CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86235 OF 2020

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0158/2020-21 dated 30th September 2020 passed by the Commissioner of Central Tax (Appeals–I), Pune.]

Lear Automotive India Pvt Ltd
Plot E-25/26/27 MDIC, Bhosari, Pune - 411026 … ***Appellant***

versus

Commissioner of Central Excise & GST
Pune – I
GST Bhawan, 41-A, Sassoon Road, Pune - 411001 ***…Respondent***

APPEARANCE:

Shri Jay Chheda, Advocate for the appellant

Shri A K Shrivastava, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86158/2024

DATE OF HEARING:	15/04/2024
DATE OF DECISION:	14/10/2024

This appeal of M/s Lear Automotive India Pvt Ltd challenges order[1] of Commissioner of Central Tax (Appeals–I), Pune upholding

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[1] [order-in-appeal no. PUN-EXCUS-001-APP-0158/2020-21 dated 30th September 2020]

demand of ₹ 47,86,229/- under section 73 of Finance Act, 1994, along with interest thereon under section 75 of Finance Act, 1994, and imposing penalty under section 77 and 78 of Finance Act, 1994 on the finding of CENVAT credit availed between April 2013 and June 2017 that, to the extent of use in non-taxable output service, had been retained contrary to rule 6 of CENVAT Credit Rules, 2004.

2. The appellant has facility for testing of 'automobile seats' at its Pune facility which, in addition to testing of products of other entities, undertakes in-house test of its own production as well as that of other undertakings of theirs. It appears from the records that invoices raised on their own units manufacturing automobile seats did not evince discharge of tax liability and it was not in dispute that these internal documents had been generated for management control with tax not having been paid as service had been rendered to self. The jurisdictional officers contended that the credit of tax paid on goods and services deployed for rendering of 'testing of automobile seats' service should have been restricted to such 'output service' as generated consideration on which tax liability had been discharged by the appellant. Proceedings were initiated for recovery of improperly retained CENVAT credit till 31st March 2016 by reversal to the extent attributable to the amount indicated in the internal documents and, for the period after 1st April 2016, by drawing upon *Explanation* below rule 6(1) of CENVAT Credit Rules, 2004 on the scope of 'exempted

service', to recover at 7% of such internally rendered service. Though the original authority dropped the proceedings, upon review directing challenge before the first appellate authority, the impugned order reversed the dropping of proceedings.

3. Learned Counsel for the appellant submitted that, for the period prior to 1st April 2016 and in the absence of specific explanation inserted with effect from that date, the impugned activity was not 'exempted service' within the scope of definition in rule 2(e) of CENVAT Credit Rules, 2004. It was further contended that rendering of service within their own establishment is not covered by rule 2(e)(ii) of CENVAT Credit Rules, 2004. According to Learned Counsel for the appellant, 'exempted service' is one which stems from being either 'taxable service' or 'service' and it is his contention that the definition of service in section 65B(44) of Finance Act, 1994 requires such to be carried out by one person for another for consideration and in the absence thereof is not a service. It was further contended that the service so rendered to their own establishment is prelude to clearance of 'dutiable goods' and, hence, retention of credit was not incorrect. It was also submitted that even if after insertion of *Explanation 3* in rule 6(1) of CENVAT Credit Rules, 2004, reversal of credit is not a requirement for the very same reasons and hence the distinction drawn in the show cause notice as well as in the impugned order of the intent of *Explanation* is not acceptable.

4. Learned Authorised Representative reiterated the findings of the first appellate authority. He also drew upon definition of exempted service in rule 2(e) of CENVAT Credit Rules, 2004 as well as the mandate of rule 6(1) of CENVAT Credit Rules, 2004 that the tax/duty charged on goods and services attributable to rendering of service that are not liable to tax could not be retained in the CENVAT credit account.

5. It is seen from the impugned order that the first appellate authority has relied upon *Explanation 3* in rule 6(1) of CENVAT Credit Rules, 2004 as well as the definition of 'exempted service' to conclude that the insertion of *Explanation 3 supra* did not change the scope of definition of exempted service owing to which the nature of the activity undertaken by the appellant did not merit the retention of credit availed on goods and services deployed for the testing.

6. It is evident that the first appellate authority had not examined the contention made now on the manner in which elements of definitions of 'exempted service' in rule 2(e) of CENVAT Credit Rules, 2004 were, according to Learned Counsel, to be perceived and also that the absence of a service precludes the attributing of any of the input service or inputs to anything other than taxable service. This aspect of the legal basis of rule 6 of CENVAT Credit Rules, 2004 would need to be examined afresh. To enable that, the impugned order is set aside and

the matter remanded back to the first appellate authority for a fresh decision after considering the submissions of the appellant herein.

(Order pronounced in the open court on 14/10/2024)

(C J MATHEW)
Member (Technical)

**/as*