CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 88686 of 2014

(Arising out of Order-in-Original No. 22/CEX/2014/C dated 28.05.2014 passed by the Commissioner of Central Excise, Nagpur Commissionerate.)

M/s Mahindra & Mahindra Ltd. .... **Appellant**
Farm Equipment Sector, MIDC, Hingna Road,
Nagpur- 440 016.

Versus

Commissioner of Central Excise, Nagpur .... **Respondent**
P.O. Box 81, Nagpur, Maharashtra- 440 001.

Appearance:

Ms. Padmavati Patil, Advocate for the Appellant

Shri Rajiv Ranjan, Auth. Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87629/2024

Date of Hearing: 15.05.2024
Date of Decision: 15.05.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of tractors and parts thereof viz., hydraulic assembly, I.C. engines, transmission assembly, etc., falling under Chapter Heading Nos. 8408, 8409, 8701 and 8708 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT credit of Central Excise duty paid on the inputs and capital goods, in terms of Rule 3 of the CENVAT Credit Rules, 2004. All the above goods were chargeable to Central Excise duty up to the period 08/07/2004. However, w.e.f. 09/07/2004, 'Tractors' falling under Chapter Heading 8701, were exempted from payment of Central Excise duty vide Notification No. 23/2004-C.E. dated 09/07/2004. Since the inputs were commonly used for manufacture of the exempted goods i.e., Tractors as well as the dutiable goods i.e., Hydraulic Assembly, I.C. Engines, Transmission Assembly, the appellants had paid an amount, equal to 8% of the sale price of

Tractors, at the time of their clearance from the factory. During scrutiny of records maintained by the appellants, the department had observed that the appellants availed CENVAT credit amounting to Rs. 3,20,50,906/- on various inputs, which were lying in stock or in the process or input contained in final product lying in stock. Since Tractors falling under the Chapter Heading 8701 were exempted from payment of duty as per the notification dated 09.07.2004, the department had entertained the belief that the appellants were required to reverse the Cenvat credit on inputs lying at various stages under the provisions of Rule 6(1) of the erstwhile CENVAT Credit Rules, 2002 (for short, referred to as "the Rules of 2002"). Accordingly, the department had initiated show cause proceedings against the appellants, which culminated into the adjudication order dated 28.05.2014 (impugned herein) passed by the learned Commissioner of Central Excise & Customs, Nagpur. In the said impugned order, learned adjudicating authority has confirmed Cenvat demand amounting to Rs. 3,20,50,906/-along with interest and also imposed equal amount of penalty on the appellant. Feeling aggrieved with the impugned order dated 28.05.2014, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. Rule 3(1) of the Rules of 2002 is the enabling provision, which entitles a manufacturer of final products to take CENVAT credit of Central Excise duty paid on the inputs/capital goods received in the factory. Sub-rule (2) of Rule 3 of the Rules of 2002 has provided the overriding effect over sub-suction (1), stating that the manufacturer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock, on the date on which any goods cease to be exempted goods or any goods become excisable. The CENVAT credit so availed by the manufacturer, is permitted under sub-rule (3) to be utilized for payment of Central Excise duty on the final products removed from the factory.

4. In the case in hand, it is an admitted fact on record that the disputed CENVAT credit was availed by the appellants before issuance of the notification dated 09/07/2004 (supra). This fact is evident on

reading of paragraph 6 in the show cause notice dated 04.08.2005, wherein it has been stated that CENVAT credit of Rs.3,20,50,906/- in respect of duty paid inputs were lying in stock or in the process or in input contained in final product lying in stock, when the Tractors became exempted in terms of the notification dated 09.07.2004. Since, at the time of taking of CENVAT credit on the inputs, the final products i.e., Tractors were not exempted from payment of Central Excise duty, in our considered view, taking of CENVAT credit by the appellants was in conformity with the CENVAT statute. Further, the department had also not objected to the fact that the appellants had correctly utilized the CENVAT credit for payment of duty on removal of the final products from their factory. Thus, under such circumstances, confirmation of the adjudged demands by taking recourse to Rule 12 of the Rules of 2002 is uncalled for and cannot be sustained.

5.1 We find that on an identical set of facts, the Hon'ble Madras High Court, in the case of *Tractor and Farm Equipment Ltd. vs. Commr. of C.Ex., Madurai-II*, 2015 (320) E.L.T. 357 (Mad.), while responding to the question, whether the respondent is right in holding that availing of the credit is wrong when the exemption on tractors is not subject to the condition that the credit on inputs lying in stock is to be reversed, had answered as follows:

> *"16. Once it is held that no co-relation between the raw material and the final product is required, the appellant's plea stands answered. If credit can be taken against excise duty on a final product manufactured on the very day, it makes it abundantly clear that there need not be co-relation between the input and the goods cleared and as a result, validly taken credit need not be reversed. The Central Excise Rules would come into play in the following manner, that is to say, on the date when the final goods become exempt from payment of duty, for the inputs received on and after the said date, no credit can be taken. This would be the correct method of understanding of the position of law."*

5.2 Further, we also find that the Hon'ble Karnataka High Court, in the case of Commissioner of C. Ex., Bangalore-II vs. Tafe Ltd. (Tractor Division) – 2011 (268) E.L.T. 49 (Kar.), had dismissed the appeal filed by the Revenue on identical facts, holding as under:

"6. Dealing with Cenvat credit and reversal of said credit, the Apex Court in the case of Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. reported in 1999 (112) E.L.T. 353 (S.C.), at paragraph 17 and 18 interpreting Rule 57A and 57J of the Central Excise Rules 1944, has held as under :

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to used the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses no to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

18. It is therefore, that in the case of Eicher Motors Ltd. v. Union of India [1999 (106) E.L.T. 3] this Court said that a credit under the Modvat scheme was "as good as tax paid."

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9. Therefore it is clear from the aforesaid judgment of the Apex Court that once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently. Only if any products are purchased subsequent to the said exemption and if any tax is paid on such inputs, as the final product is exempted from payment of tax, the assessee would not be entitled to avail the Cenvat credit on such inputs. But the Cenvat credit availed on such inputs till the date of exemption, they vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the same. Therefore the authorities taking advantage of the notification exempting the final product cannot claim reversal of Cenvat credit either in respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in progress and finished products."

5.3 The Special Leave Petition (SLP) filed by the Commissioner of Central Excise, Madurai against the order passed by the Hon'ble Madras High Court, in the case of *Tractor and Farm Equipment Ltd.*

(supra) was dismissed by the Hon'ble Supreme Court vide judgment dated 07.09.2015, reported in 2015 (324) E.L.T. A86 (S.C.). Further, the Review Petition filed against the said judgment dated 07.09.2015 was also dismissed by the Hon'ble Supreme Court – 2016 (340) E.L.T. A203 (S.C.). Similarly, Special Leave to Appeal filed by Revenue against the judgment of Hon'ble Karnataka High Court, in the case of Tafe Ltd. (Tractor Division) was also dismissed by the Hon'ble Supreme Court, reported in 2015 (320) E.L.T. A185 (S.C.).

6. In view of the foregoing discussions, we are of the considered opinion that the impugned order, confirming the adjudged demands on the appellants cannot be sustained on merits. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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