

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

Excise Appeal No. 85456 of 2015

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-030 to 032-14-15 dated 20.11.2014 passed by the Commissioner of Central Excise, Pune-I)

M/s. General Motors Pvt. Ltd.

Appellant

Plot No. A-16, Talegaon MIDC,
Phase-II, Urse, Tal. Marval,
Dist. Pune 410 507.

Vs.

Commissioner of CGST & C.E., Pune-I

Respondent

ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Excise Appeal No. 85819 of 2017

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-047-16-17 dated 31.01.2017 passed by the Commissioner of Central Excise, Pune-I)

M/s. General Motors Pvt. Ltd.

Appellant

Plot No. A-16, Talegaon MIDC,
Phase-II, Urse, Tal. Marval,
Dist. Pune 410 507.

Vs.

Commissioner of CGST & C.E., Pune-I

Respondent

ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

AND

Excise Appeal No. 85190 of 2019

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-14-18-19 dated 15.10.2018 passed by the Commissioner of Central Excise, Pune-I)

M/s. General Motors Pvt. Ltd.

Appellant

Plot No. A-16, Talegaon MIDC,
Phase-II, Urse, Tal. Marval,
Dist. Pune 410 507.

Vs.

Commissioner of CGST & C.E., Pune-I

Respondent

ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri V. Sridharan, Senior Advocate, with Shri Rajesh Ostwal, Advocate
and Shri Aditya Jain, C.A., for the Appellant
Shri S.D. Deshpande, Special Counsel, for the Respondent

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 01.11.2022
Date of Decision: 01.11.2022

PER: SANJIV SRIVASTAVA

These appeals are directed against the orders as indicated in the table below:

Appeal No	Order in Original No	Date	Show Cause Notice No	Date
E/85456/2015	PUN-EXCUS-001-COM-030-032-14-15	20.11.2014	02/P-I/R-TGN/COMMR/ADJ/2014	04.01.2014
			04/P-I/R-TGN/COMMR/ADJ/2014	31.01.2014
			64/P-I/R-TGN/COMMR/ADJ/2014	08.04.2014
E/85819/2017	PUN-EXCUS-001-COM-047-15-16	30.01.2017	04/TGN/R-I/PC/ADJ/ 2016-17	05.04.2016
E/85190/2019	PUN-EXCUS-001-COM-014-18-19	15.10.2018	02/P-I/COMMR/2017-18	14.05.2018

1.2 By the impugned orders following has been held:

A. PUN-EXCUS-001-COM-030-032-14-15 **dated**
20.11.2014

"ORDER

28.1 in respect of the Show Cause Notice bearing No. 02/P-I/R-TGN/COMMR/ADJ/2014, dated. 04.01.2014, I determine and confirm the demand of inadmissible Cenvat credit amounting to Rs.25,33,05,174/- (Rupees Twenty Five Crores, Thirty Three Lakhs, Five Thousand, One Hundred and Seventy Four Only), attributable to the cenvat credit availed on inputs written off or in respect of which provision has been made to write off.

whether fully or partially, during the period from December 2008 to December 2012, as discussed and detailed in para 24.4.3 above, under the provisions of Rule 14 of the CCR, 2004, read with Section 11A(2)/Section 11A(10) of the Central Excise Act, 1944, as the-case may be. Further, I order the assessee, M/s General Motors India Pvt. Limited, Urse, Pune, to pay the aforesaid amount forthwith. Consequently, the remaining demand of Rs.1,32,36,736/- (Rs.26,65,41,910/- (as demanded in S.C.N.) minus Rs.25,33,05,174/-) is not legally sustainable for the reasons discussed in para 24.4.3 above, and hence the same is liable to be dropped.

28.2 In respect of the show Cause Notice bearing No. 04/P-I/R-TGN/COMMR/ADJ/2014 dated 31.01.2014, I determine and confirm the demand of inadmissible Cenvat credit amounting to Rs.62,91,16,184/-Rupees Two Crores, Ninety One Lakhs, Sixteen Thousand, One Hundred and Eighty Four Only), attributable to the cenvat credit availed on inputs written off or in respect of which provision has been made to write off, whether fully or partially, during the period from January 2013 to March 2013, as discussed and detailed in para 24.4.4 above, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(10) of the Central Excise Act, 1944. Further, I order the assessee, M/s General Motors India Pvt. Limited, Urse, Pune, to pay the aforesaid amount forth with. Consequently, the remaining demand of Rs.71,380/ (Rs.2,91,87,564/- (as demanded in S.C.N.) minus Rs.2,91,16,184/- is not legally sustainable for the reasons discussed in para 24.4.4 above, and hence the same is liable to be dropped.

28.3 In respect of the show Cause Notice bearing No. 64/P-I/R-TGN/COMMR/ADJ/2014 dated 08.04.2014, I determine and confirm the demand of inadmissible Cenvat credit amounting to Rs.9,29,86,360/- (Rupees Nine Crores, Twenty Nine lakhs, Eighty Six Thousand, Three Hundred and Sixty Only), attributable to the cenvat credit availed on inputs written off or in respect of which . provision has been made to write off, whether fully or partially, during the period from April 2013 to December 2013, as detailed in Annexure 'A' to the said Show Cause Notice dated 08-04-2014, and as discussed and held in

para 24.4.5 above, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(10) of the Central Excise Act, 1944. Further, I order the assessee, M/S. General Motors India Pvt. Limited, Urge, Pune, to pay the aforesaid amount forthwith.

28.4 I order recovery of interest, at the appropriate rate(s) as applicable during the relevant period, on the demand of inadmissible Cenvat credit as confirmed at paras 28.1, 28.2 and 28.3 above, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AB/11AA of the Central Excise Act, 1944, as applicable during the relevant period.

*28.5 Further, in respect of Show Cause Notice bearing No. 02/P-I/R-TGN/COMMR/ADJ/2014, dated. 04.01.2014, I impose a penalty of Rs. 25,83,05,1741- (Rupees Twenty Five Crores, Thirty Three Lakhs, Five Thousand, One Hundred and Seventy Four Only), on M/s. General Motors India Pvt. Limited, Urse, Pune, under Rule 15(2) of the CCR, 2004, read with Section 11AC/11AC(I)(a) of the Central Excise Act, 1944, i.e. Rs.8,97,94,670/- under the provisions of Section 11AC of the Central Excise Act, 1944, for the period from December 2008 to March 2011 plus Rs.16,35,10,504/- under the provisions of Section 11AC(1)(a), *ibid*, for the period from April 2011 to December 2012 for contravention of provisions of Rule 3(5B) of the Cenvat Credit Rules, 2004.*

*28.6 However, I give an option to the assessee, under the first and second proviso to Section 11AC of the Central Excise Act, 1944, to pay 25% of the penalty amount imposed under Section 11AC, *ibid*, in para 28.5 above 1.. 25% of Rs.8,97,94,670/- which is equal to Rs.2.24,48,6684-), provided the assessee pays the entire amount of demand of Cenvat credit, as determined/ confirmed, in para 28.1 above, relevant to the period from December 2008 to March 2011 i.e. Rs.8,97,94,670/-, along with interest payable thereon as ordered in para 28.4 above on the said amount as well as the 25% penalty, within 30 days of the date of communication of this order.*

28.7 Further, in respect of the Show Cause Notice bearing No. 04/P-I/R-TGN/COMMR/ADJ/2014 dated 31.01.2014; I impose a penalty of Rs. 2,91,16,184/- (Rupees Two Crores, Ninety, One

Lakhs, Sixteen Thousand, One Hundred and Eighty Four Only, on Me General Motors India Pvt Limited, under Rule 15(1) of the Cenvat Credit Rules, 2004.

28.8. Further, in respect of the Show Cause Notice bearing NO., 64/P-I/R-TGN/COMMR/ADJ/2014 dated 08.04.2014: I impose penalty of Rs.9,29,86,860/- (Rupees Nine Crores Twenty Nine Lakhs Eighty Six Thousand Three Hundred and Sixty Only) on M/s General Motors India Pvt Limited, Urse, Pune, under Rule 15(1) of the Cenvat Credit Rules, 2004.

28.9 This order is issued without prejudice to any other action that may be taken against the assessee under the provisions of the Central Excise Act, 1994, and of the rules made thereunder and, or any other law for the time being in force."

B. PUN-EXCUS-001-COM-047-15-16 dated 15.10.2016

"Order

- i. I determine and confirm the demand of inadmissible Cenvat credit amounting to Rs.4,96,16,449/- (Rupees Four Crores, Ninety Six Lakhs, Sixteen Thousand, Four Hundred and Forty Nine Only) against the noticee, attributable to the cenvat credit availed on inputs written off or in respect of which provision has been made to write off, whether fully or partially, during the period from January,14 to March, 15, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(4)/Section and 11A(10) of the Central Excise Act, 1944, as the-case may be.*
- ii. I order recovery of interest, at the appropriate rate(s) as applicable during the relevant period, on the demand of inadmissible Cenvat credit as confirmed at para i, above, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of the Central Excise Act, 1944.*
- iii. I impose a penalty of Rs. 2,48,08,222/- on M/s. General Motors India Pvt. Limited, Urse, Pune, under Rule 15(2) of the CCR, 2004, read with Section 11AC(1)(c) of the Central Excise Act, 1944, i.e. Rs.8,97,94,670/- under the provisions of Section 11AC of the Central Excise Act, 1944.*

iv. *However, I give an option to the assessee, under the Section 11AC (1) (c) of the Central Excise Act, 1944, to pay 25% of the penalty amount imposed under section 15 (2) of the CCR, 2004 read with Section 11AC (1) (c), of the Act, in sub para iii above, provided the Noticee pays the entire amount of demand of Cenvat credit, as determined/ confirmed, in sub para i above, along with interest payable thereon as ordered in sub para ii above on the said amount as well as the 25% penalty, within 30 days of the date of communication of this order.*

29. *This order is issued without prejudice to any other action that may be taken against the Noticee under the provisions of the Central Excise Act, 1944, and/ or the rules made thereunder and/ or any other law for the time being in force."*

C. PUN-EXCUS-001-COM-014-18-19 dated 15.10.2018

"Order

- a) *I determine and confirm the demand of inadmissible Cenvat credit amounting to Rs.11,57,52,298/- (Rupees Eleven Crores, Fifty Seven Lakhs, Fifty Two Thousand, Two Hundred and Ninety Eight Only), attributable to the cenvat credit availed on inputs written off or in respect of which provision has been made to write off, whether fully or partially, during the period from January,14 to March, 15, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(4)/Section and 11A(10) of the Central Excise Act, 1944, as the-case may be.*
- b) *I confirm and order recovery of interest, on the amount confirmed by me at a above, above, under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of the Central Excise Act, 1944.*
- c) *I impose a penalty of Rs. 1,15,75,230/- (Rupees One Crore Fifteen Lakh Seventy Five Thousand Two Hundred and Thirty only) under Rude 15 of the Cenvat Credit Rules, 2004, read with Section 11AC(1)(c) of the Central Excise Act, 1944.*
- d) *However, I give an option to the assessee, under the Section 11AC (1) (b) of the Central Excise Act, 1944, to pay reduced penalty equivalent to 25% of the CENVAT*

Credit disallowed and confirmed in Para a above, provided the Noticee M/s. General Motors India Pvt. Limited, pays the inadmissible Cenvat credit, as determined/ disallowed, in sub para a above, along with interest payable thereon as ordered in para b above as well as the 25% penalty, within 30 days of the date of communication of this order.

15. *This order is issued without prejudice to any other action that may be taken against the Noticee M/s. General Motors India Pvt. Limited here under and/ or any other law for the time being in force."*

2.1 Appellant is engaged in the manufacture of Motor Vehicles (Spark and. Beat models) falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 and availing CENVAT Credit of inputs and input services under CENVAT Credit Rules, 2004

2.2. During the course of audit and scrutiny of the records of the assessee for the period from July, 2010 to September, 2011, it was noticed that the assessee have written off certain inputs/ materials like Direct material, Indirect material, consumables), totally valued at Rs.1,37,51,890/- in their books of accounts on account of "loss on excess and OBS Vehicle Prodn. Met. Sold/scrap as on 31-03-2011. Vide their letter dated 20-04-2012, appellant stated that as per Accounting Policy, they are making provision for write-off entry, if such input-goods are lying in stock for a specified period, on the basis of age of inventory. As stated by the assessee, the accounting entries are made for provision of write off and subsequently the same is re-credited in the next month.

2.3 As per rule 3 (5B) of the CENVAT Credit rules, 2004 as amended, even in cases, where provision to write off the input-goods is made, CENVAT credit has to be reversed on such goods/ inputs. A manufacturer is allowed to take re-credit on such credit reversed only when these goods are used in the manufacture of final products. This indicates that before use in manufacturing, the assessee is not entitled for taking re credit of such written off Input-goods. Therefore, the practice followed by the assessed in terms of their General Motors Accounting Policy, of re-crediting (referred as "reversing by CM) the input-goods,

shall not entitle them to take re-credit of Cenvat amount attributable to such input-goods that were written off or in respect of which a provision for write off, was made.

2.4 Appellant was availing the Cenvat Credit on the input-goods both imported as well as locally procured. The Cenvat credit amount in respect of such imported goods is higher to the extent of the Special Additional Duties (SAD). Their accounting records indicate the value of goods written-off during the relevant accounting period. Based on these entries, it was noticed that during audit verification and the data as furnished by the assessee from time to time, they have written-off the inputs wherein total Cenvat credit involved is Rs. 26,65,41,910/

2.5. A Show Cause-cum-Demand Notice bearing No. 02/P-I/R-TGN/COMMR/ADJ/2014, dated. 04.01.2014, was issued to the appellant asking them to show cause as to why.

(i) Inadmissible CENVAT Credit in respect of Input-goods, which have been written off, or in respect of which provision has been made in their Books of Accounts, whether fully or partially, to write off, and on which Cenvat credit was availed by them, during the period from December, 2008 to December, 2012, totally amounting to Rs.26,65,41,910/-, should not be demanded and recovered from them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with the proviso to Section 11 A (1)/ 11 A (4) and (5) of the Central Excise Act, 1944, as applicable during the relevant period of demand;

(ii) Interest on the above-said amount, at the applicable rates, should not be charged and recovered from them, under the provisions of Rule 14 of CENVAT Credit Rules, 2004, read with Section 1 IAB / 11 AA of the Central Excise Act, 1944, as applicable during the relevant period of demand;

(iii) Penalty should not be imposed upon them, under the provisions of Section 11AC 11 AC (b) of the Central Excise Act, 1944 road with Rule 15 (2) of the CENVAT Credit Rules, 2004 as applicable during the relevant period of demand;

2.6 Show Cause Notices, for the subsequent period were issued to the assessee, the details of which are as under:

S No	SCN No. & Date	Period	Amount (in Rs.)
1	04/P-I/R-TGN/COMMR/ADJ/2014 dated 31.01.2014	January, 2013 to March 2013	2,91,87,564/-
2	64/P-I/R-TGN/COMMR/ADJ/2014 dated 08.04.2014	April 2013 to December, 2013	9,29,86,360/-
3	04/TGN/R-I/PC/ADJ/2016-17 dated 5.4.2016	January 2014 to March 2015	4,96,16,443/-
4	02/P-I/COMMR/ 2017-18 dated 14.05.2018	April 2015 to March 2017	11,57,52,298/-

2.7 These show cause notices have been adjudicated as per the impugned orders. Aggrieved appellants have filed these appeals.

3.1 We have heard Shri V Sridharan, Senior Advocate along with Shri Rajesh Ostwal, Advocate and Shri Aditya Jain, C.A. for the appellant and Shri S D Deshpande, Special Counsel for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- The accounting entries passed by the appellant are for the purpose of valuation of inventory in the books of accounts. These entries are in respect of inputs which are categorized as slow moving, in terms of schedule of requirements. So far as the inputs which are declared "obsolete" or "not usable", the appellant had written off the same from the books of accounts and had reversed the Cenvat credit availed on these inputs,
- Following the above principles appellant passed a general entry at the end of every month, for the provision of slow moving stock which is automatically reversed in the subsequent month. Such entry is made for the purpose of valuation of inventory and to determine the Profit and Loss at the end of the month. It is merely a provisional entry, and no stock is reduced from the inventory account. Effectively, there is no provision been made, due to reversal of provision entry in subsequent month.
- The appellant had a system in place, wherein, once the inputs have been identified and declared as obsolete and

are no longer fit to use, the appellant write off the same in the books of accounts and reduces the stock to that extent from the inventory account. The cenvat credit availed by the appellant on these inputs, as evident from the records was reversed. During the period from April 2008 to June 2017, the appellant had already reversed Cenvat Credit of Rs. 7,05,86,921/- on obsolete inventory. "Write off" or "provision for write off" envisaged in the Rule 35B) covers inputs, which are obsolete and are not intended to be used. Therefore, the said Rule 3(5B) is not applicable in the present case and consequently no Cenvat credit reversal is required to be made by appellant on provision for slow moving inventory.

- The inputs whose anticipation of the consumption is after the 40 weeks of production cycle is identified as "slow moving". It is submitted that this slow moving provision cannot be construed as a provision for write-off as the inputs are intended to be used and are fit for consumption. In the present case, the appellant had subsequently consumed the said inventory in the production of the finished goods.
- the present transaction of provisioning of slow moving inputs does not amount to "write off" as contemplated in Rule 3(5B). It is merely a procedure which is adopted by the appellant, and the inputs are intended to be used in the further process of manufacture.
- Therefore, over the period of time, either the inputs has been consumed or as and when the inputs were written off and removed from the factory, the appellant had suo moto reversed the credit in accordance with the Rule 3(5B) of CCR, 2004. Moreover, at the time of winding up of the production in the plant in 2021, the appellant had already paid the GST for the inventories which were no longer to be used. Hence, these subsequent events of consumption of inventory, suo moto reversal of Cenvat credit and payment of GST has to be considered by the court while deciding the present case. In the current scenario, with these additional facts, there is no reason for further

reversal and hence, the entire demand is liable to be dropped herewith.

- The quantification of demand is erroneous and bad in law.
- No demand of duty can be made under Rule 14 of Cenvat Credit Rules, 2004 in respect of non-compliance under Rule 3(5B) for the period prior to 1.3.2013. for want of machinery provision. The Explanation to Rule 3(5B) which provides for recovery mechanism, in case of violation of Rule 3(5B) has been inserted with effect from 1st March, 2013. Reliance is placed on the following decisions wherein it was held that no duty could be recovered for want of machinery of the recovery provisions prior to 1.3.2013
 - a. Ericsson India Pvt. Ltd. Vs. CCE [2019 (3) TMI 776 – DEL]
 - b. Heidelberg Cement India Ltd. Vs. CCT [2017 (11) TMI 1394 Bang]
 - c. Steel Authority of India Ltd. Vs CCE [2020 (3) TMI 147 Chennai]
- The recovery provision inserted by way of explanation to Rule 3(5B), only provides for recovery of Cenvat Credit. There is no machinery for recovery of interest and penalty.
- The appellant has sufficient accumulated Cenvat Credit balance throughout the period from April 2008 to Feb 2017. All the facts were throughout in the knowledge of department. Hence extended period of limitation cannot be invoked. Nor there is any case for demanding the interest and imposing penalty on the appellants.

3.3 Arguing for revenue, special counsel while reiterating the findings recorded in the impugned order submitted:

- Rule 3 (5B) makes it clear that when write off or provision made to write off value of the inputs, fully or partially, then the manufacturer has to pay an amount equivalent to the CENVAT credit taken on such inputs.
- This issue was clarified in Circular 907/27/2009-CX dated 7-12-2009
- Thus it appears that even where provision to write off the input-goods is made, CENVAT credit has to be reversed on such goods/ inputs. Hence, wherever provision is made,

whether fully or partially to write off the input-goods on which CENVAT credit was availed, such CENVAT credit has to be paid/reversed by the manufacturer. Further, even by mere the entry of such provision made while writing off the Appellant shall not be entitled for taking re-credit unless it is used subsequently. Thus, manufacturer is allowed by law, to take re-credit on such when the same are used in the manufacture of final products. Therefore, the practice followed by the Appellant in terms of their 'General Motors Accounting practice', of re-crediting (referred to as reversing by GM) the input-goods, shall not entitle them to re-credit of CENVAT amount attributable to such 'input-good' that were written-off or in respect of which a provision for write off was made.

- Though the accounting transactions carried out by the Appellant are provisional in nature the same are related to the eligibility of the inputs of being used in the manufacture of final product. The Appellant has either written off value of the inputs or created the provisions to write off but has not reversed the CENVAT credit relating thereto in terms of Rule 3(58) of the CENVAT Credit Rules. Because even making a provision in the books of account invites invoking of the provisions of Rule 3(5B) of the CENVAT Credit Rules.
- The Appellant themselves have agreed that they follow a practice of maintaining a "Schedule of requirement"; that in respect of the surplus inputs which are slow moving, an ad-hoc entry is created in the accounting books at the month-end which is reversed in the subsequent month. It is admitted that they have an accounting policy which stipulates that whenever the inventory is lying for a period beyond 90 days, for domestic procurements, and beyond 120 days for imported goods, the temporary provision is created in the SAP on the last working day of the month which is reversed in subsequent month; that inputs deemed to be slow moving in accordance with schedule, are very much capable of being used in the process of manufacture. The entry for ad-hoc provision as recorded

by the Appellant. The company's accounting policy states that excess

- The Appellant reverses CENVAT credit wherever there is a provision for write-off or write-off of inventory which is not consumed subsequently in the light of above accounting policy and in compliance with the US GAAP. However, in the case of subject inputs towards which a temporary creation of provision of slow moving stock is made, which is subsequently reversed in the very next month, the provisions of Rule 3(5B) are intended to cover these transactions also wherein the value of the inputs has been written off or provisionally written off from the inventory records,
- It is evident from the SAP system maintained by the Appellant that they do not have a separate GL code for recording "slow moving inventory", and the same is recorded under the GL code "provision for write-off". Therefore, rule 3(5B) CCR is equally applicable to such inputs. The question is that whether the re-credit taken back next month on such inputs is in order? The answer should be no because once the provision (even though temporarily) is made for their value to be written off then, only when they are actually put to use afterwards in the manufacture of finished goods can the re-credit be taken. The Appellant may be facing difficulties in accounting procedure but that cannot overcome the provisions of law.
- Even after recording certain inputs as excessive and slow moving or obsolete in their books of account, the Appellant has not maintained records to show the CENVAT credit involved on such inputs, to show bifurcation of these inputs into imported or indigenous, reversal of credit, if any, made by them in respect of these inputs, usage of these inputs temporarily rendered obsolete, at a later date, etc. which shows their unharmonious inventory management system, which is not in agreement with the provisions of CCR, 2004. Therefore the Appellant has failed to maintain proper accounts in respect of inputs on which they have availed CENVAT credit and hence they have violated provisions of Rule 9(5) of CCR, 2004.

- As regard the inputs in transit but shown as written off the Appellant has claimed its deduction from the demand. It may be mentioned that the Appellant has contended that as per their accounting policy particular input which has not been received in the factory can be categorized as slow moving or accounted for in the books, therefore, the said practice is unconceivable and incorrect which cannot be accepted.
- The Appellant has contravened the provisions of Rule 3 (5B) of the CCR, 2004, in as much as, they have failed to pay an amount equivalent to the CENVAT credit attributed in the value of inputs written off fully or partially or where the provision to write off fully or partially has been made in their books of accounts and credit availed on inputs written off at the time of such write-off and Rule 9(5) of the CCR, 2004, in as much as, they have failed to maintain the proper records to prove the admissibility of CENVAT credit availed by them on the written off 'inputs', as they have already made provision in their books of accounts. Consequently, inadmissible CENVAT Credit in respect of 'inputs', which have been written off, or in respect of which provision has been made in their Books of Accounts whether fully or partially to write off, and on which CENVAT credit was availed by them, is required to be reversed; that if the inputs are rendered fully obsolete and written off or a provision has been made by the Appellant in their books of account for such write off, then it would signify that such inputs cannot be utilized by them in the manufacture of their final products and consequently, they would be liable to reverse the CENVAT credit availed on such inputs.
- Interest payable - Under Rule 14 of CCR, 2004, read with Section 11AA of the Act, CENVAT credit taken and utilized wrongly is required to be recovered along with applicable interest. Reliance is placed on the decision of Hon'ble Bombay High Court in the case of M/s. P. V. Vikhe Patil SSK Vs. CCE, as reported in 2007 (215) ELT 023 (Bom).
- Penalty imposable - Penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 15 of the CENVAT

Credit Rules, 2004, is imposable because the Appellant has contravened the provisions of Rule 3(5B) of the CCR, 2004 and Rule 9(5) of the CCR, 2004, as submitted above. The Appellant had failed to pay or reverse the CENVAT credit taken in respect of 'Inputs' which have been written off, or in respect of which provision has been made in their Books of Accounts, whether fully or partially, to write off, and on which CENVAT credit was availed by them. The Appellant was having knowledge that their inventory management system was not in consonance with and compatible with the provisions of Rule 3(5B) of the CCR, 2004, but they failed to either take corrective steps to bring it in line with the aforesaid provisions or to intimate to the department about the same. This is a deliberate practice with an intention to avail and retain inadmissible credits and thereby accumulations of CENVAT Credit for utilization towards payment of Central Excise duty.

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

4.2 The three impugned orders have decided the issue on merits. For the purpose of our consideration we refer to the order dated 15.10.2018, which records about the earlier order also. In this order commissioner has held as follows:

"6.1. find that the Notices are engaged in the manufacture of Motor Vehicles (Spark and Beat models) falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 and availing CENVAT Credit of inputs and input services under the CCR, 2004. During the course of Audit of the records of the Noticee, it was, noticed that they have been following the General Motors Accounting Policy'. wherein they are making provision for write-off of inputs, if such inputs are lying in stock for specified period, on the basis of age of inventory. The accounting entries are made for provision for write off and subsequently the same is re-credited in their books of accounts in next month. However, this accounting practice followed by the Noticee, appeared to be in contravention of the provisions of Rule 3(58) of the CCR, 2004, which stipulates that even where provision to write-off the Inputs, whether partially or fully, is

made in the books of account, the Noticee is required to reverse the CENVAT credit availed on such inputs, and on subsequent usage of these inputs in the manufacture of their final products, they are allowed to take re-credit of the same. Consequently, it appeared that the accounting practice followed by the Noticee of first making provisions for write-off of slow moving inputs and subsequently reversing the entries by way of re-credit or reversing these entries in their books of accounts in the subsequent month appeared to be in contravention of the provisions of Rule 3 (5B) of the CCR, 2004 and Rule 9(5) of the CCR, 2004. Consequently, a Show Cause Notice dated 04-01-2014, was issued to the Noticee demanding CENVAT credit attributable to the inputs, which were written off fully or partially and/or in respect of which provision for such write off was made in their books of account, during the period from December 2008 to December 2012, under the provisions of Rule 14 of the CCR, 2004, read with the proviso to erstwhile Section 11A(1)Section 11A(4) and 11A(5) of the Central Excise Act, 1944 (hereinafter referred to as the Act'), as the case may be; demanding Interest under the provisions of Rule 14 of the CCR, 2004, read with Section 11AB /11AA of the Act, as the case may be and proposing penalty under Rule 15(2) of the CCR, 2004, read with Section 11AC/11 AC(b) of the Act, as applicable during the relevant period. Periodical Show Cause Notices/Statements of Demands covering the period from January 2013 to March, 2015 were also issued to the Noticee alleging contraventions as above on the above grounds.

6.2. As the charges against the Noticee in the subsequent period i.e. from 2015 2016 (Written off entry posted on 31-03-2016) & 2016-17 (Written off entry posted on 31-03-2017) were the same, the instant Statement of Demand No. 16/P1/COMMR/2017-18 dated 14-03-2018 issued under F. No. V/15-103/CGST/Adj/ DSCN/General Motor/17-18 under the provisions of sub-section 7A of Section 11A of the Act was issued to the Noticee for recovery of CENVAT credit amounting to R\$. 11,57,52,298/- as detailed in Annexure 'A' of the said SOD under the provisions of Section 11A(1) of the Act read with Rule 14 of CCR, 2004; for recovery of interest on the said amounts

under Rule 14 of CCR, 2004, read with Section 11AA of the Act; and proposing penalty under the provisions of Rule 15(1) of the CCR, 2004 read with Section 11AC(1) of the Act.

7. The subject SCN mainly alleged that the Noticee failed to pay an amount equivalent to the CENVAT credit attributed in the value of inputs written off fully or partially or where the provision to write off fully or partially has been made in the books of accounts contravening the provisions of Rule 3 (5B) of the CENVAT Credit Rules, 2004 (herein after referred to as the CCR 2004) besides, the Noticee have contravened the provisions of Rule 9(5) of the CCR, 2004 in as much as they have failed to maintain the proper records to prove the admissibility of CENVAT credit availed by them on the written off 'Inputs', as they have already made provision in their books of accounts.

8. The main contentions of the Noticee in their reply / submissions are as under:

- a) The accounting entries passed by the Noticee are merely provisional in nature and the same are not related to the capacity of the inputs of being used in the manufacture of final product.*
- b) The accounting entries made by the Noticee do not amount to Writing off as contemplated by Rule 3(5B) of the CCR, 2004. Therefore, the said Rule 3(5B) is not applicable in the present case and consequently no credit reversal is required to be made by Noticee.*
- c) The Department has not discharged its burden to prove that the Noticee has violated the provisions of Rule 3(5B) of the CCR, 2004.*
- d) Provisions of Rule 3(5B) of CCR, 2004 were introduced with an objective to bar the availability of CENVAT credit on obsolete inputs or capital goods. Therefore, Rule 3(5B) of CCR, 2004 needs to be interpreted in a way that achieves the legislative object.*
- e) The Noticee has maintained its records and books of accounts in accordance with the provisions of CCR, 2004 and there is no violation of Rule 9(5) of CCR, 2004,*
- f) The demand needs to be re-quantified on account of multiple counting of the write-off resulting in demand of*

reversal at multiple occasions on the same part, on account of goods in transit and on account of credit already reversed on obsolete inputs

g) Interest is not recoverable if Original Demand is not sustainable. The disputed CENVAT credit has not been utilized in the instant case and hence, interest can in no manner be recovered.

h) No Penalty can be imposed in the instant case

9. From the averments made in the SOD, reply to the SOD, oral submissions during the course of personal hearing, I find that the main issues to be decided in this case, are --

- (a) Whether the Noticee is liable to reverse or pay CENVAT credit attributable to the inputs which have been written off fully or partially and in respect of which provision for write off of such inputs has been made by them in their books of account;*
- (b) Whether interest is payable by the 'Noticee on the amount of CENVAT credit demanded from them;*
- (c) Whether penalty is imposable on the Noticee.*

10.1. Now, I take up the issues mentioned in Para 9 above one by one.

Whether the Noticee is liable to reverse or pay CENVAT credit attributable to the inputs which have been written off fully or partially and in respect of which provision for write off of such inputs has been made by them in their books of account:

10. At the outset, it will be appropriate to recap the relevant provisions relating to availment of CENVAT credit by a manufacturer of excisable goods under the CENVAT Credit Rules, 2004. in this context, I find that the following provisions are relevant to this case -

10.1. As per Rule 3(1) of the CCR, 2004,

10.2. As per Rule 3 (5B) of the CCR, 2004, 'If the value of any,

10.3. As per Rule 9(5) of the CCR, 2004,

11.1. On analyzing the provisions of Rule 3(5B) of the CCR, 2004, I find that the basic elements to attract the mischief of this Rule are as follows

- a) the value of inputs or the capital goods, as the case may be, on which CENVAT credit have been taken should have been written fully or partially in the books of account and/or a provision for such write off should have been made in the books of account. There is no stipulation that these entries should be booked as permanent or provisional.*
- b) in the above cases, the assessee is required to pay an amount equivalent to the CENVAT credit taken on such inputs written off fully or partially in the books of account and/or provision for such write off should have been made in the books of account.*
- c) However, if the said inputs or capital goods are used subsequently in the manufacture of final products, the assessee shall be entitled to the CENVAT credit reversed/paid by them earlier.*

11.2. In the instant case, I find that the Noticee are following an inventory management system which according to them is US GAAP compliant and which is mandated by their global accounting policies. As per their accounting policy, 'excess productive materials and supplies are those factory materials that due to design changes, annual model changes, overbuys, overproduction or similar reasons are no longer required for normal usage. This means that the excessive stock booked by GML as write-off are no longer required for normal usage in the immediate future due to the design changes, annual model changes, and other reasons mentioned therein in the accounting policy. This signifies that in the short run, these inputs attain the character of temporary obsolescence.

11.3. I find that if the inputs are rendered fully obsolete and written off or a provision has been made by GMI in their books of account for such write off, then it would signify that such inputs cannot be utilized by the Noticee in the manufacture of their final products and consequently, they would be liable to reverse the CENVAT credit availed on such inputs. However, I find that the

provisions of Rule 3(5B) of the CCR, 2004, also cover within its ambit inputs which have been rendered obsolete temporarily due to change in production line, introduction of new models, physical deterioration of the inputs etc., but which are capable of being used in the future and available with the assessee. I find that this is evident from the wordings of the proviso to Rule 3(58) of the CCR, 2004, which stipulates that as and when such inputs rendered obsolete are used subsequently in the manufacture of the final products, then the assessee is entitled to the CENVAT credit reversed or paid by them.

11.4. Thus, I find that whether the inputs are rendered obsolete permanently or temporarily, if they are written off fully or partially and / or if a provision for such write off has been made by the assessee in their books of account, then it is mandated under Rule 3(5B) of the CCR, 2004, that at the time of such write-off or while making a provision for such write off, they shall pay an amount equivalent to the CENVAT credit taken in respect of such inputs. In the instant case, I find that GMI have undisputedly made such provision for write off in respect of their excessive stock of slow moving inputs & obsolete inputs in their books of account and therefore, they are liable to be required to pay or reverse the CENVAT credit taken on such inputs, and I hold so. I find that the nature of accounting policy adopted and followed by the assessee would not have any bearing on the unambiguous provisions of Rule 3(58) of the CCR, 2004. It has to be borne in mind that in the event of any conflict between the provisions of law enacted and the accounting policies or practices adopted by individual assessee, the provisions of law shall always prevail. In this regard, I would also like to observe that the Noticee in this case would not be prejudiced and/or put to any significant loss because if they can reconcile their accounts and show proof of usage of such inputs written off at a later date, they would be entitled to the CENVAT credit paid by them as provided in the proviso to Rule 3(58) of the CCR, 2004.

11.5. GMI have also contended that the department has failed to discharge its burden to prove that the Noticee have violated the provisions of Rule 3(5B) of the CCR, 2004. In this context, I find that the Noticee have been writing off input inventories as slow

moving or obsolete in their books of account and again recrediting such entries periodically in total defiance of the provisions of Rule 3(58) of the CCR, 2004, in as much as, once the value of inputs are booked as written off and/ or provisions for such write off is made in the books of account, the primary responsibility of the Noticee is to reverse the CENVAT credit availed in respect of such inputs. However, I find that the Noticee have been writing off the value of inputs in their books of accounts, without reversing the CENVAT credit involved in respect of such inputs. These facts clearly establish that the Noticee have violated the provisions of Rule 3(58) of the CCR, 2004.

11.6. Further, I find that the interpretation of the provisions of Rule 3(5B) of the CCR, 2004, as advanced by the Noticee, is not correct and proper and does not reveal the true spirit behind the incorporation of this Rule in the CCR, 2004. In this regard, it will be relevant to mention here that prior to the introduction of this Rule 3(5B) in the CCR, 2004, vide Notification No. 26/2007-CE (NT) dated 11-05 2007, the CBEC, vide Circular No.645/36/2002-CX dt. 16-07-2002, had clarified that - "In cases where the value of the inputs is partially written off/ reduced in the accounts of the company, but the inputs are still capable of and available for use in the manufacture of finished goods, there would be no question of payment of CENVAT Credit availed.'

11.7. The provisions of the CCR, 2004 were subsequently amended vide Notification No.26/2007-CE (NT) dated 11-05-2007, and Rule 3(5B) was introduced to specifically take care of write-off cases, whether permanent or temporary. I find that, where the inputs are rendered absolutely useless and not fit for consumption any more in the production process and which are written off and/or a provision is made in the books of account for such write off, then the value of such inputs would be booked as permanent loss' in the books of account. Consequently, the Noticee would be liable to reverse the CENVAT credit taken on such inputs. As contended by the Noticee, had the legislature intended to introduce Rule 3(5B) of the CCR, 2004, to deal with CENVAT credit of such permanently disabled inputs, then there

would not have been any need for it to incorporate the proviso to the said Rule providing for re-credit of the CENVAT credit paid on such disabled inputs because such inputs are rendered useless for any further production.

11.8. However, I find that the said Rule 3(5B) was introduced with a purpose to also to deal with CENVAT credit on inputs which are temporarily rendered obsolete due to various reasons, but which are available in the factory and capable of being used in the production process at a future date. In such circumstances, it would be pertinent to note that on the one hand the Noticee avails CENVAT credit on such inputs and utilizes the same for payment of their duty liability from time to time but the utilization of these cenvated inputs remains deferred over an uncertain period of time due to their temporary obsolescence, which defeats the very purpose of the CENVAT credit scheme. Further, I find that the book value of such slow moving inputs / temporary obsolete inputs gets eroded in the books of account and which would then be recognized and booked as "loss for the current period" in their books of account. Thus, I find that in order to overcome such situation and to bring a parity, a proviso to the said Rule 3(58) has been incorporated wherein, in cases of temporary obsolescence of inputs, which are booked as write-off fully/partially or provisions made in the books of account for such write off, the Noticee will be primarily liable to reverse the CENVAT credit taken on such inputs and upon the usage of such inputs at a later date, would take re-credit of the amount so paid by them.

11.9. In view of the above, the Noticee's contention that Rule 3(58) of the CCR, 2004, has been introduced to deal with cases of permanent obsolescence of inputs as booked in the books of accounts and that the said Rule would not be applicable to the facts and circumstances of the present case, is not acceptable and liable to be rejected.

11.10. In this regard, I also find that the Noticee have relied upon certain case laws, namely -

- a. Audco India Ltd. Vs CCE 2006 (184) ELT 77
- b. CCE Vs Ingersoll Rand (I) Ltd. 2014 (300) ELT 317

- c. *CCE Vs. Indian Petrochemicals Corporation Ltd. -2008 (226) ELT 339 (Born)*
- d. *Ultratech Cement Co. Ltd. Vs. CCE - 2009 (247) ELT 771 (Tri-Ahmd)*
- e. *Tecumseh Products India Pvt. Ltd. Vs. CCE - (2008 (221) ELT 129 (Tri Bang)*
- f. *CCE Vs Fairfield Atlas Ltd. - 2008 (230) ELT 511(Tri-Mum)*
- g. *Hindustan Zinc Limited Vs. CCE - 2005 (191) ELT 724 (Tri-Bang)*

11.11. *The gist of these cases is that CENVAT credit will not be denied on inputs and capital goods, the value of which has been written off in the books of account. However, on having gone through the aforesaid case-laws, I find that the same have been issued in the context of CENVAT Credit Rules as they existed prior to the introduction of Rule 3 (5B) of the CCR, 2004, and therefore the ratios therein would not be applicable to the facts and circumstances of this case.*

11.12. *Further, I do not agree with the Noticee's contention that Rule 3(5B) of the CCR, 2004, has frustrated the true intention of the legislature and that 'Heydon's Rule of interpretation should be resorted to construe, the true intention of the legislature behind the introduction of this Rule. In this context, as observed in the preceding paras, Rule 3(5B) of the CCR, 2004, has been introduced to deal with situations where the Noticee avails credit on inputs and utilizes the same for payment of duty, but the utilization of the inputs gets deferred for an uncertain period, thus putting the Noticee to an advantage but to the detriment of the exchequer. The very purpose of allowing credit of inputs under the CENVAT credit scheme is to neutralize the cascading effect of taxes on the final product being manufactured out of these inputs. However, in such cases where the usage of inputs remains uncertain but the credit of the same is utilized, the CENVAT credit scheme gets defeated and therefore, I find that in order to deal with such cases the provisions for first reversal of credit on such inputs temporarily rendered obsolete in the books of account and then taking re-credit upon usage of the same, was introduced by way of this Rule. In fact, I find that the Heydon's Rule of interpretation' would not have any application*

in the instant case, as the provisions of Rule 3(5B) of the CCR, 2004, are unambiguous and self-explanatory.

11.13. Further the Noticee have contended that they have maintained records and books of accounts in accordance with the provisions of CENVAT Credit Rules and there is no violation of Rule 9(5) of the CCR, 2004. In this context, in order to get the true perspective of the allegation of not maintaining proper records as envisaged in Rule 9(5) of the CCR, 2004, I find that it has to be read with the provisions of Rule 3(5B) of the CCR, 2004. In this regard, I find that even after recording certain inputs as excessive and slow moving or obsolete in their books of account, the Noticee have not maintained records to show the CENVAT credit involved on such inputs, to show bifurcation of these inputs into imported or indigenous, reversal of credit, if any. made by them in respect of these inputs, usage of these inputs temporarily rendered obsolete, at a later date, etc. which shows their incompatible inventory management system, which is not in consonance with the provisions of CCR, 2004. I therefore hold that the assessee has failed to maintain proper accounts in respect of inputs on which they have availed CENVAT credit and hence they have violated provisions of Rule 9(5) of CCR, 2004.

11.14. I find that the Noticee contended that the demand needs re-computation on account of multiple counting of the write-off resulting in demand of reversal at multiple Occasions on the same part. In this regard, I find that the working of demand in the Statement of Demand has been done on the basis of information supplied by the Noticee themselves and not on the basis of any assumptions and presumptions and also that this issue has been in dispute since the first SCN issued to them on 04-01 2014. In this regard, I find that the Noticee have enclosed Annexure 12 to the reply dated 25-07-2018, purported to be having details of part wise slow moving details. In this regard, I find that the said Annexure 12 is the statement showing part wise slow moving details for the period from January 2014 to March 2015. I find that the period of demand in the instant case is from 2015-2016 (Written off entry posted on 31-03 2016) & 2016-17 (Written off entry posted on 31-03-2017). Hence the

same is not relevant for the instant case. Therefore, I am unable to give them any relief on this count. I also find that the Noticee's appeals are pending before Hon'ble CESTAT, I am accordingly constrained to take a view that the averments made by them regarding re-computations are an afterthought to deviate from the core issue which being failure to reverse CENVAT credit on the inputs on which provision to write off has been effected in their Book of Accounts. Further, the in-built provisions of Rule 3(5B) of CENVAT Credit Rules 2004 also cater to a situation where the assessee are entitled to take re-credit. I therefore find no force in the argument advanced for re computation of demand.

11.15. Further, I also find that the Noticee have sought deduction in respect of inputs in transit but shown as written off. In this regard the Noticee have contended that as per their accounting policy, the inputs lying in stock as also in transit, for which the risks and rewards are transferred to the Noticee, are booked as stocks in their books of account, although the material is not actually received by them. However, I find that such accounting policy does not explain as to how a particular input which has not been received in the factory can be categorized as slow moving or accounted for in the books, and therefore the said practice not only seems incomprehensible but also improper. Therefore, I am unable to accept the contention of the Noticee on this count.

11.16. Further, I find that the Noticee have also contended that the demand needs re computation on account of credit already reversed on obsolete inputs. In this regard, I find that the Noticee have enclosed Annexure 16 and 17 to the reply dated 25-07 2018, purported to be having details of reversal of credit in respect of inputs which have been rendered obsolete. In this regard, I find that the said Annexure 16 is the statement showing CENVAT reversal on obsolete parts on 31-03-2014 to 31-01-2015 and Annexure 17 is screenshots of the said debit entries. I find that the period of demand in the instant case is from 2015-2016 (Written off entry posted on 31-03 2016) & 2016-17 (Written off entry posted on 31-03-2017). Hence the

same is not relevant for the instant case. Therefore, I am unable to give them any relief on this count.

11.17. In view of the above, I conclude that the Noticee have contravened the provisions of Rule 3 (5B) of the CCR, 2004, in as much as they have failed to pay an amount equivalent to the CENVAT credit attributed in the value of inputs written off fully or partially or where the provision to write off fully or partially has been made in their books of accounts and credit availed on inputs written off at the time of such write-off and Rule 9(5) of the CCR, 2004 in as much as they have failed to maintain the proper records to prove the admissibility of CENVAT credit availed by them on the written off 'Inputs', as they have already made provision in their books of accounts. Accordingly, I hold that the Noticee GMI had failed to pay or reverse the CENVAT credit taken in respect of 'Inputs' which have been written off, or in respect of which provision has been made in their Books of Accounts, whether fully or partially, to write off, and on which CENVAT credit was availed by them, Consequently, inadmissible CENVAT Credit in respect of 'Inputs, as detailed in Annexure A to the Statement of Demand dated 14-03-2018 and also detailed in their letter dated 19-02-2018, which have been written off, or in respect of which provision has been made in their Books of Accounts, whether fully or partially, to write off, and on which CENVAT credit was availed by them, during the period from 2015-2016 (Written off entry posted on 31-03-2016) & 2016-17 (Written off entry posted on 31 03-2017), totally amounting to Rs. 11,57,52,298/- (Rupees Eleven crores fifty seven lakhs fifty two thousand two hundred ninety eight only (Rs. 9,00,88,206/- BED + Rs. 4,73,873/- Ed. Cess + Rs. 2,36,937/- SHE Cess+ Rs. 2,49,53,2821- Addi C. Duty), is liable to be demanded and recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read Section 11 A (1) of the Central Excise Act, 1944 and I hold accordingly."

4.3 From the perusal of the Show Cause Notices and impugned orders it is quite evident that the only issue that needs to be decided in the present case is in respect of the interpretation of the phrase, "written off fully or partially or where any provision to write off fully or partially, has been made in the books of

account", used in the Rule 3 (5B) of the CENVAT Credit Rules. The said Rule is reproduced below:

"Rule 3 (5B)

If the value of any

- (i) input, or*
- (ii) capital goods before being put to use,*

on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially, 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 (output 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, for recovery of CENVAT credit wrongly taken."

There is complete legislative history to explain the insertion of the rule 3 (5B). Prior to the insertion of the said rule, CBEC has in 1995 issued Circular No 101/12/96-CS dated 22.2.1995 as a direction to plug the revenue leakage in situations where assessee was writing off the material in the books of accounts, but not reversing the MODVAT credit availed on those input materials. Subsequently, the CBEC issued circular no. 615/36/2002-X dated 16.7 2002 clarifying that in situation wherein inputs had been written off, the instruction mentioned in circular dated 22.2.1995 shall apply i.e. Credit availed must be paid back. Rule 3(5B) was introduced w.e.f. 11.5.2007. The intention for insertion of Rule 3(5B), was to plug those situations, wherein the assessee is availing benefit of Cenvat Credit on the inputs which are not intended to be used and are

written off or provisioned for written off in the books of accounts, but still lying in the factory. Rule 3 (5B) is part of the CENVAT Credit scheme, and should be interpreted in a manner to fulfill the basic objective of scheme. On a plain reading of the aforesaid provision, it is clear that the assessee shall be liable to pay the amount of Cenvat credit availed on the inputs, which are either written off fully or partially or any provision for write off fully or partially has been made in the books of accounts. This provision shall only apply in respect, of those goods which are written off the input in the books of accounts of the appellants for the reason that they have been lost, destroyed or become obsolete. It cannot be applied to case where the value of goods for any reason is written down in the books of account. Explaining the scheme of MODVAT Credit, Hon'ble Supreme Court has in the case of Dai Ichi karkaria Ltd [1999 (112) ELT 353 (SC)] observed as follows:

*"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. **There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible.** It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."*

This decision in an unambiguous manner provides that once the credit has been taken by the appellant then the same is available to him unless the manufacturer himself chooses not to use the raw material in its excisable product. Thus it is the option of the manufacturer to declare that inputs on which he has taken the credit have become unusable or have been lost and are not available for the purpose of manufacture of finished goods which are cleared on the payment of duty. The philosophy of this observation of Hon'ble Apex Court, is what has been formally stated in Rule 3 (5B) of the CENVAT Credit Rules, 2004.

4.4 The phrase "write off" or "provision to write off", have not been defined in the Central Excise Act, 1944 or the rules made thereunder including the CENVAT Credit Rules, 2004. However the same have been explained in various dictionaries in following manner:

- **Dictionary of Accounting Terms (by Joel G Siegel)**

WRITE OFF

1. Transfer of the entire balance of an asset account into an expense or loss account. A full reduction in an asset indicates it is not worth anything (has no future benefit) due to some occurrence. An example is the destruction of a machine in a fire when the company has no insurance and the machine no salvage value.
2. elimination of a specific customer's account balance because of uncollectibility, as in the case of a bankruptcy.

- **A Dictionary of Accounting (Oxford) 4th edition**

write off 1. To reduce the value of an asset to zero in a balance sheet. An expired lease, obsolete machinery, or an unfortunate investment would be written off. 2. To reduce to zero a debt that cannot be collected (see BAD DEBE). Such a loss will be shown in the *profit and loss account of an organization.

- **BLACK's Law Dictionary (8th Edn)**

WRITE OFF

write off,vb. To remove (an asset) from the books, esp. as a loss or expense < the partnership wrote off the bad debt>. See TAX WRITE-OFF. - write-off,n.

4.5 From the plain reading of the above definitions of the term "write off", it can be construed that write off is term used wherein the asset is permanently lost on account of pilferage, obsolescence or otherwise and is required to be removed from the books of accounts. Thus it is quite evident that the impact of "write off", or "making the provision to write off" an asset (including the inputs) would be reflected as loss or an expense in the book of accounts of the appellant and shall be admissible as deduction while computing the income of the appellant. Now the question that needs to be considered is whether the valuation of inventories as per the accounting standards and the accounting policies followed by the appellant would amount to "write off" or "making the provisions to write off".

4.6 As per the IND-AS (2) - Inventories, "the inventories shall be measured at the lower of the cost and net realizable value". This principle is followed to recognize the anticipated decrease in the value of the inventory, immediately. This principle is governed by the "Principle of Conservative Accounting". The same is explained in the Chapter-4 Inventories, of the Study Material issued by Institute of Chartered Accountants of India. The relevant extract is reproduced hereunder:

"3. BASIS OF INVENTORY VALUATION

Inventories should be generally valued at the lower of cost or net realizable value. This expenses or losses from transactions entered or event occurred are to be recognized immediately, however, any gains or profits are recognized until it becomes due or are actually realized. Under the principle of "lower of cost or net realizable value' any loss due to decrease in sales price of the inventory below its cost is recognized immediately as it is anticipated that the enterprise will make losses whenever it will sell..."

Furthermore, the same principle is laid down in the US GAAP. The following is the text of SAB topic 5.BB, Inventory Valuation Allowance,

Facts: FASB ASC paragraph 330-10-35-1 (Inventory Topic), specifies that "(a) departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as

great as its cost. Where there is evidence that the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether due to physical deterioration, obsolescence, changes in price levels, or other causes, the difference shall be recognized as a loss of the current period. This is generally accomplished by stating such goods at a lower level commonly designated as market."

... Emphasis Supplied

Hon'ble Supreme Court in the judgment of CIT V. British Paints India Ltd. [1991] 54 Taxman 499 (SC) has observed as follows:

8. It is a well recognized principle of commercial accounting to enter in the profit and loss account the value of the stock-in-trade at the beginning and at the end of the accounting year at cost or market price, whichever is the lower. [533G-H] Whimster & Co. v. The Commissioners of Inland Revenue, [191726] 12 Tax Cases, 813,823

The object of stock valuation is the correct determination of the profits and loss resulting from a year's trading. It is the true result of the trading activity of that year that must be disclosed by the books.

".....the profits are the profits realised in the course of the year. What seems an exception is recognised where a trader purchased and still holds goods or stocks which have fallen in value. No loss has been realised. Loss may not occur. Nevertheless, at the close of the year he is permitted to treat these goods or stocks as of their market value." [Whimster and Co.v. CIR (1925] 12 TC 813, 827 (C. Sess.)

... Emphasis Supplied

Following the above principles of accounting the appellant had been valuing their inventory on monthly basis and making the consequential adjustments, specifically in respect of the slow moving items. They followed the global policies laid down by their principals abroad. The accounting standards and policies followed by the appellant do not imply that revaluation of inventory from time to time is equivalent to write off or making the provision of write off, even if the revaluation of inventory

may be for the purpose of claiming certain benefits under Income Tax Act, 1961 or elsewhere.

4.7 Can such valuation of inventory from time to time and on basis of accounting standards referred above be equated to "write off" or "making the provision of write off" as used in Rule 3 (5B) of The CENVAT Credit Rules, 2004. Admittedly the goods in respect of which demand for reversal of CENVAT credit has been made have been used in the production of the finished goods which are cleared on payment of duty. Further revenue has gone on the basis of monthly inventory valuation without even co-relating the same with the Annual Financial Statements i.e. Balance Sheet and Profit and Loss Account of the Appellant. As per the appellant the entries made in the respect of the slow moving items in inventory are reversed subsequently in the next month will neutralize each other, without having any impact on the total inventory at the closure of financial year. Even the auditors who value the stock at the closure of financial years will point out if any discrepancies exist in the actual physical stock of inventory and inventory records. Without making any reference to such financial statements can anybody conclude in respect of write off of the inputs or finished goods. Not a single case of such reference over the period from 2008 to 2017 has been put forth.

4.8 In the case of Solvay Specialties India Pvt Ltd. [2018 (12) G.S.T.L. 82 (Tri. - Ahmd.)], Ahmedabad Bench has observed as follows:

"6. *The short issue involved in the present case is: whether the appellants are required to reverse the credit availed on inputs alleged to have been written off in their books of account in accordance with Rule 3(5B) of Cenvat Credit Rules, 2004. Before analyzing the issue it is worth mentioning the relevant Rule 3(5B) of the Cenvat Credit Rules, 2004 as was in force during the relevant time, which reads as follows :*

"Rule 3(5B) : 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 partially or where any provision to write off fully or partially has been made in the books of account, the manufacturer or service provider is required to pay an amount

equivalent to the CENVAT credit taken in respect of the said input or capital goods."

7. *On a plain reading of the said Rule it is clear that in the event the value of any input or capital goods before being put to use on which Cenvat credit has been availed are written off fully or partially or any provision has been made to write off fully or partially than the manufacturer or service provider are required to reverse/pay Cenvat credit availed on such inputs or capital goods. In the present case from the very beginning the appellant have submitted that they have only written down the value of the raw materials in their books of account and has not written off the value fully or partially. Also, the claim of the appellant are that all these raw materials are still available in their factory and are in usable conditions; the value is written down as per the accounting principle and since the credit availed is on inputs, therefore, under the CCR, 2004, there is no bar in taking depreciation benefit' under Income-tax Act, 1961. Further, I find that there is no evidence to the effect that the inputs whose value had been written down had been removed from the factory. Thus, reducing the value of the raw materials keeping in view the accounting principles and Income-tax benefit, if any, it cannot be construed that the value of the inputs are written off from the books of account and are not usable resulting into invoking of Rule 3(5B) of Cenvat Credit Rules, 2004."*

4.9 In case of BCH Electric Ltd [2016 (344) E.L.T. 469 (Tri. - Chan.)] Chandigarh Bench has observed as follows:

"6.

Issue No. (iii) *Whether the appellant is required to reverse Cenvat credit on inputs/components for which provision has been made in the balance sheet but not actually written-off or not?*

I have gone through the facts of the case. In fact, appellant has made a provision for written-off but inputs and components were not actually not written off by the appellant. Further, the appellant has used these inputs and components later on, in the manufacture of final goods, in that circumstances, as per provision of Rule 3(5B) appellant is entitled to take Cenvat credit

on these inputs and components, therefore, appellant is not required to reverse Cenvat credit on inputs/components for which they have made provision in the balance sheet. In these circumstances, Issue No. (iii) is answered in favour of the appellant."

4.10 In case of Ingersoll Rand India Ltd. [2014 () ELT (Guj)] Hon'ble Gujarat High Court has in respect of the similar provisions under the scheme of MODVAT credit held as follows:

"7. We are of the opinion that the reduction of the value of such spares (inputs) for income-tax purpose, cannot be equated with writing off of the physical stock. The accounts maintained by the manufacturer for the income-tax purpose stand on an entirely different footing and would have to follow the accounting standards prescribed under the law. If under such accounting principles, the assessee is entitled to diminish the value of a certain stock held over a period longer than the specified period, the same has no correlation with the availability of physical stock insofar as the manufacturing activity is concerned.

8. Even otherwise, the Rules of 1944 did not envisage any period within which the input must be consumed. In the case of Dai Ichi Karkaria Ltd. (supra), the Apex Court observed as under :-

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product."

9. Apart from the said decision, we have perused the rules. The Modvat credit was available as provided under Rule 57A. Sub-rule (1) thereof provided that the provisions of this Chapter [which is Chapter V(AA) pertaining to credit of duty paid on excisable goods used as inputs] shall apply to such finished excisable goods as may be notified by the Central Government for the purpose of allowing credit on any duty of excise or additional duty as may be specified in such notification paid on the goods used in the manufacture of the said final products. Rule 57F provided for the manner of utilisation of inputs and the credit allowed in respect of duty paid thereon. Relevant portion of the said rule reads as under :-

Rule 57F. Manner of utilisation of inputs and the credit allowed in respect of duty paid thereon. - (1) The inputs on which credit has been taken may be used in or in relation to the manufacture of final products.

(2) The inputs may be removed, after intimating the Assistant Commissioner of Central Excise concerned, in writing, for home consumption or for export under bond.

(3) All removals of inputs for home consumption shall be made -

(a) on payment of duty equal to the amount of credit availed in respect of such inputs; and

(b) under the cover of invoice prescribed under Rule 52A.

From the said rule, it can be seen that the liability of the assessee to pay duty equal to the amount of credit availed in respect of a particular input would arise at the time of the removal of the inputs for home consumption. This rule did not envisage reversal of Cenvat credit even before removal of goods.

10. With this background, we may peruse the two circulars heavily relied upon by the revenue. These circulars have been issued by the C.B.E. & C. in exercise of powers under Section 37B of the Central Excise Act, 1944 ('the Act', for short). In the circular dated 22-2-1995, it was inter alia provided as under :-

"Instances have been brought to the notice of the Board where Modvat credit taken on inputs by the assessee was not reversed even after writing off of the materials on which the credit was taken. Cases have also been noticed where the credit had not been adjusted even though the write-off of the input materials had taken place three or four years ago. In such situation, it is obligatory on the part of the assesseees to straight away reverse the Modvat credit taken under intimation to the Ranger Officers concerned. Utilisation of Modvat credit taken on inputs, which had actually been written off for stock account purposes, clearly will amount to mis-construction and abuse of the Modvat scheme."

11. This circular thus provided that where the credit has not been adjusted even though write-off of the input material has taken place, in such a situation it is obligatory on the part of the assessee to reverse the Modvat credit. It was further provided that utilisation of Cenvat credit taken on inputs which had actually been written off for stock account purpose would clearly amount to misconstruction and abuse of the Modvat scheme.

12. Quite apart from the question whether such circular can provide for reversal of the Modvat credit when the rules did not envisage to which question we shall advert to later, to our mind, this circular did not provide any clarity about the writing off of the inputs namely, whether the circular desired to strike at non-reversal of the Modvat credit upon writing off of the value of the inputs for the accounts and income-tax purpose or to strike at non-reversal of the Modvat upon physical writing off or the stock writing off of the goods. Be that as it may, the C.B.E. & C. issued yet another circular dated 16-7-2002 and provided as under :-

(i) In cases, where unused inputs are fully written off, Board's instructions dated 22-2-1995 shall apply i.e. the credit availed must be paid back.

(ii) In cases where the value of the inputs is partially written off/reduced in the accounts of the company, but the inputs are still capable of and available for use in the manufacture of

finished goods, there would be no question of payment of Cenvat credit availed.

(iii) In respect of capital goods viz. components, spare parts, etc., which are written off before use and hence are not proposed to be used, the Cenvat credit availed will have to be paid back on the same lines as applicable to "inputs" as mentioned in (i) above.

13. In this circular, there was greater clarity. In particular, in para (ii), it was provided that in case where the value of the inputs is partially written off or reduced in the accounts of the company but the inputs are still capable of or available for use in the manufacture of finished goods, there would be no question of demand of Cenvat credit availed. However, in cases where unused inputs were fully written off, the earlier circular would prevail. In other words, the reversal of Modvat credit would be compulsory.

14. To our mind, such a circular could not provide for the reversal of Modvat credit in cases which are covered prior to introduction of Rule 5B of the Cenvat Credit Rules. As already noted, there was no provision under which the Modvat credit already taken under the Rules of 1944 could be directed to be reversed simply because the input goods were not utilised for a certain period of time. We also note that there is significant difference in the accounting approach for the income-tax purpose and the approach for stock maintenance for the purpose of manufacturing activities relevant for the question of excise. Therefore, merely because the value of goods diminished in the books of account of the assessee would not by itself permit the Department to insist on reversal of the credit particularly when such goods were still available in the factory in usable condition."

4.11 Revenue has relied upon the Board Circular of 2009 to support their case. On perusal of the said circular we find that the circular is in respect of inputs contained in work in process. Hence we do not find any applicability of the said circular to fact of present case.

4.12 During the period from April 2008 to June 2017 (period of demand), the appellant claim that they had already reversed Cenvat Credit of Rs. 7,05,86,921/- on obsolete inventory. Revenue do not dispute that in case where the appellants have written off the inputs in the books of accounts they have reversed the CENVAT Credit in respect of those inputs which were written off.

4.13 Since we do not uphold the demand made on merits we are not inclined to take up the issue in respect of quantification and invocation of the extended period.

4.14 Since the demand do not survive the demand for interest too fails and no penal consequences will follow.

5.1 Appeals are allowed setting aside the impugned orders.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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