

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

Excise Appeal No. 877 of 2012

(Arising out of Order-in-Original No. 60-65/COMMR/M-III/PKA/2011-12 dated 20.02.2012/15.03.2012 passed by the Commissioner of Central Excise, Mumbai-III)

M/s. Crompton Greaves Ltd.

Appellant

1st floor, CG House, Dr. A.B. Road,
Worli, Mumbai 400 030.

Vs.

Commissioner of Central Excise, Mumbai-III Respondent

3rd & 4th floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Appearance:

Shri Aditya Chitale, Advocate, for the Appellant

Shri Sydney D'Silva, Additional Commissioner, Authorised
Representative for the Respondent

CORAM:

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

Date of Hearing: 27.06.2022

Date of Decision: 12.07.2022

FINAL ORDER NO. A/85620/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against order in original No 60-65/COMMR/M-III/PKA/2011-12 dated 20.02.2012/15.03.2012.

By the impugned order following has been held:

"ORDER

A. I determine and demand Rs. 2,96,06,162.00 (Rupees Two crores ninety six lakhs six thousand one hundred sixty two only) being the CENVAT credit u/r 14 of CCR, 2004 r/w section 11A of the CEA, 1944 in respect of all the six demand notices. Since the assessee has already reversed/paid the amount of Rs 2,96,06,162/-, being the Cenvat Credit initially taken under rule 16(1), when the goods were cleared after repairs under rule 16(2) of the CER, 2002, the same stands appropriated

automatically and no further demand/recovery is required to be made.

B. I order for recovery of interest of Rs.7,38,856/- (Rupees Seven lakhs thirty eight thousand eight hundred fifty six only) under rule 14 of the CCR, 2004 read with the then section 11AB of the CEA, 1944.

C. Since there is no misfeasance on the part of the assessee, the proposal for imposition of penalty under rule 15(1) of CCR, 2004/r/w rule 25 of CER, 2002 is not sustainable and, therefore, I do not impose any penalty.”

2.1 Appellant is engaged in the manufacture of excisable goods falling under chapter sub heading no. 8504.00 of the First Schedule of the Central Excise Tariff Act, 1985 viz. Transformers. The assessee is also availing facility of CENVAT credit.

2.2 The appellant had received in their factory excisable goods i.e. transformers along with accessories for repair/rectification without original duty paying documents from their customers. The appellant had filed an intimation with the Range officer about the receipt of the said goods into their factory for repairs. Subsequently, the appellant availed Cenvat credit in their Cenvat account in respect of transformers into their factory on the strength of Xerox/photocopy of triplicate copy of their invoice under which the goods were originally cleared by the appellant on payment of duty.

3. The assessee had applied for permission under Rule 16(3) of the Central Excise Rules, 2002 to receive back goods for repairs, rectification and were, therefore, aware that when the customer from whom the goods were received for repairs does not have the original duty paying documents, they were so required to apply for permission under Rule 16(3), of the Central Excise Rules, 2002. When the transformers were physically received, it was not accompanied by the duty paid documents and hence the assessee, it appears, was required to take prior permission from the Commissioner of Central Excise before bringing such goods into the factories. Therefore, it appeared that the Cenvat credit availed by them by following the procedure under Rule 16(1), of

the Central Excise Rules, 2002 is improper and required to be disallowed and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Sec, 11(A) of the Central Excise Act, 1944 as the same had been wrongly availed by them by following wrong procedure in contravention of sub rule (1) and sub rule (3) of Rule 16 of the Central Excise Rules, 2002 read with Rule 3 and Rule 9 (1) of the Cenvat Credit Rules, 2004. It has been further alleged that the assessee have rendered themselves liable for penalty and appropriate interest. In all the SCNs under reference the assessee had subsequently reversed/paid the amount of Cenvat credit which is also proposed for appropriation.

2.3 Thus revenue was of the opinion that appellant have contravened the provisions of Rule 16(1) and 16(3) of Central Excise Rules, 2002 read with Rule 9(1) of Cenvat Credit Rules, 2004 in as much as that they have availed of wrong Cenvat credit on the strength of invalid documents under Rule 16(1) of Central Excise Rules, 2002 instead of following the correct procedure as laid down under Rule 16(3) *ibid*. Six show cause notices as detailed in table below were issued to the appellant.

Sr. No	SCN No. / Date	Amount involved Rs.
1	V.Adj(SCN)15-45/Commr/KDN/M III/2010 dated 18.01.2011	60,27,695
2	V.Adj(SCN) 15-47/Commr/KDN/M III/2010 dated 19.01.2011	67,65,040
3	V.Adj(SCN)15-46/Commr/KDN/M III/2010 dated 20.01.2011	52,50,596
4	V.Adj(SCN)15-60/Commr/KDN/M III/2010 dated 02.06.2011	50,68,403
5	V.Adj(SCN)15-63/JC/KDN/M-III/2010 dated 14.02.2011	29,75,948
6	V.Adj(SCN)15-80/JC/KDN/M-111/2010 dated 23.06.2011	35,18,480
	TOTAL	2,96,06,162

2.3 By the six show cause notices detailed above appellant was called to show cause as to why:

- a. *Cenvat Credit availed of by them totally amounting to Rs. 2,96,06,162/- should not be demanded and recovered from them under the provisions of Rule 14 of Cenvat Credit Rule, 2004 read with Section 11A(1) of Central Excise Act, 1944.*
- b. *The credit totally amounting to Rs. 2,96,06,162/- reversed at the time of clearance of transformers should not be appropriated towards said demand.*
- c. *Penalty should not be imposed on them under Rule 15(1) of Cenvat Credit Rules, 2004 read with Rule 25 of the Central Excise Rules, 2002.*
- d. *Interest totaling Rs.7,38,856/- on delayed payment of duty/reversal of Cenvat credit should not be demanded and recovered from them under the provision Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB of Central Excise Act, 1944.*

2.4 All the six show cause notices have been adjudicated by the Commissioner by the impugned order. Aggrieved by the impugned order, appellants have preferred this appeal.

3.1 Have heard Shri Aditya Chitale, Advocate for the appellants and Shri Sydney D'Silva, Additional Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that, -

- Transformers returned for repairs were liable treated as "inputs" and availment of CENVAT credit under rule 16(1) legitimate
- Provisions of Section 11AB are attracted only in cases where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded. In the case of said 6 transformers there was no duty which was not paid or short levied or short paid and neither was this a case of wrong refund. The Appellant states and submits that under the circumstances in none of these cases the provisions of Section 11AB are attracted.
- At no point of time either during the course of hearing or in its replies filed to the show cause notices or its letters issued had the Appellants ever stated such a thing. The

Appellant states and submits that the said so called admitted fact being sought to be thrust up on the Appellant is perverse and bad in law is liable to be quashed and set aside.

- The reliance of the judgment in the matter of SKF India Ltd. is out of place and the statement attributed in that respect is incorrect. The Appellant states and submits that the issue involved in the Judgment of SKF India Ltd., [2009 (239) ELT 385(SC)] was relating to issuance of supplementary invoices by the assessee in that case. The Assessee in that case had paid duty on goods cleared by them and they had later on paid further duty on the very same goods by raising supplementary invoices. The issue involved in that case was whether interest was payable on the differential duty involved in the original invoice and the supplementary invoice.
- Once having come to a finding that the said availment of CENVAT credit under Rule 16 (1) by the Appellant was legal and proper, the Respondent could not have thereafter confirmed the very same demand on some other ground which was not existing in the show cause notices. Hence, the confirmation of the said demand for the reasons stated in the said order is not only illegal and improper, but travels beyond the scope and ambit of the allegations made in the said show cause notices and on this ground alone, the said confirmation of the demand of duty and appropriation is liable to be quashed and set aside.
 - i. Hitesh Plastic Pvt. Ltd. [2009 (243) ELT 419]
 - ii. Jindal Photo Ltd. [2009 (247) ELT 730]
 - iii. Shah Pumps Pvt. Ltd [2006 (205) ELT 489]

3.3 Arguing for the revenue learned authorized representative submits:-

- In the subject case the triplicate copies (in original) of the invoices in question were produced by the Appellants after the personal hearing and the same were found to be in order inasmuch as they co-relate with the Cenvat credits taken and the transformers initially cleared and removed after repairs as mentioned in the show-cause notices.

- In such cases ascertaining that the goods were initially cleared on payment of appropriate duty would require correlation of the identification marks on the goods and associated records maintained by the Appellants vis-à-vis the duty payment particulars in the account current or Cenvat credit register. It needs emphasis that receiving the goods back into the factory does not require any permission.
- The triplicate copy meant for the Appellants (and original of which was produced after the hearing) is the one on which the Appellants has taken Cenvat Credit. Although the SCNS refer to the assessee having availed Cenvat Credit on the basis of the photocopy/Xerox of the Triplicate copy, since the Appellants has produced the originals of the triplicate copies of the invoices, the allegations cannot have any substance. Having said that, the fact of the matter is that SCN clearly mentions that the Appellants have followed the procedure under Rule 16(1) of the CER, 2002 and has taken Cenvat Credit of the duty initially paid on the returned goods.
- There is no allegation in the SCNS under reference that the Cenvat Credits that were taken on the basis of documents do not co-relate to the goods that were received back for repairs etc. or that the Cenvat Credit taken is more than that shown on the invoices or that the quantum of reversals.
- With regard to the allegation that "interest" is required to be paid by the Appellants, the fact remains that the rule 16 does not lay down any "period" within which the goods received should be removed from the factory after conducting the process of refining, repair, re-making etc. But it is an admitted fact that once credit has been taken for the goods originally cleared on payment of duties, these become non-duty paid, and in such a situation, this is a clear case of retaining the benefit of duty already paid, and thus till clearance of the goods after repairs, the goods shall be treated as non duty paid and interest is warranted for the period of retention of benefit. The Hon'ble Supreme Court in the case of SKF India Ltd. [2009 (239)ELT385(SC)] has held that interest is payable for delay in payment of revenue on any count. In the case of Ind-Swift Laboratories Ltd [2011 (265) ELT 3 (SC)] Hon'ble Apex Court held that in view of the

provisions of Rule 14, interest liability accrues from the time the credit has been wrongly taken.

- Therefore, the Appellants are liable for payment of interest u/s 11AB of the CEA, 1944 for the delayed reversal of the credit taken and as mentioned in the show cause notices.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Commissioner has in the impugned order recorded the findings as follows:

"9. I have carefully gone through the allegations levelled in the show-cause notices and the written and oral submissions of the assessee. The triplicate copies (in original) of the invoices in question were produced by the assessee after the personal hearing and the same are found to be in order inasmuch as they co-relate with the Cenvat credits taken and the transformers initially cleared and removed after repairs as mentioned in the show-cause notices. As mentioned earlier, two show cause notices dated 14.02.2011 and 23.06.2011 involving similar facts have been made answerable to the Joint Commissioner and the assessee has requested that these may be taken up together for adjudication with the notices answerable to the Commissioner. I find substance in this proposal which also goes in sync with the instructions contained in paragraph 6 of the Board's Circular no. 752/68/2003-CX dated 01.10.2003 and hence agree to the request made of clubbing these notices in common adjudication proceedings.

10. Coming to the issue involved, it is the allegation that the assessee after receiving the Transformers in their factory for repairs took Cenvat Credit on the strength of the "Xerox/photocopy of the Triplicate copy of the invoices" without seeking any permission in this regard from the jurisdictional Commissioner under rule 16(3) of the Central Excise Rules, 2002. Such an availment of Credit is improper, the demand notices allege. Nonetheless, it is a fact that when the Transformers were cleared after repairs, the assessee has reversed the Cenvat Credit initially availed. The demand notices also seek to recover interest u/r 14 of the CCR, 2004 read with section 11AB of the CEA, 1944 for the period during which the

goods were returned and finally cleared after repairs. Penal provisions have also been invoked.

11. Before going to the allegations levelled, it would be prudent to reproduce the contents of rule 16 of the CER, 2002.

11.1 It reads

Rule 16. Credit of duty on goods brought to the factory. -

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the Appellants shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.

[Explanation : The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.]

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the Appellants may receive the goods for being remade, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner."

11.2 The rule, as can be seen, is sub-divided into three parts, the first sub-rule mentions about taking of Cenvat Credit on these goods and utilization thereof "as if such goods are received as inputs" under the Cenvat Credit Rules. This would mean that the rule pre-supposes that the returned goods are akin 10 "inputs" as defined in rule 2(k) of the CCR, 2004 and the assessee is entitled to take Cenvat Credit of the duty initially paid on the said goods. Obviously, the goods may be received

back in the factory under the cover of a duty paying document viz. invoice which would indicate the duty initially paid by the manufacturer and which duty can be taken as Cenvat credit. Invoice, whether original, duplicate or triplicate would be of no relevance as long as it is proved with co-relating documents/entries that the same goods were cleared on payment of appropriate duty earlier.

11.3 The second sub-rule mentions that if the process that the manufacturer undertakes on the goods received does not amount to manufacture, he should pay an amount equal to the Cenvat Credit taken and in any other case (i.e., where the process amounts to manufacture) he should pay appropriate central excise duty on the goods. The Explanation appended clarifies that the "amount" paid when the goods are removed without them having undergoing any 'manufacturing process' is available as CENVAT to the consignee.

11.4 Sub-Rule (3) mentions that if there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee can receive these goods for the purposes of being re-made, refined, re-conditioned or for any other reason and remove the goods subsequently subject to such conditions as may be specified by the Commissioner. Obviously, such a difficulty would arise, inter alia, when the manufacturer does not have a copy of the invoice on the of strength of which the goods were initially cleared from the factory on payment. In such cases ascertaining that the goods were initially cleared on payment of appropriate duty would require co-relation of the identification mark on the goods and associated records maintained by the assessee vis a vis the duty payment particulars in the account current or Cenvat credit register. It needs emphasis that receiving the goods back into the factory does not require any permission.

12. In the present case, there is no allegation that the goods which were received in the factory were not those initially cleared by the assessee on payment of central excise duty or for that matter the Cenvat credit taken in terms of rule 16(1) of CER, 2002 is improper inasmuch as there is no co relating duty paying document to ascertain the authenticity of the Cenvat

credit taken. The assessee is well within its right to avail the Cenvat Credit on the basis of their own invoices u/r 16(1) of the CER, 2002. Since these invoices were already in possession of the assessee, taking credit in these circumstances, on the Xerox copies of their own invoices cannot be faulted. Further, there is no allegation in the show-cause notice that the original triplicate copies were not in possession of the assessee. In any case, they have already produced the original triplicate copies of the invoices vide their letter dated 6th February, 2012 which has been duly been verified and found to be correct. Thus there is no dispute about authenticity of their copies of triplicate invoices on which they have availed credit under rule 16(1) of the CER, 2002.

13.

13.1 However, the letter of the Board dated 25.11.2009 submitted by the assessee is extracted as under -

"Subject: Credit of duty under rule T6 of Central Excise Rules, 2002 on goods brought into the factory -- reg.

2. The matter has been examined. The Rule 8(2) of the Central Excise Rules, 2002 provides that "the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty is allowed, as provided by or under any rule. This provision explains that the invoice of the returned goods, which would be a valid document for availing credit and duty is deemed to have been discharged. Regarding availing credit on its own invoice, rule 16(1) of the Central Excise Rules, 2002 allows the assessee to do so. In any case, the whole procedure is revenue neutral, in the sense as the duty has to be discharged by the 5th of next month.

3. In view of the above, it is clarified that credit on rejected/returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under rule 16(1) of the Central Excise Rules, 2002."

13.2. The aforesaid letter has been issued in a different context viz, rule 8 of the CER, 2002 and although it does not answer the issue involved yet it --. clarifies that "regarding availing credit on

its own invoice, rule 16(1) of the FCER, 2002 allows the assessee to do so."

In the present case, as discussed earlier, the triplicate copy meant for the assessee (and original of which was produced after the hearing) is the one on which the assessee has taken Cenvat Credit. Although the SCNs refer to the assessee having availed Cenvat credit on the basis of the photocopy/Xerox of the Triplicate copy, since the assessee has produced the originals of the triplicate copies of the invoices, the allegations cannot have any substance. Having said that, the fact of the matter is that SCN clearly mentions that the assessee has followed the procedure under rule 16(1) of the CER, 2002 and has taken Cenvat Credit of the duty initially paid on the returned goods. As mentioned, the rule pre-supposes the qualification of these "returned goods" as "inputs" under the Cenvat Credit Rules, 2002/2004 and allows an assessee to take Cenvat Credit of the duty initially paid.

14.1 Merely because the assessee initially filed an application seeking permission under rule 16(3) and then withdrew the same cannot mean to say that they ought to have taken permission from the Commissioner before embarking on taking Cenvat Credit and conducting the repairs of the returned goods. When the fact of the matter is that there was no need in the first place to make such an application in the present case, as discussed by me in the preceding paragraphs, one cannot allege contravention of rule 16(1)/16(3) of the CER, 2002 or for that matter rule 3 and rule 9(1) of the Cenvat Credit Rules, 2004.

14.2 Be that as it may, I would like to reiterate that there is no allegation in the SCNs under reference that the Cenvat Credits that were taken on the basis of documents do not co-relate to the goods that were received back for repairs etc. or that the Cenvat Credit taken is more than that shown on the invoices or that the quantum of reversals (of amount taken as Cenvat Credit) that were made when the goods were cleared after repairs u/r 16(2) of CER, 2002 is lesser than the Credit initially taken under rule 16(1) of the CER, 2002.

15. Coming to the allegation that "interest" is required to be paid by the assessee, the quintessential fact remains that the rule 16

does not lay down any "period" within which the goods received should be removed from the factory after conducting the process of refining, repair, re-making etc.. But it is an admitted fact that once credit has been taken for the goods originally cleared on payment of duties, these become non-duty paid, and in such a situation, this is a clear case of retaining the benefit of duty already paid, and thus till clearance of the goods after repairs, the goods shall be treated as non duty paid and interest is warranted for the period of retention of benefit. The Hon'ble Supreme Court in the case of SKF India Ltd. [2009(239)ELT 385(SC)] has held that interest is payable for delay in payment of revenue on any count. Therefore, I find that the assessee is liable for payment of interest u/s 11AB of the CEA, 1944 for the delayed reversal of the credit taken and as mentioned in the show-cause notices.

16. The assessee having reversed/paid the amounts equal to the CENVAT credit taken under sub-rule (1) of rule 16 of CER, 200 goods were removed after repairs, there cannot be any misfeasance on their part. In such an eventuality, it cannot be said that there has been a contravention of either the CER, 2002 or the CCR, 2004 so as to saddle the assessee with any penalty under rule 15(1) of the CCR, 2004/rule 25 of the CER, 2002."

4.3 The issue for consideration is applicability of Rule 16 (1) or Rule 16 (3) of the Central Excise Rules, 2002 to the transformers originally cleared by the appellant on payment of duty and subsequently received back for repairs etc. Commissioner has done an interesting analysis of the Rule 16 in para 11 of the impugned order. Suffice to say sub-rule (3) is the rule which is to remove the difficulties which person may experience by literal implementation of the sub rule (1). Sub-rule (3) is not independent because subject to the conditions as may be prescribed the goods may be received for being repaired, refined or remade by following the procedure as per Rule 16 (1) of the Central excise Rule, 2002.

4.4 Appellants have initially filed the application in respect of the first three transformers as detailed in table below seeking permission under Rule 16 (3), subsequently withdrew the same and followed the procedure as per Rule 16 (1).In respect of

remaining three cases appellant had directly followed the procedure as per 16 (1). The relevant details regarding the procedure followed are reflected in table below:

SCN Date	Permission/ intimation date	Receipt date of goods	Date of taking credit	Invoice No. against which credit taken	Date of removal of goods
18.01.2011	18.12.2009	21.12.2009	02.02.2010	233/21.06.2007	02.02.2010
19.01.2010	07.01.2010	13.01.2010	17.02.2010	614/09.10.2009	30.04.2010
20.01.2011	07.01.2010	18.02.2010	18.02.2010	131/08.05.2008	19.06.2010
14.02.2011	17.05.2010	16.05.2010	12.06.2010	1567/29.03.2010	07.08.2010
02.06.2011	09.06.2010	09.06.2010	11.06.2010	142/30.07.1992	17.08.2010
23.06.2011	09.08.2010	07.08.2010	17.08.2010	182/11.06.2009	24.12.2020

4.5 Commissioner after receiving the triplicate copies of the invoices in all the cases, has expressed his satisfaction and have stated that though Appellant had initially filed application under Rule 16 (3) but there is nothing erroneous in them having followed the procedure under Rule 16 (1). Once he expresses his satisfaction to that effect he could not have proceeded in the manner as he proceeded to confirm the demand made against the appellant in terms of Rule 14 of CENVAT Credit Rule, 2004 read with Section 11A of Central Excise Act, 1944. After confirming the demand Commissioner proceeded the amount debited/ paid by the appellant in terms of sub-rule (2) to Rule 16 of Central Excise Rules, 2002. The amounts so paid by the Appellant in terms of Rule 16 (2) were undisputedly paid by the appellant at the time of removal of goods from their factory and there is no delay in making the payment from the due date.

4.6 By protracted and convoluted argument as per para 15 of the impugned order, Commissioner has confirmed the demand for interest. In the present case there is no delay in payments that were required to be made as per rule 16 (2), and if there was no delay in making the payments of the amount due, the demand for interest cannot be sustained for what so ever reason. The reliance placed by the Commissioner on the decision of Hon'ble Apex Court in case of SKF is totally misplaced as in that case Hon'ble Apex Court confirmed the demand for interest on the duty paid subsequent to clearance of the goods on the basis of supplementary invoices issued. Reliance placed by the authorized representative on the decision of Hon'ble Apex Court

in the case of Ind-Swift laboratories also is misplaced because in the present case Commissioner has himself concluded that the CENVAT Credit taken by the appellant was in order.

4.7 Counsel for the appellant has in his submissions relied upon the following decisions:

i. Hitesh Plastic Pvt. Ltd. [2009 (243) ELT 419]

"3. I find that there is no dispute, that provisions of Rule 16 allow the assessee to avail the credit of duty paid on the goods cleared by them, as if such goods are received as inputs under the Cenvat Credit Rules, 2002. This is in the nature of deemed provisions where the final products returned by the buyer is deemed to be input by the assessee. The provisions of Rule 7, which specify the documents for the purposes of availment of credit in respect of inputs, would not apply to the provisions of Rule 16. This is the special provisions enacted for receiving back the final product originally cleared and by giving them a deemed status of inputs, in which case, the invoices originally issued by the manufacturer are also required to be considered as fit for availment of credit. The law stands declared by the Tribunal in the case of BAPL Industries Ltd. [2006 (198) E.L.T. 587 (Tri.-Chennai)]. The Board Circular issued vide F.No. 354/66/2001-TRU; dated 21-6-2001 also clarifies that Rule 16 provides availment of cenvat credit by the manufacturer equivalent to the duty paid by him.

4. Admittedly, the goods stand returned in the present case and the appellant would be entitled to the credit, in terms of the said rules. Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellants."

ii. Jindal Photo Ltd. [2009 (247) ELT 730]

A very short issue is involved in the present appeal. The appellants have availed duty credit of Rs. 1,27,611/- on rejected goods on the basis of their own original copy of the invoice. The lower authorities have held that in as much as in terms of the provisions of Rule 16 of Cenvat Credit Rules, 2002 (sic) the credit on returned goods is admissible as "if such goods are received as inputs" under the Cenvat Credit Rules. Accordingly,

they have held that when the goods are received as inputs, the Cenvat Credit would be available subject to the provisions of the said rules and Rule 7 of the Cenvat Credit Rules prescribes the document on which credit can be availed is the invoice issued by a manufacturer for clearance of inputs. In as much as the appellant has availed the credit on the basis of the invoices issued by themselves, the same is not available.

2. I find no justification in the above reasoning of the authorities below. Rule 16 allows a manufacturer to receive back the rejected goods and to avail the credit of duty originally paid by them under the cover of the invoice issued at the time of clearance of the goods. The objection of the authorities that it should be an invoice issued by the manufacturer of the inputs also stands satisfied on the same interpretation advanced by the department that if rejected goods are to be considered as inputs, it is the appellant who has manufactured the same and the invoice issued by him would cover the same goods even in terms of the provisions of Rule 7. If the reasoning advanced by the authorities below is accepted the same would amount to defeating the very purpose of Rule 16 and making the same redundant.

The view expressed in these decisions also supports the stand of the appellant that they could have followed the procedure as prescribed by Rule 16 (1) on the basis of triplicate copy of their own invoices, the view as expressed by the Commissioner in the impugned order.

5.1 The appeal is allowed setting aside the impugned order.

(Order pronounced in the open court on 12.07.2022)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)