

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

WEST ZONAL BENCH

EXCISE APPEAL NO: 89339 OF 2014

[Arising out of Order-in-Original No: PUN-EXCUS-001-COM-012-14-15 dated 25th June 2014 passed by the Commissioner of Central Excise, Pune – I.]

Force Motors Limited

Mumbai – Pune Road, Akurdi, Pune - 411035

... Appellant

versus

Commissioner of Central Excise

Pune – I

41A, ICE House, Sassoon Road, Pune -411001

...Respondent

APPEARANCE:

Shri S A Gundecha, Advocate for the appellant

Shri C Vinod, Assistant Commissioner (AR) for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86676/2024

DATE OF HEARING:

03/05/2024

DATE OF DECISION:

04/11/2024

PER: C J MATHEW

This appeal lies against the recovery of allegedly inadmissible credit of ₹ 65,24,139, for the period from January 2009 to March

2013, under rule 14 of CENVAT Credit Rules, 2004, along with applicable interest therein, and imposition of penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 in order¹ of Commissioner of Central Excise, Pune – I.

2. The allegation against the appellant was that credit of duty paid, on inputs used exclusively in the ‘research and development (R&D)’ division of the appellant, had continued to remain on their books despite the non-dutiability of the products emanating from the said division. The contention of the appellant is that these products are made use of in the manufacture of final products in their several plants and, consequently, within the meaning of ‘inputs’ as per rule 2(k) of CENVAT Credit Rules, 2004.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. Learned Counsel drew our attention to the decision of the Tribunal in their own dispute, viz., *Force Motors Ltd v. Commissioner of Central Excise, Pune-I* [2018 (363) ELT 1072 (Tri.-Bom)], relating to the immediately succeeding period, i.e., April 2013 to December 2013.

5. On a perusal of the said order, we find that the issue stands

¹ [order-in-original no. PUN-EXCUS-001-COM-012-14-15 dated 25th June 2014]

decided thus

'5. The inputs in dispute are not covered by the exclusion clause in the definition supra and, of the many elements that are specifically enumerated, it is only the first that is of relevance. A priori, it would appear that the goods used in the factory by the manufacturer of the final product would be eligible. It is important to note here that inputs are not restricted to such goods used in the factory by the manufacturer for the final product. It would, therefore, appear that there is no bar to availing credit of goods used in the research and development wing of the manufacturing facility. There is no allegation that the appellant does not produce excisable goods; neither is there any allegation that research and development is not intended for the betterment of excisable goods manufactured by the appellant. However, a definition, by itself, would not suffice to enable availment of credit. The entitlement to Cenvat credit flows from Rule 3 of Cenvat Credit Rules, 2004 in accord with which such inputs as that used in the production of output is eligible for credit. The issue therefore crystallizes on this pivot: whether the ancillary functions that support the manufacturing facility do contribute to output for the purposes of availment of credit.

6. It is here that the definition of manufacture in Central Excise Act, 1944, referred to by Learned Counsel, may provide some elucidation. It would appear that apart from production of excisable outputs any activity that is incidental or ancillary also constitutes manufacture. That the output of such incidental or ancillary operations may not directly result in goods that are excisable would not take it out of the ambit of manufacture and, prima facie, it would appear that the fruits of research and development facility ultimately finds its way, in form and in costs, to the excisable product.

7. *The Hon'ble Supreme Court in Maruti Suzuki Ltd v. Commissioner of Central Excise, Delhi-III [2009 (240) ELT 641 (SC)] has held that -*

'20. To sum up, we hold that the definition of "input" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose. The important point to be noted is that, in the present case, excess electricity has been cleared by the assessee at the agreed rate from time to time in favour of its joint ventures, vendors, etc., for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assessee was not entitled to Cenvat credit. In short, assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption). They are not entitled to Cenvat credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors, etc., which is sold at a price.'

thus clarifying that inputs in any activity that contributes to the final product would be in compliance with the definition of input in Cenvat Credit Rules, 2004.

8. *The Tribunal in V. Ramakrishna Rao v. Commissioner of Central Excise, Hyderabad [2006 (205) ELT 703 (Tri.-Bang.)] held thus -*

'6. We have gone through the records of the case carefully. The show cause notice issued to the appellants is not only based on the balance sheets but also on the raw material ledger for R & D issue register and the indent slips used for R & D. Therefore, the appellant cannot take advantage of the fact that the balance sheet is a public document and hence longer period is not applicable. There is clear evidence that inputs have been diverted for R & D purposes. The scope of the remand order of the Tribunal is very limited, as observed by the Adjudicating Authority. He was asked to examine whether R & D activity is an integral part of the manufacturing process. The contentions of the appellants that even the R & D activity resulted the manufacture of final product which are accounted for are not accepted by the Adjudicating Authority in the absence of evidence. The appellant is working under the system of self removal procedure. They cannot take the plea that the officers were visiting the unit and no irregularity was pointed out. Inasmuch as the Adjudicating Authority has given a finding that R & D is not an integral part of the manufacture and in the

absence of evidence that the R & D activity resulted in the manufacture of final product, on which duty has been paid, the appellants are liable to pay the irregular Modvat credit availed. Hence, the confirmation of an amount of Rs. 38,91,220/- (Rupees Thirty-Eight Lakhs Ninety-One Thousand Two Hundred Twenty only) is upheld. However, the penalty under 57-I is limited to Rs. 4,00,000/- (Rupees Four Lakh only). Interest under 57-I(5) is also confirmed. The penalty on M/s. Plant Organics is reduced to Rs. 50,000/- (Rupees Fifty Thousand only) under Rule 173Q(l)(bb) of the CE Rules. Having record to facts and circumstances of the case, the penalty on Shri V. Rama Krishna Rao is set aside. The appeals are disposed of in the above terms. ‘

implying that denial of credit is a consequence of establishing that the research and development facility was not integral to the manufacturing process. Such an allegation has not motivated the demand in the present instance. It was in a similar vein that the Tribunal handed down its decision to disallow the credit claimed by the assessee in Bajaj Auto Ltd. v. Commissioner of Central Excise, Pune [2004 (176) ELT 162 (Tri.-Mumbai)]; in the impugned order, and in the notice there is no finding that research and development has ought to do with the product that emerges in the factory.

9. Considering the wide latitude offered for availment of credit, and in the absence of any allegation that research and development is not concerned with manufacture of the appellant, the disallowance of Cenvat credit does not find favour and must be set aside.’

6. Respectfully following the said decision, we allow this appeal to set aside the impugned order.

(Order pronounced in the open court on 04/11/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)