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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76584 of 2018

(Arising out of Order-in-Original No. 34/COMMR/BOL/17-18 dated 14.02.2018 passed by the Commissioner of Central Goods & Services Tax Commissionerate, Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum, West Bengal, PIN – 731 204)

M/s. Chittaranjan Locomotive Works : Appellant
P.O.: Chittaranjan,
District: Burdwan, West Bengal, PIN – 713 331

VERSUS

Commissioner of Central Goods and Services Tax : Respondent
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur,
District: Birbhum, West Bengal, PIN – 731 204

APPEARANCE:

Shri N.K. Chowdhury, Advocate, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 77872 / 2025

DATE OF HEARING / DECISION: 03.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Chittaranjan Locomotive Works, P.O.: Chittaranjan, District: Burdwan, West Bengal, PIN – 713 331 (hereinafter referred to as the "appellant") is engaged in the manufacture of goods such as 'Railway Locomotives' falling under Chapter Heading No. 86 and 'Traction Motor' falling under Chapter Heading No. 85 to the Schedule of the Central Excise Tariff Act, 1985. The appellant availed the benefit of exemption as per Sl. No. 333 of Central Excise Tariff Notification No. 12/2012-C.E. dated 17.03.2012 on 'Traction Motor' and hence, central excise duty was not paid by them on removal of Traction Motor for captive consumption.

2. A scrutiny of the ER-1 Returns, along with the ER-6 Returns, filed by the appellant revealed certain discrepancies in the input and output quantity in respect of Traction Motors. On further enquiry, it was found that the appellant had not paid duty on the Traction Motors cleared by them "as such" to various zones of the Indian Railways.

3. On the basis of the allegation that the appellant had not paid appropriate central excise duty on the 'Traction Motors' cleared, a Show Cause Notice dated 16.03.2017 was issued.

4. After due process, the said Notice was adjudicated vide the Order-in-Original No. 34/COMMR/BOL/17-18 dated 14.02.2018 (hereinafter referred to as the "impugned order") wherein the Ld. Commissioner has confirmed the demand of central excise duty amounting to Rs.11,45,54,256/- (inclusive of cesses) and appropriated the amount of Rs.6,88,32,978/- already paid by the appellant towards their central excise duty liability. The ld. adjudicating authority also ordered for payment of interest at the appropriate rate on the above demand confirmed and imposed a penalty of Rs.11,45,54,256/- on the appellant under Section 11AC(1)(c) of the Central Excise Act, 1944.

4.1. Aggrieved by the confirmation of the above demands, the appellant has filed this appeal.

5. The Ld. Counsel appearing on behalf of the appellant submits that M/s. Chittaranjan Locomotive Works, i.e., the appellant herein, is a part of the Indian Railways. Hence, the 'Traction Motors' cleared to various zones of the Indian Railways and consumed by various Railway Zones has to be considered captive

consumption only. It is his submission that the impugned goods are fully exempted by way of Notification No. 12/2012-C.E. dated 17.03.2012 when they are consumed within the factory; as their unit is a part of the Indian Railways and all the good are used by the Indian Railways, it is argued that the Traction Motors should be considered as used within the factory of production and therefore, eligible for the exemption provided under Notification No. 12/2012-C.E. In support of the above contentions, reliance is placed by the appellant on the following case-laws: -

i. *Ashok Kumar Tiwari v. Commissioner of Cus., C.Ex. & S.T., Allahabad [2017 (7) G.S.T.L. 49 (Tri. – All.)]*

ii. *Wheel & Axle Plant v. Commissioner of C.Ex., Bangalore-II [2003 (1610 E.L.T. 843 (Tri. – Bang.)]*

5.1. Further, The Ld. Counsel for the appellant submits that the entire demand is barred by limitation as the period of dispute in this case is from April, 2012 to April, 2016 whereas the Show Cause Notice was issued on 16.03.2017. It is stated that the Appellant is a Government owned company and there was no intention to evade the payment of duty on the part of the appellant in this case; further, the entire demand has been raised and confirmed on the basis of the ER-1 and ER-6 Returns filed by the appellant. Accordingly, the appellant submits that the demand confirmed by invocation of the extended period of limitation is not sustainable in this case.

6. The Ld. Authorized Representative of the Revenue appearing before us reiterated the findings in the impugned order. He pointed out that the same issue has already been decided by this Tribunal in respect of the appellant's own case vide *Final order*

No. FO/75182/2019 dated 10.01.2019, wherein this Tribunal has decided that the benefit of exemption under the said Notification is not available for the Traction Motors cleared to various Zones of Indian railways as the same were not consumed captively and used outside the factory. Accordingly, he submits that the appellant is liable to pay central excise duty on the Traction Motors manufactured and cleared to various zones of the Indian Railways. Thus, he justified the demands confirmed in the impugned order.

7. Heard both sides and perused the records of the case.

8. We find that in the present case, the appellant has manufactured Traction Motors and cleared the same to various zones of the Indian Railways. The contention of the appellant is that the Indian Railways is a single unit and thus, the various zones of the Indian Railways, to which the goods viz. Traction Motors were cleared, should be considered as factories of the appellant. Accordingly, they contend that the benefit of Notification No. 12/2012-C.E. dated 17.03.2012 should be available to all the Traction Motors cleared to various zones of the Indian Railways.

8.1. We find that the benefit of the said Notification is available only when the goods viz. Traction Motors are used within the factory of production. It is an admitted fact that the goods in question were removed outside the factory of the appellant. Thus, we do not agree with the submission of the appellant that the various zones of the Indian Railways to which the goods were cleared are to be considered as "other factories of the appellant". We also find that the appellant has also

not produced any evidence to show as to how the goods cleared were used after clearance from the factory of production. of the appellant-company. Thus, we agree with the view taken by the ld. adjudicating authority that the exemption provided under Notification No. 12/2012-C.E. dated 17.03.2012 is available only when the parts, i.e., Traction Motors, are used within the factory of production or any other factory of the same manufacturer in the manufacture of goods falling under heading nos. 8601 to 8606. Accordingly, we hold that the appellant has not fulfilled the conditions laid down under Notification No. 12/2012-C.E. dated 17.03.2012 in respect of the goods cleared outside the factory of production and hence, the appellant is not eligible for the benefit of exemption provided under the said Notification.

8.2. We find that the same view has been taken by this Tribunal in the appellant's own case vide *Final order No. FO/75182/2019 dated 10.01.2019,* wherein this Tribunal has held as under:-

> *"7. The appellant, who is a manufacturer of Railway Locomotives, enjoyed the benefit of Notification No. 67/86-CE dated 10/02/1986. The Notification granted exemption in respect of parts of electric motors captively consumed within the factory of manufacture. However, the Lower Authority has disallowed the benefit of exemption under the Notification by taking the view that the same cannot be extended to the parts of Electric motors which are cleared out of appellant's factory, for use as spare parts in various Railway Zones. The Show Cause Notice dated 04/02/1991 has covered the period of five years and has invoked the suppression clause of Sec 11A for demanding duty for the longer period. The subsequent Show Cause Notice dated 03/08/1992 has also invoked the extended period of limitation under Section 11A. The appellant being a unit of Ministry of Railways, by no stretch of imagination, can be considered to have suppressed*

facts with a view to evade payment of duty. Hence, the demand is to be reiterated within normal time limit

8. We note that once a Show Cause dated 04/02/1991 has been issued alleging the suppression clause, the Department is pre-cluded from issuing another Show Cause Notice by again invoking the longer time limit in view of the decision of the Hon'ble Supreme Court in the case of Nizam Sugar Factory reported in 2006 (197) ELT 465 (SC).”

9. Now we examine the issue on merits is considered. In respect of the parts of motors cleared outside the appellant's factory for use in various zones of the Railways, we are of the view that the benefit of Notification No. 67/86 will not be available in asmuchas the benefit can be extended only to parts which are used in the factory of production as component parts. In respect of Show Cause Notice dated 04/02/1991, we note that no demand survives within normal time limit. Accordingly, we set aside the entire demand made by Show Cause Notice dated 04/2/1991. In respect of the Show Cause Notice dated 03/08/1992, we set aside the demand beyond the normal time limit.”

8.3. In support of their contentions, the appellant has cited the decision in the case of *Ashok Kumar Tiwari (supra)*. However, we find that the said case-law pertains to Service Tax matters. The appellant has also relied on the decision in *Wheel & Axle Plant (supra)* wherein the demand is pertaining to MODVAT Credit required to be reversed under Rule 57CC of the erstwhile Central Excise Rules, 1944. Thus, we find that the case-laws cited by the appellant are not relevant to the facts and circumstances of the present case. As the decision of this Tribunal in the appellant’s own case vide *Final order No. FO/75182/2019 dated 10.01.2019*, is squarely applicable to this case, we hold that the appellant is liable to pay central excise duty on the Traction Motors manufactured and cleared to various zones of the Indian Railways.

9. Regarding the demand of duty confirmed in the impugned order by invoking the extended period of limitation, we find that the appellant has not suppressed any information from the Department. It is seen that the entire demand has been raised and confirmed on the basis of the information furnished by the appellant in their ER-1 and ER-6 Returns. This is evident from paragraph 5.11 of the impugned order, which reads as follows: -

> *"5.11 Now, I come to the issue of time bar in raising demand in this case for the period from April, 2012 to April, 2016.4 find that the instant issue of clearance or as such removal of Traction Motor by the Noticee M/s Chittaranjan Locomotive Works emerged only after scrutiny of their ER-1 & ER-6 returns for the period 2015 16. …."*

9.1. We observe that it is a fact on record that the issue has been raised only on the basis of the information furnished by the appellant. Therefore, we are of the view that the demand confirmed against the appellant by invoking the extended period of limitation is not sustainable. Consequently, the demand confirmed by invoking the extended period of limitation is set aside. We also find that the same view was taken by this Tribunal in the *Final Order dated 10.01.2019* (supra) wherein the demand for the normal period was confirmed and the demand pertaining to the extended period was set aside. In view of the above discussion and following the ratio of the decision cited supra, we hold that the appellant is liable to pay central excise duty, along with interest, for the normal period of limitation and the demand for the extended period of limitation is set aside.

9.2. As suppression of fact with intention to evade the central excise duty has not been established in this case, we also hold that no penalty can be imposed on the appellant. Accordingly, the penalty imposed on the appellant under Section 11AC of the Act stands set aside.

10. In view of the above, we pass the following order: -

(1) We uphold the demand confirmed in the impugned order for the normal period of limitation, along with interest. The matter is remanded back to the adjudicating authority for the limited purpose of quantification of the demand for the normal period.

(2) The demand confirmed in the impugned order by invoking the extended period of limitation is set aside.

(3) The penalty imposed on the appellant stands set aside.

11. In these terms, the appeal is disposed of.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd