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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76933 of 2016

(Arising out of Order-in-Appeal No.35/KOL-V/2016 dated 19.08.2016 passed by Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s. Premium Transmission Ltd.
(Formerly M/s. Greaves Ltd.)
(Plot No.B-09 & B-10, PTU-II, Falta Industrial Growth Centre, Sector-III, Falta, Dist.24 Parganas (South), West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-VII

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri S.Dey, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75115/2025

DATE OF HEARING : 20.01.2025
DATE OF DECISION : 20.01.2025

Per : R. MURALIDHAR :

The Appellant is manufacturer of industrial gear boxes. They were receiving some of the inputs from their Pune Unit. These inputs were being used towards manufacture of the finished goods on which Excise duty was being paid at the time of clearance. The Appellants have taken the Cenvat Credit for the inputs received from their Pune Unit.

2. On 20.03.2003 a Show Cause Notice was issued seeking to deny the Cenvat Credit of Rs.41,73,406/- taken by them during the period April 2000 to May 2002 by invoking the extended period provisions. After due process, the Adjudicating authority dropped the demand after ascertaining the fact that the Excise duty was properly paid by the Pune unit by way of Central Excise invoices and the inputs were received and properly accounted for by the Appellant. However, the department filed an appeal before the Commissioner(Appeals) who has held that the duty paying documents were not available with the Appellant and in the absence of the same the Cenvat Credit cannot be taken. Being aggrieved, the Appellant is before the Tribunal.

3. The Ld.Counsel appearing on behalf of the Appellant submits that in the Annexure to the Show Cause Notice itself the full details of Invoices, Excise duty involved, entries made in their Part-I and Part-II etc. are being shown, which clarifies that the inputs have been received along with proper documents and all such inputs have been properly accounted for in their books of accounts. He takes us through page 22-26 of the Appeal Book. One such page is scanned hereunder :-

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	(2)	(3)	(4)	(5)
/2001	M/s Graphites Ltd	10553 dt-24-3-01	594	Rs. 2416
		10624 dt-26-3-01	598	Rs. 3887
		10309 dt-17-3-01	572	Rs. 9128
		10308 dt-17-3-01	574	Rs. 2265
		10237 dt-14-3-01	562	Rs. 66
		10155 dt-10-3-01	536	Rs. 2119
		10154 dt-10-3-01	537	Rs. 6257
		10153 dt-10-3-01	538	Rs. 5956
		10152 dt-10-3-01	539	Rs. 1600
		10151 dt-10-3-01	540	Rs. 945
		10150 dt-10-3-01	541	Rs. 16291
		10149 dt-10-3-01	542	Rs. 9750
		10148 dt-10-3-01	543	Rs. 2150
		10060 dt-6-3-01	544	Rs. 726
		10052 dt-3-3-01	494	Rs. 2558
		10051 dt-3-3-01	496	Rs. 2551
		10050 dt-3-3-01	497	Rs. 485
		10049 dt-3-3-01	498	Rs. 1021
		10048 dt-3-3-01	499	Rs. 604
		10046 dt-3-3-01	500	Rs. 3602
		10045 dt-3-3-01	501	Rs. 11583
		10039 dt-3-3-01	502	Rs. 25749
		10040 dt-3-3-01	503	Rs. 18205
		10027 dt-3-3-01	504	Rs. 7308
		10022 dt-3-3-01	505	Rs. 806
		10047 dt-3-3-01	506	Rs. 598
				1,38,636
4/2001	"	278 dt-21-4-01	57	Rs. 5526
		37 dt-7-4-01	30	Rs. 2323
		36 dt-7-4-01	31	Rs. 2623
		35 dt-7-4-01	32	Rs. 8058
		34 dt-7-4-01	33	Rs. 4131
		6907 dt-15-11-2000	1	Rs. 9067
		6908 dt-15-11-2000	2	Rs. 13438
		6909 dt-15-11-2000	3	Rs. 7376
				54,562
5/2001	"	950 dt-19-5-2001	126	Rs. 1228
		951 dt-19-5-01	127	Rs. 11,315
		779 dt-11-5-01	100	Rs. 10154
		782 dt-11-5-01	101	Rs. 3602
		781 dt-11-5-01	102	Rs. 3174
		780 dt-11-5-01	103	Rs. 3062
		31084 dt-31-3-01	104	Rs. 4254
		441 dt-28-4-01	73	Rs. 11753
		442 dt-28-4-01	74	Rs. 4804
		685 dt-2-5-01	83	Rs. 9171
				62577

Inspector
Central Excise
Cal-T Divn. Range

2.9.02

Superintendent
Central Excise
Cal-T Divn. Range-?

4. He also relies on the case of **Exide Industries Ltd. vs. Commisioner of C.Ex., Haldia [2008 (226) E.L.T. 249 (Tri.-**

Kolkata)], wherein it has been held that if the inputs have been have been sent to the sister unit and the same are used for manufacture of finished goods on which duty has been paid, Cenvat Credit cannot be denied. Based on this submission, he prays that the Appeal may be allowed on merits.

5. The Ld.AR for the Department reiterates the findings of the Commissioner (Appeals) and submits that the Appellant has not provided proper evidence towards the duty-paying nature of the inputs being received at their end. Hence, he justifies the confirmed demand.

6.. Heard both sides and perused the appeal papers and other documents placed before us.

7. We find that the Department is not disputing the fact that the goods in question which happened to be the inputs for the appellant have been received by them from their Pune unit. We have also perused some of the sample invoices produced by the Ld.Counsel and find that they are all proper invoices raised by M/s. Greaves Ltd. (Pune Unit) clearly showing the details of goods being dispatched, their rates, the value, the Excise duty involved etc. After receiving the goods, the Appellant is making entry by affixing a staff towards packing their goods in their account in RG-23 Part-I and Part-II. A sample invoice is scanned below for ready reference :

2657

GREAVES LIMITED
POWER TRANSMISSION UNIT-I
P.B. NO. 5, CHINCHWAD,
PUNE - 411019

DELIVERY CHALLAN/INVOICE
2 DUPLICATE FOR TRANSPORTER (MODVAT)
UNDER RULE 52 A & 173 G

TELEPHONE : 775141/42/43/44
FAX : (020)770601
TELEGRAM : GREAVES
AUTHENTICATED BY
PRE-AUTHENTICATION EXEMPTED VIDE PUNE COMMISSIONERATE'S NO. 55/98/ 24.06.98

Region	Number	Date
10	002657	26-JUN-2000

Name and Address of Consignee
GREAVES LTD
PTU-II, FALTA SECTION III,
FALTA INDS. GROWTH CENTRE
PARAGANAS, WEST BENGAL. SEMI FINISHED GOODS
ECC NO. : 1609080122

Your Order Ref: STOCK
Our Order No.: 802645 [20]
Our Order Date: 12-MAY-1999
L/R or R/R No.
L/R or R/R Date

SRL	(Name of the Excisable Commodity. Industrial & Marine Gear Boxes & Spares) PRODUCT CODE/DESCRIPTION UNIT SERIAL NUMBERS	Qty	Rate	Value
	SEMI-FINISHED GOODS			
1	7009-7200-0000-0000 27" SPCL WORM SHAFT. A 349003	1	242250.00	242250.00
2	7009-9600-0000-0000 GEAR SPL.LOCKNUT FOR 27" A 349004	1	500.00	500.00
3	7009-9700-0000-0000 SPCL.I/P KEY 27" A 349005 A 349006	2	400.00	800.00

FOR TRANSPORTER (FOR AVAILING MODVAT) UNDER RULE NO. 57 G & 57 T

RG 23 Part-I Sl. No. 274 Dt. 28/6/2K
RG 23A Part-II Sl. No. 358 Dt. 28/6/2K

Total Units : 4 No. (1 Case)
Total Excise Duty in words :
Rs. Thirty Eight Thousand Nine Hundred Sixty Eight Only.
GIR No - 112631 Payable

Total	243550.00
Deduction if any	0.00
Assessable Value	243550.00
BED @ 16.00 Percent Sixteen	38968.00
Sub-Total	282518.00
Sales Tax @ 0.00 Percent	0.00
Total Amount	282518.00

GROSS WEIGHT: 0.0 Kg.
NET WEIGHT:
No of Cases: BY ROAD VEH. NO.

Range: Chinchwad IV
Address: Pimpri, Pune 411 018.
Division: Pune II P. J. Chambers,
Address: Pimpri, Pune 411 018.

P.L.A. Serial No: 26001
Date: 26-JUN-2000
RG 23-A (PART II):
RG 23-C (Part II):

ECC No. / REGN. NO. 10020-40189

Date of Preparation: 26-JUN-2000
Time of Preparation: 16:33
Date of Removal: 26-JUN-2000
Time of Removal: 18:00 Eighteen Hrs

P.L.A. / N.E.S. 79 PLA
Heading & Subheading: 8483.90 8483.90

Nature of Removal Stock transfer/Captive use/Independent buyer
Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration ...

Certified that particulars given ...
FOR GREAVES LIMITED

8. Therefore, on factual matrix, we find that there is nothing coming on record that the Appellant has contravened the provisions of

Rule 57AE of the Central Excise Rules, 1944 or Rule 7 of Cenvat Credit Rules, 2002.

9. We also find that similar issue has been decided by this Bench in the case of **Exide Industries Ltd. vs. Commissioner of C.Ex., Haldia**, cited supra. This Bench has held as under:-

> ***"4.3*** *Relevant period involved in the proceeding was April, 2000 to March, 2002 raising aforesaid demand on the allegation that input received by one unit from its sister unit were not entitled to CENVAT credit. There is nothing on record to state whether inputs so received were not used in manufacture. Also record does not demonstrate that input had not undergone suffering appropriate duty before procurement. The order of adjudication also fails to exhibit that "purchase" is an essentiality to claim CENVAT credit under law even if the term "procurement" being substituted in Rule 7(4) of CENVAT Credit Rules, 2002. There is no doubt that Notification No. 13/03, dated 1-3-2003 has substituted the word 'procured' for the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002 w.e.f. 1-3-2003. But Notification No. 27/2000, dated 31-3-2000 which sought to amend CENVAT Credit Rules, 2000 does not prohibit to read the said substitution for the period earlier to that, under challenge. Definition "inputs" under Rule 57A of Central Excise Rules, 1944 read with Rule 57B and conditions laid down by Rule 57AC nowhere warranted 'purchase' is sine qua non. Therefore Notification No. 13/2003, dated 1-3-2003 guides to appreciate legislative intention. Further, decisions cited by learned Counsel also brings its case in all four. When a levy is not expressly designed by law by a statutory provision, respective Rule which grants credit cannot be presumed to be a charging section by any analogy.*
>
> ***4.4*** *Following the Apex court judgment cited by the learned Counsel and decisions of Tribunal, we are of the view that Appellant is not liable for recovery sought to be made by the impugned order.*

5. *In the result the Appeal is allowed and stay petition is disposed.*

6. [Order per : C. Satapathy, Member (T)]. - *I agree with the order proposed above to allow the stay petition and the appeal for the reason that the word 'purchased' has been used only in the procedural Rule 57AE(3) in the context of maintaining record of inventory whereas there is no such stipulation regarding 'purchase' in the substantive Rule granting input duty credit."*

9. We find that the ratio laid down in the above case law squarely applies to the facts of the present appeal. In view of the foregoing, we set aside the impugned order and allow the Appeal filed by the Appellant. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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