

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

Excise Appeal No. 87314 of 2019

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-23-19-20 dated 25.04.2019 passed by the Commissioner(Appeals), GST & Central Excise, Nashik)

Greaves Cotton Ltd.
Unit I J2 MIDC Chikalthana
Aurangabad

.....Appellant

VERSUS

Commissioner of Central Excise &
Service Tax, Aurangabad
N-5, Town Centre, CIDCO,
Aurangabad

.....Respondent

APPEARANCE:

Shri Rajesh Ostwal, Advocate along with Ms. Payal Nahar,
Advocate for the appellant
Shri A.K. Jha, (AR) for the respondent

CORAM:

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

FINAL ORDER No: A/85967/2023

DATE OF HEARING : 21.12.2022
DATE OF DECISION : 19.06.2023

Per: AJAY SHARMA

This appeal has been filed from the impugned Order dated
25.04.2019 passed by the Commissioner(Appeals), GST &

Central Excise, Nashik by which the appeal filed by the appellant was rejected.

2. The appellant are manufacturing excisable goods such as ICD Engine, Petrol/Gasoline Engine, ICD Engine parts, Water handling pump set etc. and are availing credit on capital goods. The issue involved herein is the availment of Cenvat Credit of Rs.13,26,589/- by the appellant on the customs duty of Rs.19,15,802/- alongwith interest of Rs.53,853/- paid by the them through TR-6 challan on 14.1.2016 on '*Greaves 1.51 Diesel Engine 77 KW*' which they initially imported from China under the Scheme '*ATA Carnet*' for the purpose of exhibition without payment of duty but later on decided to retain the same for *Research & Development (R&D)* purpose in order to use it as a prototype for manufacture of their goods. The lower authority rejected the credit on two counts, one being not a capital good and another that TR- 6 Challan is not the valid document as contemplated by Rule 9 of Cenvat Credit Rules, 2009 for establishing the payment of duty. The 1st appellate authority although held that TR- 6 challan dated 14.1.2016 evidencing the payment of the duties by the appellant is a valid document for admitting the Cenvat credit but held that the Cenvat credit on '*Greaves 1.51 Diesel Engine 77 KW*' is not available to the appellant as the appellant has failed to establish use of the said engine for *Research & Development (R&D)*. As per Revenue the Engine in issue was merely put up for display in the entrance

lobby of the appellant's factory and was not being used by the appellant for any research purpose. The fact of wrongly availment of Cenvat credit came to notice of the department during audit and accordingly a show cause cum demand notice dated 30.5.2018 was issued to the appellant which culminated into the Order-in-Original dated 26.12.2018 confirming the demand raised in the show cause notice alongwith interest and equal penalty.

3. I have heard learned counsel for the appellant and learned Authorised Representative for the revenue and perused the case records including the synopsis/written submissions alongwith case laws placed on record. TR-6 challan has already been held as valid document by the 1st appellate authority and the Revenue has not challenged that issue by way of any appeal therefore it attained finality. Learned counsel drew my attention towards the technical write up of the engine in issue and also towards the declaration submitted by the appellant before the authority below specifying the use of imported goods for R & D purpose. The engine in issue is undisputedly falls under Chapter 84 therefore one limb of Rule 2(a) *ibid* has been fulfilled, the another limb is that *it must be used in the factory of the manufacturer of the final product*. According to the learned Commissioner, the appellant has failed to submit any corroborative evidence to establish the use of the said engine for any research purpose in their factory whereas learned counsel

submits that all relevant evidences were produced by them before this learned Commissioner. I am of the view that if the appellant wishes to avail credit then they have to fulfill the conditions laid down in the relevant provision. Learned counsel produced test data sheet in respect of LEAP 3 Cyl diesel engine variant indicating the use of imported engine in their factory. The test data sheet as produced herein may be a relevant document for their purpose but the authority below will be the appropriate authority to appreciate the same and therefore without going into the other aspect viz. suppression by appellant, imposition of penalty etc., I am inclined to grant one more opportunity to the appellant to produce evidences including the test data sheet to establish the use of the said engine for any research purpose in their factory and for that purpose I am remanding the matter back to the learned Commissioner (Appeal) for deciding the same afresh. The issue regarding TR-6 challan has already attained finality. The appellant is directed to produce all relevant documents/ evidences they wish to rely upon in support of their submission before the learned Commissioner (Appeals).

4. In view of the discussions made hereinabove, the impugned order is set aside and appeal is allowed by way of remand to the 1st Appellate Authority i.e. Commissioner (Appeals) to the extent mentioned hereinabove with a direction

to decide the same afresh after giving proper opportunity of hearing to the Appellant.

(Pronounced in open Court on 19.06.2023)

(Ajay Sharma)
Member (Judicial)

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