545 MT in the manufacture of goods. Demand for reversal of cenvat credit has been raised on the balance quantity of 1685.696 MT of steel items, by taking a view that the cenvat credit availed was not admissible.

2.2 M/s Bhawani is a body builder mainly doing body building activities for M/s Tata Motors. They sometimes received duty paid chassis on which body was built and cleared on payment of duty. In certain other cases, they have received chassis on which no cenvat credit is taken and after building body, it is cleared on payment of only on the body. For use in the manufacture, they have procured various types of steel metal, like, plates, HR/CR Coils, sheets etc. and availed cenvat credit. The team of Central Excise Officers visited the factory of M/s Bhawani on 02.03.2006 and noticed that in respect of two invoices, credit was availed on the basis of photo copies of the invoices. On verification, the officers noticed that the goods accompanying the said invoices, were not received accordingly, took the view that the appellant was not entitled to avail cenvat credit on a total quantity of 76.920MT involving duty of Rs.2,42,752/-. The Department proceeded to carry out further verification into the receipt of raw materials and use of the same in the factory. It was noticed that M/s Tata Motors have supplied the design and drawing to be used for body building along with bill of materials normally required for manufacture of these goods. The Departmental officers investigated

into the quantity of materials used by the appellant for manufacture of different models of vehicles. It was found that the requirement of materials indicated in the records of the appellants was more than the quantity of materials indicated in the drawing of Tata Motors. By adopting the drawing of Tata Motors as a reference, the Departmental Officers proceeded to work out the excess inputs claimed to have been used by the appellant in the manufacture during the period 2002-03, 2003-04, 2004-05 & 2005-06. On this basis, it was concluded that on the total quantity of 1685.696 MT of materials, cenvat credit was availed in excess.

2.3 Further investigation undertaken by the Department was focused on the various suppliers of inputs based on whose invoices, the cenvat credits were availed with a view to establish that 1685 MT of inputs were physically not received in the factory. It was noticed that the several suppliers, i.e. M/s Chinar Steel Segment Centre, M/s PPG Steel Pvt. Ltd., M/s Garg Steel Traders and M/s ASL Enterprises, had supplied HR/CR coils as well as sheets. Since the appellant did not have facility for cutting such coils into sheet forms, it was alleged that the goods in coil form were never received in the appellant's factory and as such the cenvat credit availed on the basis of invoices on coils were not admissible.

2.4 In respect of some of the materials received, on perusal of the documents accompanied with the goods, it was noticed that the trucks involved had not passed through Purulia, West Bengal. This ground

was also used to allege that such goods were never received in the appellant's factory.

2.5 Certain entries in RG-23A Part II did not have corresponding entries in Part I evidencing the receipt of quantity of goods.

2.6 One more ground on which the cenvat credit was sought to be denied was that in respect of several supplies, there was no evidence of freight payment either by the appellant or by the supplier on the face of the cenvatable invoices. In the absence of such evidence, it was presumed that accompanying raw materials were never received in the appellants' factory.

3. Show-cause notice dated 21.03.2007 on the above lines was issued proposing for denial of cenvat credit.

4. After conclusion of adjudication, the impugned order was passed demanding service tax totally amounting to Rs.52,27,870/- including cess. The impugned order imposed penalty of equal amount of service tax as well as penalties on the various suppliers and transporters and two Directors of the Appellant Company. This order is assailed in these appeals.

3. Heard Shri Ravi Raghavan and Shri Deepro Sen, both Advocates, appeared on behalf of Appellant Nos.(1), (5) & (6) and Shri B.N.Chattopadhyay, Id.Consultant, appeared on behalf of Appellant Nos.(2), (3) & (4).

4. The demand for reversal of cenvat credit as well as imposition of penalties have been challenged mainly on the following grounds :

(i) In respect of two invoices, on which cenvat credit was denied, it is submitted that the goods involved in those two invoices were returned to supplier having been found faulty. But the cenvat credit involved therein was reversed by the appellant.

(ii) Design and drawings supplied by M/s Tata Motors were to be used as a reference for the purpose of fabrication of body on the chassis. Quantum of materials actually used varied depending upon the manufacturing process and gauge of the materials used. In certain cases, the assesses have used thicker gauge of sheets than what was proposed by M/s Tata Motors. He submitted that the actual consumption of material in the manufacture is required to be considered and not as per design.

(iii) Stocktaking conducted by the Departmental Officers on 02.03.2006, had not considered the stock of materials lying in process in different parts of shop floor. This has resulted in incorrect estimation of the quantum of materials consumed. The Departmental officers had also not taken into account the closing balance of stock at year-end on the basis of value of goods shown in the balance sheets. Further, they have ignored the weight difference in different models. They have also not taken into account the process loss that invariably results in the process of fabrication. Such process loss of 10% to 12% will be required to be allowed in determining the quantum of materials consumed.

(iv) A part of the raw materials were also used within the factory for undertaking repair and maintenance of machines installed

Ex.Appeal Nos.124,149,152,166/09
& 78230,78231/18

in the factory. The cenvat credit cannot be denied for such use captively within the factory.

(v) The appellant assessee had made payment through Banking Channel for the entire raw materials received and for all the invoices listed in the Annexure to the show-cause notice. In view of the above, it is not fair to allege that the raw materials were not received in the appellant's factory. The non-availability of specific particulars of payment of transport charges should not be used to allege that such raw materials were never received in the factory.

(vi) The Id.Advocate also submitted detailed work sheets explaining and reconciling the difference of 1685.696 MT between the requirement and purchase. The summary of the reconciliation table is given below :

Sl.No.	Description	Amount in MT
1.	Sales Difference	86.81
2.	Weight not considered by DGCEI	28.660
3.	Difference in Stock taken on 02.03.2006	406.310
4.	Model Weight Difference	405.925
5.	Process Weight Loss of 12% on finished product difference	240.000
6.	Difference due to use of higher grade/ Thickness of material	350.000
7.	Material used in plant maintenance	91.070
8.	Material returned to PPG which has been taken in purchase by DGCEI	35.630
9.	Material not received by Chinari which has been taken in purchase by DGCEI	41.290
	Total	1685.695

(vii) He also submitted a Chartered Accountant's Certificate issued by S.K.Naredi & Co. dated 31.10.2018, certifying that the invoice quantity supplied by the Company of various products during the period of dispute along with the consumption of materials in the manufacture of such goods.

On the basis of the above arguments, he submitted that the cenvat credit cannot be denied and prayed that the demand as well as the penalty may be set aside.

5. Shri B.N.Chattopadhyay, Id.Consultant, strongly opposed the penalties imposed on the various suppliers. It is his submission that all the purchasers were genuine and payment for such purchases were made by M/s Bhawani through Cheques. He made the point that the period of dispute was from 2002-03 to 2005-06 and penalties have been imposed on the suppliers in terms of Rule 26 of the Central Excise Rules, 2002. He specifically pointed out that the provisions for imposition of penalty on other facilitating taking the credit without actual supply of materials, was inserted only w.e.f. 01.03.2007 by inserting sub-rule (2) of Rule 26 of Central Excise Rules, 2002. Accordingly, he submitted that the adjudicating authority was not legally empowered to impose the said penalties. He also relied on the following decisions :

(a) CCEx., Chandigarh I Vs. Mini Steel Traders : 2014 (309) ELT 404 (P & H) ;

Ex.Appeal Nos.124,149,152,166/09
& 78230,78231/18

(b) CCEx., S.Tax, Chandigarh I Vs. Asim Enterprises : 2015 (328) 658 (Tri.-Del.) ;

(c) Steel Tubes of India Ltd. Vs. CCEx., Indore : 2007 (217) ELT 506 (Tri.-LB) ;

(d) Sahu Refrigeration Industries Ltd. Vs. CCEx., S.Tax, Delhi I : 2015 (330) ELT 587 (Tri.-Del.) ;

(e) Piyush Engineering Works Vs. CCEx., Rajkot : 2009 (240) ELT 700 (Tri.-Ahmd.).

6. The Id.D.R. for the Revenue, justified the impugned order. He specifically made the following arguments :

(i) The demand for reversal of cenvat credit was made on the basis of detailed investigation conducted by the Department after noticing the fact that the appellant-assesses had availed credit on the basis of two invoices on 02.03.2006 without receiving the accompanying goods. During the course of investigation, the Revenue has ascertained the actual requirement of raw materials, for the manufacture of final product from the appellants as well as M/s Tata Motors. It was noticed that huge difference was shown between the actual consumption of materials as per statutory records and the requirement. The year-wise purchase, consumption and requirement of steel metal along with difference, was concluded as follows :

Year	Purchase (MT)	Requirement (MT)	Difference (MT)
2002-03	674.927	315.426	359.501
2003-04	536.915	281.225	255.689
2004-05	1010.224	430.364	579.860
2005-06	885.175	394.530	490.645
Total	3107.241	1421.545	1685.696

He opposed the claims made on actual consumption of materials with the submission that such deviation is only acceptable subject to verification.

7. Heard both sides and perused the appeal records.

8.1 The dispute in the present cases is regarding the cenvat credit availed on inputs in the form of HR/CR Coils and sheets. Such inputs were used by the appellants in the fabrication of body on the chassis supplied by M/s Tata Motors and other customers. For fabrication of body, the supplier, M/s Tata Motors, had supplied the design and drawing to the appellants. This also contained a bill of materials required for the fabrication of such body. During the course of investigation, the Department has considered such bill of materials supplied by Tata Motors as a reference and has attempted to evaluate the actual consumption of materials by the appellants in the fabrication of various models of vehicles. The investigation led to the conclusion that the appellants have shown consumption of materials in excess of materials as per bill of materials supplied by Tata Motors. This became the basis for the prima-facie conclusion of Revenue that the appellant has shown as consumed more materials than what was required for fabrication of chassis.

8.2 On the basis of prima-facie conclusion as above, the investigations were further conducted to establish the non-receipt of the materials in respect of some of the invoices based on which the

cenvat credit were availed. The investigation highlighted some of the apparent discrepancies including the following :

(i) Some of the invoices were of HR/CR Coils in addition to sheets. It was found that the appellants did not have facility of cutting such huge HT/CR Coils in their factory. Since no documentary evidence was found indicating cutting of such coils into sheets on job work basis by sending coils outside the factory, it was concluded that the goods in the form of such coils were never received and such cenvat credit were irregular.

(ii) In a few cases, trucks were found to have not crossed the Purulia Check Post in West Bengal and it was presumed that such goods were never received by the appellants in the factory at Jamshedpur.

(iii) The investigation further proceeded towards dealers. Some of the dealers indicated in their statements that they did not pay the freight charges in respect of materials sent to the appellant's factory. Since no details of freight payment by the appellant were forthcoming from the records, it was concluded that such materials were also never received.

8.3 The question which arises for decision, in the circumstances, is whether the Department is justified in ordering reversal of cenvat credit for inputs to the tune 1685.696 MT. As per the Scheme of the Cenvat Credit Rules, 2004, the credit on inputs is eligible in respect of goods used in the factory of the manufacturer of final product. It is not in dispute that the HR/CR sheets are inputs, which are required in

the fabrication of body in the appellant's factory. The credit also have been availed on the basis of invoices for which the payments have been made through proper Banking Channels. The investigation of the Department has sought to project that the entire quantum of materials covered by all the invoices, could not have been used in the manufacture within the factory, since quantity of materials shown as consumed is in the excess of the bill of materials supplied by Tata Motors. An attempt has also been made to project that goods covered by some of the invoices were probably never received.

8.4 The circumstances outlined supra can at the most raise doubt about the receipt of raw materials etc. The submissions made by the appellants before the Tribunal (these submissions were also made before the Adjudicating Authority) includes the detailed working for the consumption of raw materials for manufacture and clearance of invoice quantity of goods supplied by the Company. We take note of the fact while accepting their submissions, that the actual consumption of materials could vary from the bill of materials supplied with the design and drawing by M/s Tata Motors. For example, in a few cases, the appellant made use of thicker grade of materials than what was suggested by Tata Motors. Certain percentage of process of loss has also been claimed by the appellant, which is reasonable and inevitable. As per the Chartered Accountant's Certificate issued by S.K.Naredi & Co., after scrutiny of the Books of Account of the appellant for the years, 2002-03 to 2005-06, they have certified the consumption of materials for the entire invoice quantity supplied, as per the working

submitted by the appellants, by taking into account the process loss as well as the materials used in the plant maintenance. It is seen that the entire quantity of materials purchased have been accounted for in the appellants' record. The investigation undertaken at the supplier's end, has not brought on record any solid evidence to establish that the inputs were never received in the appellants' factory. It is nobody's case that any part of the inputs have been diverted clandestinely outside without use in the factory for manufacture. In view of the above, it cannot be concluded that the appellant has irregularly availed credit on inputs without use of the same in the manufacture.

8.4 In respect of two invoices for a total quantity of about 76 MT, the credit for the same has since been reversed inasmuch as the material has been received/returned.

9. In view of the above, we conclude that the Revenue is not justified in ordering reversal of cenvat credit. Accordingly, the impugned order is set aside and all the appeals are allowed.

(Dictated and pronounced in the open court.)

Sd/
(P.K.Choudhary)
Member (Judicial)
mm

Sd/
(V.Padmanabhan)
Member (Technical)