IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/87614/2015, 87443,87444 & 87170/2016

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0077-15-16 dt. 21.09.2015 OIA No. PUN-EXCUS-001-APP-096-16-17 dt. 25.07.2016 passed by the Commissioner (Appeals) Central Excise, Pune-I)

Thermax Ltd.	:	**Appellant**
VS		
Commissioner of Central Excise, Pune-II	:	**Respondent**

Appearance

Shri Rajesh Ostwal, Advocate for Appellant

Shri S.V. Nair, Assistant Commissioner (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 22/12/2017
Date of pronouncement: 17/04/2018

ORDER NO. A/86049-86052/2018

The brief facts of the case are that during audit of the records of the appellant it was observed that the appellant have made provision of obsolescence of inputs on which CENVAT credit has been availed under the provisions of Cenvat Credit Rules, 2004. The appellant have not reversed the proportionate CENVAT Credit in relation to inputs written off in the books of account as per Rule 3(5B) of the Cenvat Credit Rules, 2004. Accordingly the show cause notices were issued for recovery of Cenvat amount on operational quantity of the inputs booked as written off in the books of accounts. The adjudicating authority confirmed the demand on the quantity of opening balance of obsolescence and monthly quantity of written off. Being aggrieved by the orders-in-original, the assessee filed appeal before the Commissioner (Appeals). The Ld. Commissioner (Appeals) dropped the demand in respect of opening balance on the ground that it is not known that the opening balance consist of which period when the quantity of input was written off. However on the monthly written off quantity, the demand was confirmed, therefore against the confirmed demand the assessee filed the appeals and against the dropping of demand in respect of opening balance Revenue also filed the appeals. All the appeals are taken up together for disposal.

2. Shri Rajesh Ostwal, Ld. Counsel appearing on behalf of the assessee submits that as regard the assessee's appeal, the Commissioner (Appeals) has only taken up the written off quantity during the period involved in the case. However for the same period the appellant have written back some quantity , therefore to that extent there should not be any demand of Cenvat credit. As regard the Revenue's appeal, he submits that the Ld. Commissioner has rightly dropped the demand in respect of opening balance of obsolescence as that the opening balance consist of written of quantity of the previous period whereas the

show cause notice did not cover that previous period, therefore the demand dropped by the Commissioner is correct.

3. Shri S. V. Nair, Ld. Asstt. Commissioner (A.R.) appearing on behalf of the revenue reiterates the findings of the impugned order in as much as the Ld. Commissioner upheld the demand. As regards the Revenue's appeal he reiterating the grounds of Revenue's appeal submits that the opening balance shown in the obsolescence account is clearly on account of written off quantity of inputs. Therefore there is no reason to drop the demand in respect of opening balance therefore the Revenue's appeal deserves to be allowed.

4. On careful consideration of the submissions made by both the sides and perusal of records I find that the issue relates to the demand of Cenvat Credit in respect of written off quantity of inputs in terms of Rule 3(5B) of Cenvat Credit Rules 2004 which reads as under:

"(5B) If the value of any,

(i) input, or

(ii) (ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

Explanation **–** If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14 is recovery of CENVAT credit wrongly taken.

From the above provision, it is clear that as and when assessee writes off the quantity of inputs on which the Cenvat Credit was taken, he is required to reverse an amount equivalent to cenvat credit taken in respect of the inputs which has been written off in the books of account. Therefore in principle on the quantity of inputs written off in the books of account, cenvat credit is required to be reversed. However in the present case, there is a submission of the Ld. Counsel that they are not only writing off the inputs but as and when the written off quantity is found useable, the same is written back in the books of account. If at all there is any case of payment of cenvat credit it should be on the net quantity to written off after adjusting the written back quantity. In this fact I am of the view that the adjudicating authority must re-quantify the actual credit to be reversed on net written off quantity after adjusting the written back quantity. In terms of the proviso to Sub-Rule (5B) of Rule 3 which provides that after reversal of the credit on written off quantity if the input is subsequently used, the assessee can take the credit of the amount equivalent to the cenvat credit paid earlier. Therefore both the lower authorities are is absolutely wrong for not considering the written back quantity. As a result there is a need of re-quantification of the actual cenvat credit on the net written off quantity of inputs. As regards the Revenue's appeal, Ld. Commissioner (Appeals) dropped the demand on the ground that the show cause notice does not cover the previous period of opening balance. However I am of the view that since the written of quantity was shown as opening balance which is covered in the show cause notice, the assessee is required to reverse the cenvat credit on such opening balance subject to verification of the fact that whether the said quantity pertains to the period after the introduction of Rule 3(5B) of the Cenvat Credit Rules, 2004. Therefore on both the issue matter needs to be reconsidered. Since we are not deciding the issue conclusively, all the issue are kept open. The appeals are disposed of by way of remand to the adjudicating authority.

(Pronounced in court on 17/04/2018)

(Ramesh Nair)
Member (Judicial)

SM.