

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1143 of 2012

(Arising out of Order-in-Appeal No. P-I/RKS/129/2012 dated 19.05.2012 passed by the Commissioner of Central Excise (Appeals), Pune-I)

M/s Tata Motors Ltd.

.... Appellant

PCBU State Parts Division
Next to hinjewadi IT Park , Ph.II, S. No. 288,
Man, Pune - 411057

Versus

Commissioner of Central Excise, Pune-I Respondent

ICE HOUSE, Sassoon Road, Pune - 411001

Appearance:

Ms. Payal Nahar, Advocate for the Appellant

Shri N.N. Prabhudesai, Supdt., Authorized Representative for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87102 / 2021

Date of Hearing: 01.11.2021

Date of Decision: 09.11.2021

Per: Ramesh Nair

The brief facts of the case are that the appellants are availing CENVAT Credit of the Central Excise duty paid on inputs, capital goods and Service Tax paid on input services under the provisions of CENVAT Credit Rules, 2004. During the scrutiny of the Cenvat documents, it was observed that there is variance in the inventory of the Cenvat inputs maintained by

the appellants. The value of net shortages in the input inventory for the period April, 2010 to October, 2010, worked out to Rs.1,18,95,547/- and the Cenvat credit in respect of such shortages worked out to Rs.12,25,242/-. A show-cause notice dated 27.04.2011 was issued and the same was adjudicated by the Additional Commissioner of Central Excise, Pune-I vide Order-in-Original dated 20/27-01-2012, vide which he has confirmed the recovery of inadmissible credit of Rs.12,25,242/-, recovery of interest and also imposed penalty. Being aggrieved by the said Order-in-Original, the appellants filed an appeal before the Commissioner (Appeals), who has upheld the Order-in-Original dated 20/27-01-2012. Therefore, the present appeal filed by the appellants.

3. Ms. Payal Nahar, learned Counsel appearing on behalf of the appellant at the outset submits that in view of large magnitude of business they have adopted sophisticated computer based accounting system to ensure accuracy and efficiency. All the receipts of inputs are made at receipt point where the consignments are inwarded and after checking of quality and invoiced quantity, Goods Inward Note is prepared then the acceptable inputs are stored in the allotted Bins. In nutshell, all transactions are properly documented. In these circumstances, only reasons for variation of stock is picking up wrong LH/RH parts, dispatch of alternate parts, incorrect posting to alternate parts etc. Also errors may be in noting down the 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. Once such discrepancies are noticed by the appellants during physical stock verification, after sufficient analysis of the reasons they indicate it as shortages/excesses and book it as consumption. She submits that shortages are only theoretical since as explained above, the appellants follow total documentation discipline with respect to receipt of inputs and consumption thereof. She further submits that if value of inputs found shortages or excesses as compared the total value of input is negligible i.e. 0.58%. Also the CENVAT Credit involved in inputs found short/excess if compared with total CENVAT Credit availed, is NIL (since excesses are more than shortages). This is evidence from the position explained in the chart in their appeal memo. She submits that the issue is no longer in dispute as the same issue in the appellant's own case, the Tribunal has decided the matter in the following judgments: -

- (i) *Tata Motors Ltd. Vs. Commissioner of Central Excise & Service Tax (LTU), Mumbai – 2019 (7) TMI 1797-CESTAT-Mumbai*
- (ii) *Tata Motors Ltd. Vs. Commissioner of Central Excise – 2017 (345) ELT 653 (T)*
- (iii) *Tata Motors Ltd. Vs. Commissioner of Central Excise – 2017-TIOL-1027-CESTAT-MUM*

4. On the other hand, Shri N.N. Prabhudesai, learned Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of impugned order. He also takes support of the following judgment: -

- (i) *Commissioner of Central Excise, Indore Vs. Kashyap Sweetners Ltd. – 2006 (193) ELT 108 (Tri-Del)*

- (ii) *Commissioner of Central Excise, Aurangabad Vs. Greaves Cotton Ltd. – 2008 (225) ELT 198 (Bom)*
- (iii) *Spentex Industries Ltd. Vs. Commissioner of Central Excise, Indore – 2010 (253) ELT 225 (Tri-Del)*
- (iv) *Philips Carbon Black Ltd. Vs. Commissioner of Central Excise, Bolpur – 2013 (29) STR 217 (Tri-Kol)*
- (v) *Micro Tipes Pvt. Ltd. Vs. Commissioner of Customs, Bombay- 1998 (104) ELT 76 (Tri).*

5. We have carefully considered the submissions made by both sides and perused the records.

6. We find that in the facts and circumstances of the present case the shortages and excesses if any found are theoretical due to huge quantity of inputs handling. It is not a case of the Department that the appellant have ever removed any Cenvat inputs without payment of duty from their factory. Therefore, even though there is any shortage or excess, the input was available within the factory premises or consumed in the production. This issue has been considered by this Tribunal in the appellant's own case as follows: -

- (i) *Tata Motors Ltd. Vs. Commissioner of Central Excise & Service Tax (LTU), Mumbai – 2019 (7) TMI 1797-CESTAT-Mumbai*

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 invocable 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 off 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.

(ii) *Tata Motors Ltd. Vs. Commissioner of Central Excise – 2017 (345) ELT 653 (T)*

5. I find that there is discrepancy in the inventory of input on which Cenvat credit being taken by the appellant but discrepancy is only to the extent of 0.08%. It cannot be ruled out that in a big industry, there is always possibility of minor variations in the stock, which occurred due to human error. Moreover, in the present case neither there is any charge nor any evidence to show that differences in input inventory is

either due to short receipt or cleared from factory clandestinely. In such a situation, even if there is shortage of input, the same must be lying in the factory. On the identical issue in the appellant's own case cited by the Id. Counsel, this Tribunal has decided the issue relying on the decision of *Maruti Udyog Ltd.* [2004 (173) E.L.T. 382 (Tri.-Del.)] which was upheld by the Hon'ble Apex Court reported in 2015 (319) E.L.T. 549 (S.C.) held as under :

4.1 I find that the case of the appellant is squarely covered by the decision of the Hon'ble Supreme Court in case of *Maruti Udyog* (supra). The only difference is that in case of *Maruti Suzuki*, value of excess found was greater than the value of shortages, whereas in the instant case the value of shortages is higher than the value of excess. Insofar as the value of shortages ranging from 0.01% to 0.21% whereas the excess ranging from 0.01% to 0.08% of the total procurement of parts. I find that the Tribunal in its decision in case of *Maruti Udyog Ltd.* (supra) has not relied on quantum of shortages are excess, but has relied solely on minuscule percentage of shortages found. The Hon'ble Supreme Court also has relied on the percentage of shortages found. However, as an additional argument, the Hon'ble Supreme Court has observed that the fact that shortages of input was less than the excess of input found demonstrate the *bona fide*.

5. In view of the above, I find that the issue is squarely covered by the decision of the Hon'ble Supreme Court in case of *Maruti Suzuki India Ltd.* (supra). The impugned order is set aside and appeal is accordingly allowed.

Following the ratio of the aforesaid judgments of this Tribunal which is based on the Hon'ble Supreme Court's judgment in case of *Maruti Suzuki India Ltd.* (supra), I am of the view that Cenvat credit cannot be disallowed in the facts and circumstances of the present case. The impugned order is set aside, appeal is allowed.

(iii) *Tata Motors Ltd. Vs. Commissioner of Central Excise – 2017-TIOL-1027-CESTAT-MUM*

4. I have gone through rival submissions. I find that the Order-in-Original clearly records that the appellants have elaborate method of accounting. There is no allegation of any mischief in the shape of clandestine clearance of receipt of raw materials. The Tribunal in case of *Maruti Udyog* has observed as follows: -

“7. The appellants have a huge and complex accounting problem. It is beyond manual tally. The appellants have put in place sophisticated computer based accounting systems to ensure accuracy and efficiency. The evidence on record does not indicate any diversion of inputs in contravention of rules relating to utilisation of inputs. The demand is merely based on the shortages detected during physical tallying, that too without taking into account the excesses noticed. Since there

is no evidence, that the excesses are not the result of clandestine receipt of inputs, the same view is required to be taken in regard to shortages also, that the shortages are not the result of any clandestine or unauthorised utilisation of the inputs. The shortages thrown up also do not account for much. The appellants' Management as well as its auditor have accepted the differences between the physical stocks and the procurement as normal and something to be put up with. It is a very small (0.24%) fraction of the inputs received. It is well settled that Tax Authorities also should go by the normal commercial and professional practice. If the shortages are within the tolerance limits fixed by an efficient Management and certified to as within the norms by qualified accounting professionals, it would be unreasonable and unfair for Tax authorities to take a different view. In these circumstances, we are of the view that there is no evidence to sustain a finding that this is a case of irregular or incorrect taking or utilisation of credit. In such a situation, no demand can be raised under Rule 57-I. The demand is accordingly, set aside and appeal is allowed with consequential relief to the appellant. Amounts already deposited by the appellant, on account of this dispute, shall be returned to it."

Hon'ble Supreme Court while confirmed the decision of the Tribunal has observed as follows: -

"We find from the reading of the impugned order of the Tribunal that the Tribunal has discussed in detail the accounting system of the respondent. The magnitude of the inputs used and the discrepancy which arose because of the various factors, on that basis it is stated that when the shortage of inputs as corrected is only 0.24%, that would be immaterial and correction of the total input is in use. In addition we find that the respondent had pointed out that this was due to accounting errors and there was no "shortage" in fact because of the reason that in respect of many inputs even stocks in excess was found. It was demonstrated before the authorities that though the shortage of the inputs was to the tune of Rs. 25.67 crores, at the same time many other inputs were in excess and those figures were to the tune of Rs. 27.59 crores during the same period. This fact alone demonstrates the *bona fides* of the respondent in claiming the Modvat credit on the basis of figures disclosed by them in respect of the inputs which were used while manufacturing the motor vehicles. A finding of fact is recorded that there was no clandestine of removal of any inputs. It is therefore, not a case for any interference."

4.1 I find that the case of the appellant is squarely covered by the decision of the Hon'ble Supreme Court in case of *Maruti Udyog (supra)*. The only difference is that in case of Maruti Suzuki, value of excess found was greater than the value of shortages, whereas in the instant case the value of shortages is higher than the value of excess. In so far as the value of shortages ranging from 0.01% to 0.21% whereas the excess ranging from 0.01% to 0.08% of the total procurement of parts. I find that the Tribunal in its decision in case of *Maruti Udyog Ltd. (supra)* has not relied on quantum of shortages are excess, but has relied solely on minuscule percentage of shortages found. The Hon'ble Supreme Court also has relied on the percentage of shortages found. However, as an additional

argument, the Hon'ble Supreme Court has observed that the fact that shortages of input was less than the excess of input found demonstrate the *bona fide*.

5. In view of the above, I find that the issue is squarely covered by the decision of the Hon'ble Supreme Court in case of *Maruti Suzuki India Ltd. (supra)*. The impugned order is set aside and appeal is accordingly allowed.

7. From facts of the three cases cited above, it can be seen that the same facts and circumstances existing in the present case, even though there is some theoretical variation in the inputs was found and on that ground the CENVAT Credit cannot be denied.

8. Following the aforesaid judgment of the Tribunal, we are of the view that the CENVAT Credit cannot be denied to the appellant on a theoretical variance in the inputs. Accordingly, the impugned order is set aside and the appeal is allowed.

(Pronounced in court on 09.11.2021)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha