IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/85609/2017

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-325-16-17 dated 9th January 2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Force Motors Limited …***Appellant***

versus

Commissioner of Central Excise
Pune – I …***Respondent***

Appearance:

Shri SA Gundecha, Advocate for appellant

Shri DS Chauhan, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 17/11/2017
Date of decision: 17/11/2017

ORDER NO: ____________________________

M/s Force Motors Ltd is aggrieved by order-in-appeal no. PUN-EXCUS-001-APP-325-16-17 dated 9th January 2017 of Commissioner of Central Excise (Appeals), Pune which upheld the order of the lower authority confirming disallowance of inadmissible CENVAT credit of ₹10,53,569 availed between April 2013 and

December 2013 on imports that were used exclusively in the research & development department of the operations of the appellant. According to the lower authorities, CENVAT credit can be availed only in relation to manufacture of goods and the output of the said department is not manufacture. In addition to the demand of duty, along with interest thereof, penalty of like amount has also been imposed under rule 15(1) of CENVAT Credit Rules, 2004.

2. Learned Counsel for appellant drew attention to the definition of manufacture in section 2 of Central Excise Act, 1944

'2 Definitions.-

xxxx

(f) 'manufacture' includes any process, -

i) incidental or ancillary to the completion of a manufactured product;

ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

and the word 'manufacturer' shall be construed accordingly *and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;'*

to suggest that the test of manufacture is not limited to the production of output. He also made submissions at length to justify the admissibility of the credit by placing reliance on various decisions.

3. Learned Authorized Representative explained the contours of the reasoning adopted by the lower authorities to highlight the correctness of the impugned order.

4. The issue in dispute is not the exigibility of output to duty that have not suffered the burden of duty. It is specifically on the issue of entitlement to CENVAT credit for which the definition of

' (k) 'input' means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam or pumping of water for captive use; or

(iv) all goods used for providing any [output service, or;

(v) all capital goods which have a value upto ten thousand rupees per piece.

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, 'free warranty'

> *means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;'*

is crucial.

5. The inputs in dispute are not covered by the exclusion clause in the definition *supra* and, of the many elements that are specifically enumerated, it is only the first that is of relevance. A *priori,* it would appear that the goods used in the factory by the manufacturer of the final product would be eligible. It is important to note here that inputs are not restricted to such goods used in the factory by the manufacturer for the final product. It would, therefore, appear that there is no bar to availing credit of goods used in the research and development wing of the manufacturing facility. There is no allegation that the appellant does not produce excisable goods; neither is there any allegation that research & development is not intended for the betterment of excisable goods manufactured by the appellant. However, a definition, by itself, would not suffice to enable availment of credit. The entitlement to CENVAT credit flows from rule 3 of CENVAT Credit Rules, 2004 in accord with which such inputs as that used in the production of output is eligible for credit. The issue therefore crystallizes on this pivot: whether the ancillary functions that support the manufacturing facility do contribute to output for the purposes of availment of credit.

6. It is here that the definition of manufacture in Central Excise Act, 1944, referred to by Learned Counsel, may provide some elucidation. It would appear that apart from production of excisable outputs any activity that is incidental or ancillary also constitutes manufacture. That the output of such incidental or ancillary operations may not directly result in goods that are excisable would not take it out of the ambit of manufacture and, *prima facie*, it would appear that the fruits of research and development facility ultimately finds its way, in form and in costs, to the excisable product.

7. The Hon'ble Supreme Court in *Maruti Suzuki Ltd v. Commissioner of Central Excise, Delhi-III [2009 (240) ELT 641 (SC)]* has held that

> *'20. To sum up, we hold that the definition of "input" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose. The important point to be noted is that, in the present case, excess electricity has been cleared by the assessee at the agreed rate from time to time in favour of its joint ventures, vendors etc. for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assessee was not entitled to CENVAT credit. In short, assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption). They are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors*

etc., which is sold at a price.'

thus clarifying that inputs in any activity that contributes to the final product would be in compliance with the definition input in CENVAT Credit Rules, 2004.

8. The Tribunal in *V Ramakrishna Rao v. Commissioner of Central Excise, Hyderabad [2006 (205) ELT 703 (Tri-Bang)]* held thus

'6. We have gone through the records of the case carefully. The Show Cause Notice issued to the appellants is not only based on the balance sheets but also on the raw material ledger for R & D issue register and the indent slips used for R & D. Therefore, the appellant cannot take advantage of the fact that the balance sheet is a public document and hence longer period is not applicable. There is clear evidence that inputs have been diverted for R & D purposes. The scope of the remand order of the Tribunal is very limited, as observed by the Adjudicating Authority. He was asked to examine whether R & D activity is an integral part of the manufacturing process. The contentions of the appellants that even the R & D activity resulted the manufacture of final product which are accounted for are not accepted by the Adjudicating Authority in the absence of evidence. The appellant is working under the system of self removal procedure. They cannot take the plea that the officers were visiting the unit and no irregularity was pointed out. Inasmuch as the Adjudicating Authority has given a finding that R & D is not an integral part of the manufacture and in the absence of evidence that the R & D activity resulted in the manufacture of final product, on which duty has been paid, the appellants are liable to pay the irregular Modvat credit availed. Hence, the confirmation of an amount of Rs. 38,91,220/- (Rupees Thirty Eight Lakhs Ninety One Thousand Two Hundred Twenty only) is upheld. However, the penalty under 57-I is limited to Rs.

> *4,00,000/- (Rupees Four Lakh Only). Interest under 57-I(5) is also confirmed. The penalty on M/s. Plant Organics is reduced to Rs. 50,000/- (Rupees Fifty Thousand Only) under Rule 173Q(1)(bb) of the CE Rules. Having record to facts and circumstances of the case, the penalty on Shri V. Rama Krishna Rao is set aside. The appeals are disposed of in the above terms.'*

implying that denial of credit is a consequence of establishing that the research and development facility was not integral to the manufacturing process. Such an allegation has not motivated the demand in the present instance. It was in a similar vein that the Tribunal handed down its decision to disallow the credit claimed by the assessee in *Bajaj Auto Ltd v. Commissioner of Central Excise, Pune [2004 (176) ELT 162 (Tri-Mumbai)]*; in the impugned order, and in the notice there is no finding that research and development has nought to do with the product that emerges in the factory.

9. Considering the wide latitude offered for availment of credit, and in the absence of any allegation that research and development is not concerned with manufacture of the appellant, the disallowance of CENVAT credit does not find favor and must be set aside.

10. Accordingly, the appeal is allowed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*