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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.953 of 2011

(Arising out of Order-in-Original No.42/Denovo/Commissioner/2011 dated 30.08.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

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

...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

.....Respondent

(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

APPEARANCE

Shri Deepro Sen & Shri Shovit Betal, both Advocates for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75016/2024

DATE OF HEARING : 6 December 2023
DATE OF DECISION : 09.01.2024

Per : K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Original: 42/Denovo/Commissioner/2011 dated 06.09.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur. This order has been passed pursuant to remand directions issued by CESTAT, Kolkata vide Final Order No. A-465-466/KOL/2010 dated 27.07.2010. In the impugned order, Modvat credit totally amounting to Rs. 51,51,042/- pertaining to the period March 1997 and October 1997 was denied to the appellant and penalty of Rs.20,000/- was imposed.

2. In the impugned order MODVAT credit amounting to Rs.50,98,653/- availed by the Appellant on capital goods was denied on the ground that they do not conform by their description either as specified machines or parts and accessories of such machines. It has been alleged that the Appellant has not produced details of capital goods of which these goods are claimed as parts and accessories. The argument of the appellant that if the goods are not covered under the definition of 'capital goods' they are eligible for credit under "input" category as per Rule 57A of the Central Excise Rules, 1944 was also rejected by the adjudicating authority as devoid of merits since these two categories are not interchangeable.

3. In their grounds of appeal, the appellant submits that most of the items are covered by classification under Rule 57Q of the Central Excise Rules, 1994 as capital goods, therefore, the finding in the impugned order is incorrect to such extent. As for the rest of the goods, the appellant has submitted the details of the machines for which they were used as parts and accessories. The appellant further submits that the finding at para 4.11 of the O-I-O that no declaration as required by Rule 57T of the CER, 1944 has been filed is completely contrary to the facts/evidence on record. They had duly filed the declarations under Rule 57T of the CER, 1944 indicating the details of each and every item which are disputed herein, as is evident from the replies to the SCNs. The declaration under Rule 57T requires description of capital goods to be given, accordingly the Appellant by filing such declarations gave details of all the capital goods disputed herein to the department. In light of the same, the finding in the O-I-O at para 4.11 that the Appellant did not gave the name of machines/could not co-relate the disputed goods with any specified machines is completely contrary since all such details have already been given by the Appellant by filing the declarations. The appellant submits that there is no bar in getting the claim for MODVAT credit regularised under Rule 57A of the CER, 1944 as 'inputs' if the appellant fails to establish its claim under Rule 57Q. In this regard, they placed their reliance on the following rulings:

a. ***Commissioner of Cus& C. Ex., Meerut – I vs. Modi Rubber Ltd, 2000 (119) ELT 197(T-LB),***
b. ***Commissioner of Cus. & C. Ex., Raipur vs. Bhilai Steel Plant, 2010 (261) ELT 612 (Tri-Del),***
c. ***Kishan Sahkari Chini Mills Ltd vs. Commissioner of C. Ex., Meerut – II, 2010 (261) ELT 308 (Tri-Del), and***
d. ***Raymond Ltd vs. Commissioner of Central Excise, Bhopal, 2014 (300) ELT 317 (Tri-Del)***

4. The appellant further submits that one of the grounds on which the benefit of MODVAT credit as "inputs" have been denied is that the Appellant failed to show that the disputed goods have been used in manufacture of final goods. It is their submission that there is no allegation in the SCNs that these goods on which MODVAT credit has been availed:

a. were not received in the factory premises of the Appellant,
b. were not used in relation to manufacture of final product, and
c. were not duty paid.

Therefore, the finding recorded in the OIO is beyond the scope of SCN. It is settled position of law that an order confirming demand cannot go beyond SCN. Reliance is placed on the following decisions:

a) ***Commissioner of Customs, Mumbai vs. Toyo Engineering India Limited, 2006 (201) ELT 513 (SC),***
b) ***Commissioner of Central Excise vs. Gas Authority of India Ltd, 2008 (232) ELT 7 (SC)***

In light of the above, the appellant submits that MODVAT credit cannot be denied as the disputed goods qualify to be inputs under Rule 57A of the Central Excise Rules, 1944.

5. MODVAT credit amounting to Rs.52,389/- was denied on the ground that the credit was taken on the basis of invoices which do not contain description of goods/part no. of goods. In this regard, the appellant submits that when receipt of these goods in the factory of the Appellant, and its use in the manufacturing process is not disputed, denial of MODVAT credit merely due to deficiency in invoice is not

sustainable. Apart from non-mentioning of description or part nos. of goods there is no allegation that other mandatory particulars have been incorrectly mentioned or not mentioned at all. It is settled position of law that substantive right should not be denied merely due to procedural infirmities. In this regard, the appellant relied on the decision in the case of Bank of Baroda Ltd vs. Commissioner of Service Tax – I, 2021 (9) TMI 536 – CESTAT Mumbai. Also, this tribunal in Appellant's own case ***[Tata Motors Ltd vs. Commissioner of C. Ex., Jamshedpur, 2010 (252) ELT 265 (Tri-Kolkata)and Tata Motors Ltd vs. Commissioner of C. Ex., Jamshedpur, 2010 (251) ELT 253 (Tri-Kolkata)]*** dealt with a similar nature of dispute and allowed credit even if there was some deficiency in the invoice. Accordingly, the appellant contended that the MODVAT credit availed by them cannot be denied.

6. The Ld. D.R. reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal records.

8. We observe that MODVAT credit amounting to Rs.50,98,653/- availed by the Appellant on capital goods was denied on the ground that they do not conform by their description either as specified machines or parts and accessories of such machines. We find that the Appellant has produced details of capital goods of which these goods are claimed as parts and accessories. Accordingly, most of the items specified therein are eligible for credit as 'capital goods' as defined under Rule 57Q of the Central Excise Rules. 1944. Regarding the remaining goods , the appellant contended that even if the goods are not covered under the definition of 'capital goods' they are eligible for credit under "input" category as per Rule 57A of the Central Excise Rules, 1944. However, we observe that the adjudicating authority has rejected their contention on the ground that these two categories are not interchangeable. We find that there is no doubt that these goods on which MODVAT credit has been availed were received in the factory premises of the Appellant. Also, there is no dispute that these goods were duty paid and used in relation to manufacture of final product. As

these goods were received in the factory premises and they have been used in manufacture of dutiable final products, we hold that they qualify as 'inputs' used in the manufacture of dutiable goods and hence qualify as 'inputs' as defined under Rule 57A of the Central Excise Rules, 1944. Accordingly, we hold that the appellant is eligible for the credit of Rs.50,98,653/- either as 'capital goods' as defined under Rule 57Q or as 'inputs' as defined under Rule 57A of the Cenvat Credit Rules. 1944.

9. Regarding the denial of MODVAT credit amounting to Rs.52,389/-, we observe that the credit has been denied on the ground that the invoices based on which the credit has been availed do not contain description of goods/part no. of goods. We observe that there is no dispute regarding the receipt of these goods in the factory of the Appellant, and its use in the manufacturing process. Apart from non-mentioning of description or part nos. of goods there is no allegation that other mandatory particulars have been incorrectly mentioned or not mentioned at all. It is a settled position of law that substantive right should not be denied merely due to procedural infirmities. Accordingly, we hold that denial of MODVAT credit merely due to deficiency in invoice is not sustainable. We also observe that this tribunal in Appellant's own case ***[Tata Motors Ltd vs. Commissioner of C. Ex., Jamshedpur, 2010 (252) ELT 265 (Tri-Kolkata)and Tata Motors Ltd vs. Commissioner of C. Ex., Jamshedpur, 2010 (251) ELT 253 (Tri-Kolkata)]*** dealt with a similar nature of dispute and allowed credit even if there was some deficiency in the invoice. By following the decision cited above, we hold that the MODVAT credit availed by the Appellant cannot be denied. Since, the credit availed is held to be eligible, no penalty imposable. Accordingly, we set aside the penalty imposed on the appellant.

10. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the appellant.

(Order pronounced in the open court on 09.01.2024.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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