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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.365 of 2010

(Arising out of Order-in-OriginalNo.02/Commissioner/10 dated26.02.2010 passed by Commissioner of Central Excise& Service Tax, Jamshedpur.)

M/s.Amul Crank Case Private Limited
(M/s.V.B. Seth & Co., 'Dharaj', Near Moti Tanki, Dr. Radhakrishna Road, Rajkot-360001, Gujarat.)

...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

.....Respondent

(143, New Baradwari, Sakchi, Jamshedpur, 831001.)

APPEARANCE

Shri N.K. Chowdhury, Advocate for the Appellant (s)
Shri A. Roy, Authorized Representative for the Respondent (s)

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 75185/2022

DATE OF HEARING : 9 December 2021
DATE OF DECISION : 08 April 2022

P.K.CHOUDHARY :

M/s. Amul Crank Case Pvt. Ltd. (here-in-after referred to as the Appellant)is in appeal against the Order-in-Original passed by the ld.Commissionerof Central Excise and Service Tax, Jamshedpur dated 26.02.2010 by which the Ld Adjudicating authority has confirmed the demand of recovery of Cenvat credit of Rs.2,57,38,894.67/- along with interest and penalty on the Appellant.

2. The facts of the case in brief are that the Appellant is engaged as job worker by M/s. Tata Motors Limited for the purpose of Machining, Turning etc. on the Engine block being supplied by M/s.Tata Motors Limited under the procedure as prescribed under Notification

No.214/86 dated 25/03/1986. Thus the Appellant was removing the goods to M/s.Tata Motors Ltd without payment of any Central Excise duty under returnable challans. The Appellant had obtained Excise registration for the purpose of manufacturing Cylinder block. They had also availed Cenvat credit of capital goods procured in order to manufacture cylinder block as well as carry out the job work process. On investigation by the Department, it was noticed that since the Appellant does not manufacture any finished goods and is only engaged in job work activity, the Appellant is not eligible to avail Cenvat credit on capital goods and thus a Show Cause Notice dated 28/11/2008 was issued for recovery of ineligible Cenvat credit availed by the Appellant. It was also alleged that the Appellant is paying excise duty only on scrap generated during job work process. The demand was confirmed vide the impugned order. Hence, the present Appeal.

3. Heard both sides through video conferencing and perused the appeal records.

4. We find that the issue to be decided in the present case is, whether the Appellant is eligible to claim Cenvat credit on capital goods used for the purpose of carrying out intermediate production process on goods supplied by M/s.Tata Motors Limited and removed without payment of excise duty under the procedure prescribed under Notification No.214/86 dated 25/03/1986.

5. We find that the issue is no longer *res integra* and has been decided by Hon'ble Madras High Court in the case of COMMR. OF C. EX., CHENNAI-IVVersusKYUNGSHIN INDUSTRIAL MOTHERSON LTD. [2016 (332) E.L.T. 69 (Mad.)] wherein it was held thus :-

> ***"12.*** *In the case of Escorts Ltd. v. Commissioner of Central Excise, Delhi [2003 (160) E.L.T. 623 (Tri. - Del.)], the Tribunal, while interpreting Rule 57C of the Central Excise Rules, in the said case, rejected the assessee's claim for Modvat credit of duty*

on the inputs used in the manufacture of parts, which were cleared without payment of duty to the assessee's other unit under Chapter X procedure and utilised in the manufacture of tractor, which were cleared on payment of duty holding that no duty was paid on the parts at the time of clearance. It held that Rule 57C will apply and no Modvat credit would be admissible. Such a view, on appeal, was reversed by the Supreme Court in Escorts Ltd. v. Commissioner of Central Excise, Delhi [2004 (171) E.L.T. 145 (S.C.)], wherein the Supreme Court held as hereunder :-

> *"8. It is to be seen that the whole purpose of the notification and the rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. Rule 57D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where intermediate product comes into existence, even though no duty has been chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product.*
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> *9. In cases of manufacturers like the appellants the final product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus 57C would have no application. The mere fact that the parts are cleared from one factory of the appellants to another factory of the appellants would not disentitle the appellant from claiming benefit of Notification No. 217/86-C.E., dated 2nd April, 1986. As stated above, the notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer."*

13. *The above principle, laid down by the Supreme Court, was followed in the case of Sterlite Industries Ltd. v. Commissioner* *of Central Excise, Pune [2005 (183) E.L.T. 353 (Tri. - LB)] by the Larger Bench of the Tribunal, wherein it has been held thus :-*

> *"2. The revenue is denying the Modvat credit to the present job worker on the grounds that the inputs were used in the manufacture of the goods which were cleared without payment of duty. Pausing here for a second, let us take a situation where the basic inputs is sent by the principal manufacturer after debiting the Modvat credit taken by him. The job worker takes the credit of the same his factory, utilises other inputs procured directly by him after taking the Modvat credit on the same and clear the processed goods to the principal manufacturer on payment of duty and the principal manufacturer takes the credit of the same in his factory and utilises such credit for payment of duty on his final products at the time of clearance. In such a situation, there can be no objection or dispute by the revenue as regards the admissibility of the credit on the inputs received directly by the job worker and utilised in his factory. The only effect of the above procedure adopted by the principal manufacturer and the job worker would be additional paper work. It is basically to avoid such a situation the procedure under Rule 57F(3) has been enacted. As rightly observed by the earlier decision's the mechanical application of Rule 57C which destroys the basic benefit intended to be extended to the assessee should be avoided. If the interpretation adopted by the revenue is upheld, the benefit otherwise intended to be given will get frustrated apart from leading to discriminatory situation, where the manufacturer has himself processed the inputs and in the other case where he is sending it to the job worker.*
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> *3. We are also in agreement with the appellant's contention that Rule 57C debars taking of credit in respect of the inputs used in the manufacture of the final product, if final product is exempted from the whole of duty of excise leviable thereon or chargeable to nil rate of duty. As such, to attract the provisions of Rule 57C, two situations in respect of the final product should be satisfied. Either the final product should be exempted which*

situation can arise only when there is an exemption notification issued under Section 5A of the Central Excise Act or the final product is chargeable to nil rate of duty. Expression chargeable to nil rate of duty or exempted from whole of duty was considered by the Tribunal in the case of Orissa Synthetics Ltd. v. Collector of Central Excise [1995 (77) E.L.T. 350 (Tri.)] and after taking note of the Ministries clarifications issued vide Circular No. 10/75/CX.6, it was held that clearance under goods under provision of 191BB for export without payment of duty would not get covered by the above expression. Reference was made to the advice received from the Ministry of Law dealt in the paragraph of 9 in the said decision. It was opined in the said letter of the Law Ministry that the term 'exempted' has a definite connotation. The same as attributed to the notification issued by the Central Government. Similarly, the chargeable to nil rate of duty would refer to the tariff rate being nil and the goods cleared in terms of provision of Rule 199BB would not be covered by the said expression inasmuch as the same are not chargeable to nil rate. In the present case, we find the job worker could have cleared the goods on payment of duty and manufacturer could have claimed credit of the same. It is only under the special procedure laid down in terms of Rule 57F(3) that the duty does not get paid at the job worker's end at the time of clearance of the goods, but ultimately gets paid at the manufacturer's end. In these circumstances, we are in agreement with the decision rendered in the case of Bajaj Tempo and Jindal Polymers."

14. *The above order of the Larger Bench of the Tribunal traces the manner in which Modvat credit could be taken by a job worker. The abovesaid decision came to be approved by the Division Bench of the Bombay High Court in the case of Commissioner v. Sterlite Industries (I) Ltd. [2009 (244) E.L.T. A89 (Bom.)].*

15. *Similar view was taken by this Court in Commissioner v. Hwashin Automotive India Pvt. Ltd. [2014 (304) E.L.T. A16 (Mad.)] and Commissioner of Central Excise v. Sivaramakrishna Forgings Pvt. Ltd. [2015-TIOL-813-HC-MAD-CX = 2015 (322) E.L.T. 697 (Mad.)].*

16. *We find on fact that in this case also, the Tribunal was correct in holding that wiring harness was removed without payment of duty under job work procedure to the principal manufacturer and that semi-finished goods removed by the job worker from its unit to the principal, without payment of duty, would not come within the scope of expression "exempted final product" used in Rule 57R(1) equivalent to Rule 6(4) of the Cenvat Credit Rules, 2004. The Tribunal has rightly held that availment of Modvat credit on capital goods to be job work is in order. For the reasons aforesaid, the substantial question of law is answered in favour of the assessee and against the Revenue."*

Therefore by respectfully following the judgment of the Hon'ble Madras High Court (*supra),* we set aside the impugned order and accordingly, the Appeal filed by the Appellant, is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 08 April 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

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