

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

WEST ZONAL BENCH

EXCISE APPEAL NO: 87242 OF 2013

[Arising out of Order-in-Appeal No: RPS/55/NSK/2013 dated 25th February 2013
passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.]

Lear Automotive (India) Pvt Ltd

Plot No. B-86, MIDC, Ambad, Nashik – 422 010

... Appellant

versus

Commissioner of Central Excise & Customs

Kendriya Rajaswa Bhavan, Gadkari Chowk

Nashik – 422 002

...Respondent

APPEARANCE:

Shri Rajesh Ostwal, Advocate and Ms Payal Nahar, Advocate for the appellant

Shri Bhilegaonkar Deepak, Additional Commissioner (AR) for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87066/2023

DATE OF HEARING:

27/06/2023

DATE OF DECISION:

26/10/2023

PER: C J MATHEW

This appeal of M/s Lear Automotive (India) Pvt Ltd, against the
remnant demand of ₹ 19,16,372 ordered for recovery under rule 14
CENVAT Credit Rules, 2004 by the original authority, along with

applicable interest, and penalty of like amount under rule 15 of CENVAT Credit Rules, 2004, relates to the removal of ‘epoxy moulds’ to manufacturer of ‘parts of automobile’ seats that were returned to the appellant for final assembly into the finished products to be supplied to M/s Mahindra & Mahindra Ltd during 2008-09 and in the following year upto 27th February 2010 with no demand thereafter owing to the incorporation of

‘(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf, according to his specifications.”.’

in rule 4(5) of CENVAT Credit Rules, 2004 with effect from 27th February 2010 vide notification no. 6/2010-CE(NT) dated 27th February 2010.

2. The case of the jurisdictional central excise authorities is that the ‘moulds’ had been removed ‘as such’ and, therefore, rendered the credit taken to be ineligible in terms of rule 3(5) of CENVAT Credit Rules, 2004.

3. It is the contention of Learned Counsel for the appellant that the ‘epoxy moulds’ had been deployed by their vendors in manufacture of parts of the goods that were returned to them and that the eligibility

for availment of credit in relation to such supplies made to ‘job-workers’ is not in doubt at all. It is further contended that merely by using ‘raw materials’ other than that of the principal manufacturer status of the vendors as ‘job-worker’ would not be altered as held by the Tribunal in *Monica Electronics v. Commissioner of Central Excise, New Delhi* [2000 (123) ELT 1047 (Tribunal)], in *Whirlpool of India Ltd v. Commissioner of Central Excise, Trichy* [2004 (178) ELT 423 (Tri.-Del.)], affirmed by the Hon’ble High Court of Madras in *Commissioner of Central Excise, Pondicherry v. Whirlpool of India Ltd* [2015 (316) ELT 209 (Mad.)], in *Commissioner of Central Excise, Trichy v. Whirlpool India Ltd* [2005 (191) ELT 481 (Tri.-Chennai)] and in *Transafe International Pvt Ltd v. Commissioner of Central Excise, Kolkata – V* [2019 (368) ELT 726 (Tri.-Kolkata)].

4. It was also contended that incorporation of such clearance in terms of rule 4(5)(b) of CENVAT Credit Rules, 2004 with effect from 27th February 2010 which happen to be clarificatory renders them eligible from as far back as the period of dispute for which reliance was placed on letter¹ of Central Board of Excise and Customs (CBEC). A further contention of Learned Counsel was that the distinguishment of the decision of the Tribunal in *re Whirlpool of India Ltd* and in *re Monica Electronics*, as well as that of the Hon’ble Supreme Court in *re Whirlpool India Ltd*, was inappropriate. It was

¹ [dated 26th February 2010 issued from F.No. 334/1/2010-TRU]

also contended that the clearance of ‘moulds’ under cover of challan did, as per rule 4(5)(1) of CENVAT Credit Rules, 2004, establish that vendors were ‘job-worker’ of theirs.

5. Learned Authorised Representative submitted that the decision of the Tribunal in *JBM Ma Automotive Pvt Ltd v. Commissioner of Central Excise, Pune – I* [2015 (315) ELT 234 (Tri.-Mumbai)] supports the stand of the lower authorities that a ‘job-worker’ is distinguished by the supply of materials from the principal manufacturer which the appellant did not in the present instance.

6. We find that the demand has been confirmed by reference to the definition of ‘job-worker’ in rule 2(n) of CENVAT Credit Rules, 2004. The first appellate authority has determined that the transfer of ‘moulds’ without reversal of credit is permissible only when such supplies are made to ‘job-worker’ and definition of ‘job-worker’

‘(n) “job work” means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly;’

in rule 2 of CENVAT Credit Rules, 2004 precludes the arrangement between the appellant and the vendors owing to not being recipients of any raw materials or semi-finished goods from the appellant.

7. We find that rule 4(5)(b) of CENVATA Credit Rules, 2004 permits transfers to 'job-worker' for production of goods on behalf of 'principal manufacturer' and according to such specification as set out in such arrangement. The definition of 'job-worker' is specific and restricting it to such persons as undertake processing or working upon of raw material or semi-finished goods supplied to the job-worker is intended to relieve them of liability that would, otherwise, devolve on them as 'manufacturer' of excisable goods. On the other hand, enablement of transfers on 'principal-to-principal' basis was specifically incorporated in CENVAT Credit Rules, 2004 with effect from 27th March 2010. The issue, therefore, is permissibility of such transfers without reversal of CENVAT credit prior to such incorporation. CENVAT Credit Rules, 2004 were notified in succession to rules for availment and utilization of MODVAT credit in Central Excise Rules, 1944. We see from several decisions cited before us that MODVAT credit concerned was sought to be denied on the ground that 'raw materials' had not been furnished to 'job-worker' but we take note that definition of 'job-work' has been incorporated in CENVAT Credit Rules, 2004 unlike in the predecessor framework and the cases before the Tribunal had been disposed off on the finding that it was inappropriate to draw upon 'definition' in a procedural notification for an entirely different purpose for determination of eligibility to MODVAT credit.

8. We find that rule 9(3) of CENVAT Credit Rules, 2004, relating to inputs or capital goods removed 'as such' requires issue of invoice referred to in rule 9 of CENVAT Credit Rules, 2004 which does not apply to the present facts inasmuch as 'moulds' are not sold to the vendors. The removal of such moulds to 'job-worker' admittedly governed by rule 4(5) of CENVAT Credit Rules, 2004, permits retention of credit for a time and reversal upon completion of deadline till such time when the goods are not returned to the principal manufacturer. We cannot accept the submission that the incorporation of 2010 to cover removal to another manufacturer or job-worker is not clarificatory in nature especially as rule 4(5)(a) of CENVAT Credit Rules, 2004, intended for such clearance to the job-worker, finds mention again in rule 4(5)(b) to cover situations of such not being returned to the principal manufacturer.

9. The orders of the lower authority are silent on the final disposal of the 'moulds' after completion of contract. To the extent that 'moulds' had been transferred to the vendors, even if not to the 'job-worker', and it is not the contention of central excise authorities that these are removals envisaged in rule 3(5) of CENVAT Credit Rules, 2004, recovery of ineligible credit under rule 14 of CENVAT Credit Rules, 2004 without such ascertainment would not be appropriate. Accordingly, we set aside the impugned order and remand the matter back to the original authority for fresh determination on ascertainment

of facts relating to the transactions.

10. The appeal is accordingly disposed off in the above terms.

(Order pronounced in the open court on 26/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*