**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 632 of 2012

Arising out of Order of Original No. 26/Commr./2012 dated 29.06.2012 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.

M/s. Apex Auto Ltd.
(M-1, Phase-VII; Tata-Kandra Road; Adityapur Industrial Area; Jamshedpur,-832109.)

...Appellant

VERSUS

Commissioner of Central Excise, Patna
(Central Revenue Building (Annexe), Bir Chand patel Path, Patna – 800001)

...Respondent

WITH

Excise Appeal No. 75073 of 2014

Arising out of Order of Original No. 26/Commr./2012 dated 02.07.2012 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.

M/s. Apex Auto Ltd.
(M-1, Phase-VII; Tata-Kandra Road; Adityapur Industrial Area; Jamshedpur,-832109.)

...Appellant

VERSUS

Commissioner of Central Excise & S. Tax, Jsr.
(Outer Circle Road, Bistupur, Jamshedpur (Jharkhand)- 831001)

...Respondent

APPEARANCE

Present for the Appellant : Shri Deepro Sen & Shri Shovit Betal, both Advocates

Present for the Respondent : Shri K. Chowdhury, Authorized Representative

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Final ORDER NO. 76209-76210/2023

Date of Hearing : 18.07.2023
Date of Decision: 18.07.2023

PER RAJEEV TANDON:

The Appellants are in appeal against the Order in Original No. 26/Commissioner/2012 dated 29.06.12 issued on 02.07.12 alongwith corrigendum dated 17.12.2012 issued to the said order in original.

2. During the course of audit of the records of the appellants company it was noticed by the department that besides manufacturing excavator parts, the appellant is also engaged in undertaking various processes on MS plates cleared by them upon payment of duty to their sister unit at Dharwad. The processes undertaken include, clearing, cutting & drilling. The show cause notice lists out such processes undertaken by the appellant on MS plates as not amounting to manufacture in terms of Section 2(f) of the Central Excise Act, 1944[1]. It alleged that the credit availed by the assessee on such MS plates was irregular and in violation of Rule3(1) read with Rule 2(k) of the Cenvat Credit Rules 2004[2].

3. It was further alleged that even though the assessee had paid the excise duty at the time of clearance on such processed MS plates, the credit availed on such MS plate was not in accordance with the provisions of Rule 3(5) of the Rules. Invoking the extended period of

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1. **The Act.**
2. **The Rules.**

limitation a demand for an amount of Rs.1,483,0398 was issued to the appellant under Section 11(A) of the Act, read with Rule 14 of the said Rules. The notice alleged willful miss-statement and suppression of facts on part of the Appellants. The notice also called for imposition of penalty under Section 11 AC and demand for payment of interest under Section 11 AB.

4. In response to the Show Cause Notice it was the contention of the noticee that they had never cleared the MS plates by undertaking the process of cutting drilling etc. as manufactured goods, but cleared them on "as such basis". It was also their contention that as the sister unit of the appellant was eligible for credit of duty paid by the noticee, the entire exercise is revenue neutral. As for extended period, it was their contention that there was no willful suppression of facts as the noticee had regularly filed their ER-1returns which contained details of all such clearances.

5. The learned Commissioner however did not find sufficient merit in the assessee's plea and confirmed the entire amount of demand proposed in the Show Cause Notice towards the amount of Cenvat Credit disallowed. Besides demanding interest as applicable and imposing penalty equivalent to the amount of Cenvat Credit availed, vide corrigendum dated 17.12. 2012 issued to the order in original, an amount of Rs.1,61,96,910 was appropriated by the department.

6. Heard the rival submissions of the two sides.

7. The facts are not quite in dispute. We note that it is a settled position in law that if Cenvat Credit is availed on goods (inputs) that are subjected to certain processes, that do not amount to manufacture, and if such goods are cleared on payment of excise duty, then there is no requirement for reversal of Cenvat Credit availed on the inputs. It is also the appellants contention that even if it is assumed that the processes undertaken viz cleaning, cutting and drilling of MS plates do not amount to manufacture, Cenvat Credit on the inputs is essentially available to them. The fact of clearance of such goods to their sister unit on payment of excise duty is evident from records. We also note that the amount of duty paid by the appellant is higher than the amount of credit availed.

7.1. The Hon'ble Gujrat High Court, in similar circumstances in the case of **Commissioner of Central Ex. & Cus., Surat-III Vs. Creative Enterprises**[3] has held as under:

> "6. *When one goes through the order of the first appellate authority, it is apparent that the respondent has been held to be a manufacturer as defined in Section 2(f) of the Central Excise Act, 1944. The appellate authority has taken into consideration the activities carried on by the respondent-assessee. <u>The Tribunal is justified in holding that if the activity of the respondent-assessee does not amount to manufacture there can be no question of levy of duty, and if duty is</u>*

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3. 2009 (235) ELT 785 Guj

> *levied, Modvat credit cannot be denied by holding that there is no manufacture.* "

(Emphasis Supplied)

SLP filed by the department, against the impugned order of the Hon'ble Gujrat High Court was dismissed on 08.07.2009[4].

7.2. The Hon'ble Bombay High Court in the case of **Commissioner of Central Excise, Pune-III Vs. Ajinkya Enterprises**[5], had upheld the Tribunal order, wherein an identical contention in the context of decoiled HR/CR coils cut into specific size was concerned with and the Tribunal had upheld the availment of CENVAT credit on HR/CR coils and its utilization for payment of duty on decoiled HR/CR coils cleared.

7.3. To similar purport, is the decision of the Hon'ble Karnataka High Court, relied upon by the appellant, in the case of **CCE, Bangalore Vs. Vishal Precision Steel Tubes & Strips Pvt. Ltd.**[6]. It has been categorically held therein, that once duty is paid by assessee treating the processes undertaken as a manufacturing activity due CENVAT credit cannot be denied. The relevant portion of the Hon'ble High Court's order is extracted below:

> "7. *It is an undisputed position that the final product is treated as dutiable and duty is paid by the assessee. When once duty is paid by the assessee treating the*

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4. 2009 (243) ELT 120 SC

5. 2013 (294) ELT 203 Bom

6. 2017 (349) ELT 686 Kar

activity as manufacturing activity by the Department, Cenvat credit is available and there is no question of reversion of Cenvat credit. As such, in view of the aforesaid two decisions of the High Court namely, Bombay High Court and Gujarat High Court, we do not find any question of law would arise for consideration as sought to be canvassed."

8. Thus, as the question of law as in the impugned appeal is no more res integra and has been settled, by the decision of the Hon'ble Gujarat High Court, in the case of **Commissioner of Central Excise and Customs, Surat III Versus Creative Enterprises[3],** there can be no question of levy of duty and if duty is levied, the Cenvat Credit cannot be denied to the manufacturer. The impugned decision of the Hon'ble Gujarat High Court has been upheld by the Apex Court, as stated in earlier paras, and in view of the aforesaid decision of the highest authority, there is absolutely no justification in the department's contention.

9. In view of aforesaid position in law, we are of the view that there is no merit in the adjudication order passed by the learned Commissioner and it being bereft of merit needs to be set aside.

10. We therefore set aside the impugned order and allow the appeal filed by the appellants.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

K.M.