CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.505

Excise Appeal No. 717 of 2012

(Arising out of Order-in-Original No. 14/CEX/2011 dated 22.12.2011 passed by the Commissioner of Central Excise, Pune-I)

M/s Tata Motors Ltd. ....Appellant
Gen Maager (RWH-West),
CVBU Spares Division,
Gat No. 338/1, Vill- INgate,
MIDC, Chakan,
Pune-410501

VERSUS

Commissioner CE & ST(LTU) Mumbai ....Respondent
ICE House, 41-A, Sasson Road,
Opposite Wadia College,
Pune-411001

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the Appellant
Shri Ajay Kumar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. CJ MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87637/2019

Date of Hearing: 16.07.2019
Date of Decision: 16.07.2019

PER: Ajay Sharma

This appeal has been filed impugning the order dated 21.12.2011 passed by the Commissioner, Central Excise Pune 1, by which the learned Commissioner disallowed the Cenvat Credit and confirm the demand of Rs. 74,42,828/- for the period April, 2008 to

August, 2010 and Rs. 34,56,627/- from September, 2010 to March, 2011 alongwith interest and penalties.

2. The relevant facts giving rise to the filing of the instant Appeal are as follows. M/s. Tata Motors Ltd. i.e. the Appellant herein are manufacturers of motor vehicle parts falling under Chapter 87 of CETA, 1985. During scrutiny of their records by audit it revealed that M/s. TVS Logistics Services provide services to the appellant including unpacking of input from bulk packages, repacking of final product into unit containers and maintenance of stock of input/finished goods. The appellant and the service provide carryout stock taking of goods at specific intervals. The excess stock is taken on record whereas shortages are written off as a result there was variance in the inventory of Cenvat Input Credit maintained by the Appellant. Net shortages of inputs were to the tune of Rs.7,13,49,351/- and credit involved was to the extent of Rs.74,42,828/- for the period April, 2008 to August, 2010 and for the period September, 2010 to March, 2011 the net shortage of inputs were to the tune of Rs. 3,35,59,485/- and Cenvat credit involved was to the extent of Rs.34,56,627/-. Accordingly two show cause notices dated 25.11.2010 and 30.8.2011 respectively were issued for the period April, 2008 to August, 2010 and September, 2010 to March, 2011 respectively under Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11A of the Central Excise Act, 1944 demanding duty on such shortages alongwith interest and also proposing penalty therein. The said show causes notices were adjudicated by the Adjudicating

Authority vide impugned order dated 21.12.2011 by which the demands were confirmed alongwith interest and penalty.

3. We have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the records of the case including the synopsis and the case laws cited by the respective sides. Learned counsel submits that considering the magnitude of their operations the shortages are meagre/ negligible and therefore Cenvat credit on the same should not be denied. According to him in view of large magnitude of their operations, it is not practicable to have conventional method of book keeping i.e. to receive, store and issue inputs and strike balance of these transactions on daily basis in a register. In order to handle such volume of transactions, they have put in place sophisticated computer based accounting system to ensure accuracy and efficient. The entries regarding receipt of inputs are made at receipt point where the consignments are inwarded and after sample checking of quality and invoiced quantity, Goods Inward Note (GIN) is prepared, thereafter the acceptable inputs are stored in the allotted Bins. As per the learned counsel errors can creep in for many reasons like picking up wrong LH/RH parts, despatch of alternate parts, incorrect posting to alternate parts etc. Also there may be errors in noting down various types of parts during physical stock verification, parts not available at the time of stock taking at its specified storage rack but subsequently found in another storage rack. He also submits that the shortages/ excess are only theoretical since they follow total documentation discipline with respect to receipt of inputs and

consumption of inputs and the value of inputs found short/excess if compared with the total value of procurement of inputs is negligible i.e. 0.59% approximately and such a meagre shortages are commercially acceptable. The inputs were undisputedly received in their factory and upon receipt they were properly accounted for. Learned counsel denied the allegation that the inputs were not used in or in relation to the manufacture of final products. He further submits that the extended period is not invokable in the facts of the present case and Rule 3(5B) ibid has no application in the present case. Nor Rule 11 is applicable as the said rule will come into play only when the Cenvat Credit has been taken or utilised wrongly whereas in the present matter the Cenvat credit was rightly taken on eligible inputs upon their receipt. Learned Authorised Representative on the other hand reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal. According to learned Authorised Representative the appellants are liable to pay an amount equivalent to Cenvat Credit taken on inputs allegedly written off in terms of Rule 3(5B) ibid alongwith interest and penalty, as it categorically states that an amount equivalent to the Cenvat credit taken on input written off is payable by the assessee. He denied the contention of learned counsel that those parts which were not available during physical stock verification at its specified storage rack were subsequently found in another storage rack.

4. Rule 3(5B) ibid specifically provides that If the value of any input or capital goods *before being put to use*, on which CENVAT credit has been taken is written of fully or where any provision to

write off fully has been made in the books of accounts, 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. A plain reading of the said rule makes it clear that it is applicable only in cases where goods are available in the factory and only a book entry has been made to write off the value of the said goods, which is not the allegation of the department against the Appellant.

5. The magnitude of the inputs used and discrepancy which arose because of various factors, on that basis it is stated on behalf of the appellants that when the shortage of inputs is only 0.59%, that would be immaterial and correction of the total input is in use. It is settled principle that Tax Authorities should go by the normal commercial practice. We are also aware about the submission of learned counsel that this was due to accounting errors and there was no "shortage" in fact as in respect of many inputs even stocks in excess was found and also some of the parts which were not available at the time of stock taking at its specified storage rack, subsequently found in another storage rack. It is not the case that the inputs which were found short were not received or were clandestinely removed. We also cannot lose sight of the fact that there were excesses also in inputs which were brought to the notice of the department but these excesses were ignored by the department. This fact itself establishes the bonafide of the appellants in claiming CENVAT credit on the basis of figures disclosed by them in respect of inputs which were used by them. Although there is a

finding that the appellants have suppressed the facts with intent to wrongfully avail and utilize the inadmissible Cenvat credit, but the same has not been substantiated by producing any evidence. Merely making allegations of suppression or intention is not sufficient unless the same is established beyond reasonable doubt. The inputs were undisputedly received in the factory of the appellants and upon receipt they were properly accounted for. In our considered view rule 3(5B) ibid cannot be applied on the facts of this case as the entire case of the department is that the goods are not available in the factor whereas for the application of the said rule the goods have to be available in the factory and only a book entry is to be made to write off the value of the said goods. We are also not oblivious of the fact that on a similar set of facts in appellants own case this Tribunal *in the matter of M/s. Tata Motors Ltd. Vs. CCE, Pune-1;* reported in *2016-TIOL-1027-CESTAT-MUM* while relying upon the law laid down by the Hon'ble Supreme Court in the matter of *Maruti Suzuki India Ltd.; 2015(319) ELT 549 (SC)* decided the issue in favour of the Appellants. Similarly in another matter of Appellants i.e. *Appeal No. E/172/2009 in the matter of M/s. Tata Motors Ltd. Vs. CCE&ST, Jamshedpur*, a coordinate Bench of the Tribunal vide Order dated 11.1.2019 decided the issue in favour of the appellants therein and held that the demand is not sustainable and there is no evidence on record that the inputs on which the Credit was taken, were not received in the factory or removed as such from the factory.

6. While following the decisions as cited above and in view of the facts of this case and also in view of the discussions made

hereinabove, we are inclined to set aside the impugned order and accordingly the appeal filed by the appellants is allowed with consequential relief as per law, if any.

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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