CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86876 OF 2013

[Arising out of Order-in-Appeal No: BC/596/M-III/2012-13 dated 19th February 2013 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Crompton Greaves Ltd
Transformer Division, Kanjur, Mumbai 400042 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
CGO Complex, 5th Floor, CBD Belapur
Navi Mumbai - 400704 ***…Respondent***

WITH

EXCISE APPEAL NO: 86877 OF 2013

[Arising out of Order-in-Appeal No: BC/632/M-III/2012-13 dated 14th March 2013 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Crompton Greaves Ltd
Transformer Division, Kanjur, Mumbai 400042 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
CGO Complex, 5th Floor, CBD Belapur
Navi Mumbai - 400704 ***…Respondent***

AND

EXCISE APPEAL NO: 86337 OF 2013

[Arising out of Order-in-Original No: 13/COMMR/M-III/WLH/2012-13 dated 30th November 2012 passed by the Commissioner of Central Excise, Mumbai – III.]

Commissioner of Central Excise
Mumbai – III
4th Floor, Vardaan Trade Centre, MIDC
Thane (West) - 400604 … ***Appellant***

versus

Crompton Greaves Ltd
Transformer Division, Kanjur, Mumbai 400042 ***…Respondent***

APPEARANCE:

Shri Aditya Chitale, Advocate for the assessee-appellant

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

CORAM:

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

FINAL ORDER NO: A / 87107-87109/2023

DATE OF HEARING: 11/07/2023
DATE OF DECISION: 08/11/2023

PER: C J MATHEW

M/s Crompton Greaves Ltd, the appellant in these two appeals, is a manufacturer of 'transformers', which are either cleared domestically or exported upon removal in terms of rule 19(3) of Central Excise Rules, 2001 read with notification no. 41/2001-CE (NT) dated 26th June 2021, and the duties of central excise attendant to 'parts and components' procured by them were availed as credit under CENVAT Credit Rules, 2004. It also happened that some of these exported ‘transformers’ had been returned to them for carrying out repairs which may have involved utilization of such inputs. Two such ‘transformers’ were re-exported in February 2008 after repairs and the appellant had, erroneously, reversed credit attributable to ‘inputs’ deployed for repairs to the extent of ₹19,95,770/- and ₹ 21,36,861/- respectively. Restoration of this credit allowed by the original authority and, on appeal of Revenue, reversed by the first appellate authority, was remitted by the Tribunal in order dated 23rd March 2016. It is against this backdrop that the present disputes have come before us.

2. Between 2007 and 2009 five such transformers had been re-exported without impacting the credit attributable to ‘inputs’ utilized therein upon which subsequently, on August 2010 and September 2010 and at the instance of central excise authorities, the appellant reversed the credit of ₹ 75,90,509/- ‘under protest’ following which show cause notice came to be issued to the appellant as on 12th May 2012 for ‘appropriation’ thereof. In the meanwhile, the appellant also, *vide*, application dated 29th June 2012, sought restoration of credit of ₹ 75,90,509/- thus reversed, which came to be rejected by *ex-parte* order dated 14th September 2012. The earlier notice for ‘appropriation’ was dropped by Commissioner of Central Excise *vide* order-in-original dated 3rd December 2012. Revenue is in appeal

against dropping of the ‘appropriation’ with the plea that the said goods utilized in repairs are not ‘inputs’ within the meaning of rule 2(k) of CENVAT Credit Rules, 2004. It would also appear that the appellant-Commissioner was inclined to discard applicability of circular no. 283/117/96-CX dated 31st December 1996 of Central Board of Excise & Customs (CBEC) clarifying that ‘inputs’ used in such repairs be deemed to have been cleared ‘as such’ and hence eligible for credit. The appeal against disallowance of request for restoration of credit came to be rejected by order[1] of Commissioner of Central Excise (Appeals), Mumbai – II leading to the present appeal. In relation to two other transformers, re-exported in 2007-2009, credit of ₹ 25,89,574/- reversed at the instance of central excise authorities was sought to be restored *vide* letter dated 12th September 2012 which came to be rejected and further appeal before the first appellate authority yielded no success leading to the second appeal of assessee before us.

3. According to Learned Counsel for the assessee-appellant, in *Crompton Greaves Ltd v. Commissioner of Central Excise, Navi Mumbai*, appeal[2] challenging order[3] of Commissioner of Central Excise (Appeals), Navi Mumbai and on identical issue, the Tribunal had followed its earlier decision in *Transformers & Electricals Kerala*

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[1] [order-in-appeal no. BC/596/M-III/2012-13 dated 19th February 2013]
[2] [E/2105/2010]
[3] [order-in-appeal no. PKS/320/BEL/2010 DATED 24th September 2010]

Ltd v. Commissioner of Central Excise [2006 (205) ELT 1136 (Tri.-Bang.)] and the issue is accordingly no longer *re integra*.

4. We have heard Learned Authorised Representative.

5. It would appear that the objection of the central excise authorities is to the deployment of the impugned goods not for manufacture but for repair and which was neither within the ambit of rule 2(k) of CENVAT Credit Rules, 2004 nor cleared 'as such' within flexibility afforded by rule 4 of CENVAT Credit Rules, 2004. Nonetheless, the repair executed by the appellant, even if not manufactured, would be tantamount to service and to the extent that the impugned goods had been deployed in rendering of 'taxable service' or service that had exported, eligibility for availment of CENVAT credit cannot be denied. Accordingly, there is no merit in the appeal of Revenue which is dismissed.

6. What now remains to be disposed off were the disputes arising from rejection of the claim for refund. Eligibility for claim for refund in such circumstances has already been settled by the Tribunal in *re Transformers & Electricals Kerala Ltd* holding that

> *'6. We have gone through the records of the case carefully. The goods on which Cenvat credit have been availed were used in the repair of the transformers which was re-exported. In other words, the inputs used in the repairs are contained in the goods exported. The provisions pointed out by the learned*

> *Representative of the appellant provided for excise rebate even in respect of inputs used in the processing of export goods. In these circumstances, there is no merit in the impugned order passed by the Commissioner (A). There is no necessity for reversing the credit. Hence, we allow the appeal with consequential relief, if any.'*

Moreover, the appellant-assessee had been seeking restoration of credit that they had been forcibly deprived of at the instance of the central excise authorities.

7. In view of our finding *supra,* that the impugned goods constitute 'inputs' in terms of rule 2(k) of CENVAT Credit Rules, 2004, rejection of claim for restoration of credit is not tenable. Accordingly, the applications are restored to the original authority for disposal in terms of section 11B of Central Excise Act, 1944 and in accordance with our finding *supra.*

8. Appeals are, accordingly, disposed off.

(Order pronounced in the open court on 08/11/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*