CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85574 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0003-15-16 dated 03.12.2015 passed by the Commissioner, Central Excise, Pune-III Commissionerate.)

Piaggio Vehicles Pvt. Ltd. **.... Appellant**
E-2 & F-1 Katphal Road,
MIDC Area, Baramati,
Dist.- Pune- 413 133.

VERSUS

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
Pune-III Commissionerate,
ICE House, 41-A, Sassoon Road,
Opp. Wadia College,
Pune- 411 001.

APPEARANCE:

Shri M.H. Patil a/w Ms. Mansi Patil, Shri Viraj Reshamwala, Advocates and Shri Abhijit Malankar, Consultant for the appellant

Shri Hemant Kumar Tantia, Authorized Representative for the Revenue

CORAM:

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

FINAL ORDER NO. A/86753/2025

Date of Hearing: 19.03.2025
Date of Decision: 19.03.2025

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants in their factory located at Katphal Road, MIDC Area, Baramati, Pune, are engaged *inter alia*, in the manufacture of motor vehicles and chassis thereof, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of Central Excise duty paid on the inputs/capital goods and service tax paid on the input services, as per the provisions contained in the CENVAT Credit Rules, 2004. The appellant's other unit, known as 'CNC Division', is also engaged in the manufacture of the excisable goods viz., Gear Boxes and Motor Vehicle Parts, in their factory

located at Bhigwan Road, MIDC Baramati, Pune. During the disputed period, the CNC Division of the appellants had issued the supplementary invoices, indicating the additional duty paid on the basis of inter-unit transfer of goods. Based on such supplementary invoices, the Katphal Road unit of the appellants had availed the CENVAT Credit. Availment of CENVAT Credit by the appellants was disputed by the jurisdictional Central Excise Authorities on the ground that the supplier of goods i.e., CNC Division had contravened the provisions of Section 4 (1) (b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, with intent to evade payment of duty, which was detected by their jurisdictional authorities. Accordingly, show cause notice (SCN) dated 07.11.2014 was issued by the department to the appellants, alleging that they are not eligible for availment of CENVAT Credit in terms of Rule 9 (1) (b) of the Rules of 2004. The said SCN dated 07.11.2014 was adjudicated by the learned Commissioner, Central Excise, Pune–III vide the impugned order dated 03.12.2015, wherein CENVAT demand of Rs. 3,37,03,843/- along with interest was confirmed on the appellants. Feeling aggrieved with the impugned order dated 03.12.2015, the appellants have preferred this appeal before the Tribunal.

3. The appellants have assailed the impugned order, mainly on the ground that the restriction imposed on availment of CENVAT Credit in respect of supplementary invoices in Rule 9(1) (b) *ibid* is applicable only in a case, where the clearance of goods by the supplier is made by way of sale and not otherwise. It was further contended by the appellants that as a manufacturer of excisable goods, they were eligible to avail CENVAT Credit in terms of Rule 3 of the Rules of 2004, on the strength of supplementary invoices issued by their CNC Division.

4. It is an admitted fact on record that the CNC Division had stock transferred the gear boxes to the appellants on the basis of the valuation arrived at in terms of Rule 8 of the Rules of 2000 read with Section 4(1) (b) of the Act of 1944 and that there is no sale of goods taken place between both the units belonging to the appellants. Since, the differential duty was paid by the CNC Division based on the Accounting Standards (CAS-4), in our considered view, the said additional/differential duty should be available to the appellants (as the recipient unit of gear boxes), in terms of Rule 3 of the Rules of 2004. An embargo has been created in Rule 9 (1) (b) of the Rules of 2004, providing that on the basis of supplementary invoice, CENVAT Credit

cannot be allowed, where the additional amount of duty became recoverable from the manufacturer of input/capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts etc., with intent to evade payment of duty. On reading of said statutory provision, it would transpire that the restriction imposed for non-availment of CENVAT Credit is with regard to the sale of goods and not to the goods stock transferred to the sister units/other manufacturing unit owned and belonging to the same corporate entity. We find that the issue arising out of the present dispute is no more open for any debate, in view of the judgement delivered by the Hon'ble Karnataka High Court, in the case of *Karnataka Soaps & Detergents Ltd. Vs. C.Ex., Mysore* – 2010 (258) E.L.T. 62 (Kar.), which was upheld by the Hon'ble Supreme Court, reported in 2010 (254) E.L.T. A-40 (S.C.). Further, the Co-ordinate bench of this Tribunal, in the case of *Hindustan Unilever Ltd. & Other Vs. CCE & S.T. Valsad*, vide the Final Order Nos. A/12328-12329/2023 dated 19.10.2023 has allowed the appeal, holding that CENVAT Credit is available on the strength of the supplementary invoices issued for stock transfer of goods.

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of appellants.

(Operative portion of the order pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

SM