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

COURT No. I

Appeal No. E/87672/17

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-220/17-18 dated 03.08.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

General Motors India Ltd. **Appellant**
Vs.

Commissioner of C.E & S.T. **Respondent**
Pune I

Appearance:

Ms. Anjali Hirawat, Advocate for appellant
Shri M.R. Melvin, Supdt. (AR) for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 13.03.2018

FINAL ORDER NO. A/86172/2018

Per: M.V. Ravindran

This appeal is directed against order-in-appeal No. PUN-EXCUS-001-APP-220/17-18 dated 03.08.2017.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this case is regarding whether the lower authorities are correct in confirming the demand raised along with interest and penalties imposed or

otherwise on the ground that there was shortage of inputs on which CENVAT Credit was availed. It is on record that the appellant is manufacturer of automobile and imports numerous parts. On physical verification of inventory, it was noticed by them that there was shortage of parts on which CENVAT credit was availed. They have informed the department about the same and also pointed out that the shortages which were noticed were 0.28% of the total CENVAT Credit availed inputs and that there was no removal of the inputs as such from the factory premises. Show-cause notice was issued for demand reversal of CENVAT Credit on such shortages as noticed by appellant.

4. Learned Counsel is correct in pointing out that identical/similar issue in respect of Maruti Udyog Ltd Ltd was considered by Tribunal and it was held in favour of the appellant therein, wherein the law was settled, stating that any demand on shortages would not arise if there was no allegation of clandestine removal of inputs. It is seen that it has been correctly pointed out that the issue has been decided by the Hon'ble Apex Court reported as *2015 (319) ELT 549 (SC)* by upholding the decision of Tribunal (as cited herein above). In the case in hand the ratio will apply in full force as there is no allegation in the show-cause notice that the inputs which was reported as found shortage from the factory premises.

Accordingly, following the said law, as settled by the Apex Court, I set aside the impugned order and allow the appeal.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)

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