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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.169 of 2012

(Arising out of Order-in-Original No.53/Denovo/Commissioner/2011 dated 30.12.2011 passed by Commissioner, Central Excise & Service Tax, Jamshedpur.)

M/s. Tata Motors Limited
(Mr.Dhanu Kumar, AGM-Finance, Tata Motors Limited, Jamshedpur-831010.)
...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

APPEARANCE

Shri Rahul Tangri, Advocate for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76277/2023

DATE OF HEARING : 28 July 2023
DATE OF DECISION : 03.08.2023

Per : K. ANPAZHAKAN :

Four show cause notices were issued for recovery of Cenvat credit amounting to Rs.3.39 Crore wrongly availed by the Appellant, M/s. Tata Engineering & Locomotive Works Ltd., Jamshedpur (now M/s. Tata Motors Ltd., Jamshedpur – in short TML), during the period April 2000 to July 2000. The Commissioner, Central excise, Jamshedpur vide his Order-in-Original dated 31.03.2004 disallowed credit of Rs.2.57 Crore only.

2. Being aggrieved by the above order of the Commissioner, TML filed an appeal before the Tribunal challenging the order in so far as it related to denial of credit amounting to Rs.2,14,05,637/- out of Rs.2.57 crores. The Tribunal vide its order No.A-346-349/KOL/2010 dated

20.04.2010 allowed the appeal in so far as it had denied the credit of Rs.61,22,262/- and Rs.1,11,35,767/- and remanded the case for a fresh decision in so far the disallowance of credit of Rs.41,47,609/- in the order dated 31.03.04, with the observation as under:-

> *"8. In respect of denial of credit of Rs.41,47,609.00, we find that appellant submitted 54 invoices under cover of a letter dated 16/11/2000 to the jurisdictional superintendent. In the adjudication order, the credit was denied on the ground that appellant had not produced the copy of the letter. We find that in the show cause notice reference of the letter dated 16/11/2000 has been made therefore the denial of credit merely on the ground that copy of letter has not been produced regarding which the reference has been made in the show cause notice is not sustainable and requires reconsideration. In respect of the denial of credit on the ground where the photocopies of the invoices were produced by the appellant, we find that the photocopies are of the original invoices as there was no requirement for producing the invoice for department during the relevant period therefore this matter also requires reconsideration. The demand of Rs.41,47,609.00 is set aside and the matter is remanded to the adjudicating authority to consider afresh after affording an opportunity of hearing to the appellant. Both sides are at liberty to produce documents in support of their claim."*

3. In the De-novo proceedings, the Commissioner has disallowed the Cenvat credit of Rs 41,47,609/-along with interest and imposed a penalty of Rs.5,00,000/-on the Appellant. Aggrieved against the impugned order, the Appellant filed the present appeal. Thus, the present appeal deals with the denial of Cenvat credit of Rs. 41,47,609/- along with interest and penalty.

4. The Appellant furnished the break-up of the Cenvat credit dis-allowed in the impugned order, which is furnished below:

(i) DFT copy of invoices recd. from Telco-Pimpri, which was submitted earlier by their letter dated 16.11.2000 – Rs.15,31,074/

(ii) Credit availed without invoice – Rs.19,91,913/-

(iii)Credit availed on other than DFT copy of invoice – rs.5,33,208/

(iv) Modvat availed on the basis of Certificate 'A' – Rs.89,641/-

(v) Misc. Discrepancies – Rs.1775/-

5. The eligibility of the credit in respect of the above mentioned categories are discussed below, based on the submissions made by the Appellant, findings in the impugned order and the evidences available on record.

(i) Cenvat credit of 15,31,074/-

5.1 This credit was earlier denied by the department only for the reason that Appellant did not produce the copy of the letter dated 16.11.2000, under cover of which the respective 54 invoices were submitted. The Appellant stated that before the Denovo adjudication, they have submitted the copy of the said letter to the adjudicating authority. However, in the Impugned Order, the credit has been denied on the ground that the said goods have been transferred to M/s H.V.Axles Ltd and hence the same were not used in the factory of production. The Appellant stated that this a different ground which is beyond the remand direction as well as the scope of the previous Order-in-Original. which merely denied the credit for non-submission of letter, which has been provided. The Appellant stated that the finding in the impugned order is based on piecemeal and incorrect reading of the letter. The letter clearly said that the goods were received in the factory of the Appellant under cover the DFT invoices, based on which the credit availed. Thereafter, the goods were cleared to HV Axles Ltd. on further issuance of invoices and dispatch documents which were also provided to the department. Payment of duty upon clearance of goods to HV Axles is evidenced by this letter which has never been in dispute. The only dispute in the present proceeding was regarding eligibility of the said credit at the time of receipt thereof in the factory, which was justified by providing DFT invoices vide this letter. Thus, denial of credit on an issue which has never been agitated is legally not tenable.

5.2 We observe that the impugned order is beyond the remand direction as well as the scope of the previous Order-in-Original, which merely denied the credit for non-submission of letter, which has been provided by the Appellant before Denovo adjudication. Regarding eligibility of this credit, we observe that the Duplicate copy of invoice produced by the Appellant clearly indicate the receipt of the goods into the factory. Hence, we hold that the appellant has rightly availed the credit. Subsequently, they have cleared the inputs to HV Axles Ltd as such on reversal of the same credit availed at the time of its receipt. Thus, we observe that there is no infirmity in the initial availment of the credit and its subsequent clearance 'as such' on reversal of the credit availed. Accordingly, we hold that the denial of credit of Rs 15,31,074/- is not sustainable.

(ii) Regarding denial of Cenvat credit of Rs,19,91,913/- +5,33,20/- in the Impugned Order, we observe that the above credit has been denied on the ground that the same was taken on the strength of Original copy of invoices, instead of Duplicate copy. We observe that the denial credit on this ground is beyond the remand direction as well as the scope of the previous Order-in-Original, which merely denied the credit for non-submission of letter, which has been provided before the denovo adjudication. We observe that during the relevant period there was no requirement for producing the invoices for defacement. The remand direction by the Tribunal also mentions this. Once the remand direction clearly stated that during the relevant period there was no requirement to produce the original copies for defacement, the insistence on the production of the same or denial the credit on the basis that the Appellant did not produce DFT copy of the invoice, for availing the credit is legally not tenable. Even legally, there was no requirement during the relevant period to avail credit only on the DFT copy of the invoice, as evident from the provisions of amended Section 52A of the Central Excise Rules, 1944, w.e.f. 01.04.2000. Rule 57AC or Rule 57AE also never provided for such a requirement. Rather, even pre-amendment, Rule 57G(6) always allowed the assessees to avail credit on the basis of original copy of the invoice if there is no dispute about the receipt of goods in the factory. Inasmuch as there is no dispute on the duty paid character and receipt of goods in the factory, we hold that the credit cannot be denied on this count. The Appellant relied on the following decisions, in support of their contention that credit cannot be denied on procedural grounds:

- **Adhunik Corporation Ltd. v. CCE, Bolpur, 2010 (262) ELT 551 (Tri-Kol.)**
- **The Karur Vysya Bank Ltd. v. CCE & ST, Trichy, 2019-TIOL-1845-CESTAT-MAD**
- **Shivam Electrical Industries v. UOI, 2018 (359) E.L.T. 46 (J & K)**
- **Cords Cable Industries Ltd. v. CCE, Jaipur-I, 2015 (320) E.L.T. 155 (Tri.)**
- **Pepsico India Holding P. Ltd. v. CCE, Mumbai-II, 2017 (349) E.L.T. 665 (Tri. - Mumbai)**

We observe that the above cited decisions supports the case of the Appellant. Cenvat credit cannot be denied on the ground that they have not produced Transporters copy of the invoice for availment of the credit. We observe that during the material period there was no requirement of submitting the Transportr's copy to avail the credit. Since that requirement has been done away with in the Rule, the credit can be availed on the basis of any other valid document such as original copy or Triplicate copy also. Accordingly, we hold that the denial of credit on this count in the impugned order is not sustainable**.**

(iii) Cenvat credit amounting to Rs. 89,641/- was denied on the ground that the said credit was availed on the basis of Certificate A issued by the jurisdictional superintendent certifying the payment for Rs. 89,641/- as differential duty on certain invoices produced. The Appellant contended that the credit of this amount is allowable as per Tribunal's finding in the remand order . The impugned order has given a finding that extra duty paid subsequently is not admissible. We observe that the credit on this count has been held to be admissible as per Para 9 of the remand order of Tribunal, Kolkata. The Appelant stated that the judgment of the Hon'ble Supreme Court in the case of **CCE, Madras v. Home Ashok Leyland Ltd., 2007 (210) E.L.T. 178 (S.C**.) is squarely applicable to them. We observe that Certificate A issued by the Superintendent certifying the additional duty payment is a valid document to allow the credit. The decision cited by the Appellant squarely applicable in this case. By following the decision cited above, and the Tribunal's direction in the earlier order, we hold that the credit cannot be denied on this count.

(iv) Miscellaneous Discrepancies – We find that there is no specific finding on this count in the impugned order for denying this credit. Accordingly, we allow the credit of Rs 1775/-.

6. In view of the above discussion, we hold that the denial of Cenvat credit amounting to Rs.41,47,609/-in total in the impugned order is not sustainable. Accordingly, we set aside the impugned order and allow the credit. Since, the credit has been taken correctly, no penalty imposable on the Appellant.

7. In view of the above discussion, the appeal filed by the Appellant is allowed.

(Order pronounced in the open court on 03.08.2023.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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