

Central Excise Appeal No. 44 of 2015

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**Central Excise Appeal No. 44 of 2015
Date of decision : March 10, 2023**

PRINCIPAL COMMISSIONER OF CENTRAL EXCISE, CENTRAL
EXCISE COMMOSSIONERATE, GURGAON-II

....APPELLANT

VERSUS

M/S MITSUBISHI ELECTRIC AUTOMOTIVE INDIA PVT. LTD.

....RESPONDENT

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Tejinder Joshi, Senior Standing Counsel,
for the appellant

Mr. Amar Pratap Singh, Advocate, for the respondent

KULDEEP TIWARI, J.

1. The present appeal, filed by the Revenue, has been directed against the judgment dated 5.9.2014 (Annexure A/3) passed by the learned Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi, whereby, the appeal filed by the respondent, against the order dated 31.3.2006 (Annexure A/2), passed by the Commissioner Central Excise, Delhi-III, Gurgaon, had been allowed.

2. The respondent-company is engaged in the production and clearance of Electric Control unit, Alternator Assy. etc. classifiable under Central Excise Tariff Hearing No. 9032.99/8511 of

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the 1st Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and is also availing Modvat/CENVAT credit of duty paid on inputs and capital goods under Rule 3 of CENVAT Credit Rules, 2002/2004. During the course of audit of the respondent's records, for the period from September, 2003 to March, 2005, the staff of Central Excise Audit observed that the respondent had taken CENVAT credit in respect of the imported inputs, namely, stator Assy, spacer, rectifier assy, regulator assy, rotor, bearings etc., used in the manufacture of Alternator in terms of provisions of Rule 4 of CENVAT Credit Rules, 2002/2004. It was further observed that respondent has imported the goods under the cover of proper bill of entries and after getting custom clearance, directly sent under Notification No.214/86-CF dated 23.3.1986 as amended to M/s Lucas TVS Limited (hereinafter referred as 'Job Worker'), for further processing, and, job-work challans to this effect were issued by the respondent after taking CENVAT Credit of CVD paid thereon. After completion of job work at the job worker's premises, the processed goods i.e. semi furnished alternator, were sent by the job worker to the respondent under the cover of an invoice-cum-delivery challan showing therein the cost of customer's material plus job work charges @ Rs.375.00 per piece and payment of central excise duty (and education cess w.e.f. 5.7.2004) on such value (cost of customer's material plus job work charges) along with job work challan. The job worker did not avail benefit of Notification No. 214/86-CF dated 23.3.1986. The respondent then availed CENVAT credit on the job worked goods on the strength of such invoice-cum-delivery challans, as issued by the

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job worker. In the backdrop of these facts, the department concerned concluded that the respondent has availed CENVAT credit (duty + education cess) amounting to Rs.2,04,31,581/- on the basis of invoices-cum-challans, as issued by job worker, and, again Rs.1,78,93,790/- on the basis of B/E for the same inputs, during the period from 23.9.2003 to 29.3.2005. Considering the respondent to have taken double CENVAT credit, in contravention of Rule 3 of CENVAT Credit Rules, 2002/2004, read with Notification No. 214/86-CF dated 23.3.1986, a show cause notice was issued by the appellant to the respondent on 16.9.2005/ 21.9.2005.

3. Vide order dated 31.3.2006 (Annexure A/2), the Commissioner, Central Excise, disallowed the CENVAT credit of Rs.1,78,93,790.00, as availed and utilised by the respondent, and, ordered recovery of the abovesaid amount from the respondent. Moreover, the Commissioner, while disallowing the CENVAT credit to the respondent, held that the respondent had taken the credit on the same inputs and therefore, disallowed the CENVAT credit amounting to Rs.1,78,93,790.00 and imposed an equal penalty for mis-declaration and suppression of the facts. The relevant observation reads as under:-

“Their contention that rule 3 of the CENVAT Credit Rules allows credit of duty paid by job worker is not tenable. The rule 3 ibid allows credit of duty paid on any input Used in the manufacture of intermediate product by job worker availing the benefit of exemption specified under Notification No. 214/86-CE 25.3.86 and received by the manufacturer for

use in or in relation to, the manufacture of the final product. That is, the credit is available to the job worker availing the exemption under the above said notification. In the present case the job worker did not avail the benefit of the above notification. Further the credit is available in respect of duty paid by the job worker on the inputs used by him in or in relation to the manufacture of the intermediate product. In this case the duty has been paid by the job worker on the product manufactured by him and no duty has been paid by the job worker on any input used in the manufacture thereof. Furthermore the product manufactured by the job worker in this case is not the intermediate product but the input for the party. The imported goods were not the inputs of the party. Under rule 3 the credit of duty paid by the job worker is allowable in respect of those inputs which are added by the job worker out of his own produce on payment of duty. That is not the case here. I observe that the law laid down by the Apex Court in the case of M/s Ujagar Prints case in respect of goods manufactured on job basis deals with valuation aspect of the goods so manufactured and laid down the guideline for payment of excise duty based on raw material, cost of production plus job workers profit whereas the issue involved in the instant case is whether the CENVAT could be availed on the same inputs/processed inputs twice i.e. once at the input stage and again on the intermediate stage (especially when the inputs were sent to job worker without reversal of CENVAT under relevant CENVAT provisions). The ratio of the said case is, therefore, not applicable to the facts of the case.

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Their contention that they had been regularly filing monthly returns for CENVAT credit with the department and in these returns they separately indicated the availment of CENVAT credit of CVD paid on imported raw materials as well as excise duty paid by Lucas on the intermediate products does not lead to the conclusion that they had not suppressed the fact that they had disclosed the fact that they took credit of duty paid on materials which were not their inputs and were not utilized the same in the manufacture of their final products. From the return it can not be known whether a particular material is the input or not. The return is a declaration made by an assessee in respect of inputs, final product, credit taken, goods manufactured etc and if the assessee mis-declares a product as input then it tantamounts to mis-declaration and suppression of facts.”

4. Being aggrieved with the order (supra), the respondent had preferred a statutory appeal before the learned Customs, Excise & Service Tax Appellate Tribunal. The Tribunal, while relying upon the judgment passed by the High Court of Gujarat, in the case of **CCE, Ahmedabad-I vs Rohan Dyes & Intermediated Ltd., 2012 (284) ELT 484 (Guj)**, held that the CENVAT credit is admissible to principal manufacture of the duty paid by the job worker, even if the credit was availed earlier on receiving the inputs, specifically when it is not disputed that the job worker had not taken any credit in respect of inputs imported by the respondent.

5. The appellant has now challenged the order of the

Tribunal, wherethrough, the statutory appeal (supra) was allowed and, has raised the following substantial questions of law:-

- “(i) Whether the decision of the Tribunal was justified to allow the CENVAT credit of duty paid (CVD) on imported raw materials directly sent to the job worker in terms of Notification No. 214/86-CE dated 25.3.1986 to the Respondent ?*
- (ii) Whether the Tribunal has erred in interpreting Rule 3 of CENVAT Credit Rules, 2004 ?*
- (iii) Whether the order passed by the Tribunal is legal, correct and proper with respect to the provisions of Law/Rules ?*

6. We have examined the entire case in detail and heard both the learned counsels at length.

7. The learned counsel for the appellant has submitted that the respondent has availed CENVAT credit twice, as it took credit on duty paid on imported raw material, used by the job worker in the manufacture/processing of goods, and, also on duty paid by the job worker on the goods manufactured by them. He vehemently argued that the imported raw material was not the input used by the respondent, rather in fact, the goods received from the job worker, are the inputs used by the respondent, and therefore, the duty paid thereon, as shown in the invoice/challan issued by the job worker, is only eligible to be taken credit by the respondent. Furthermore, while placing reliance upon Rule 3(1) of the CENVAT credit, he submitted that the Rule (supra) allows credit of duty paid on the inputs used in relation to the manufacture of final products. The inputs, as used in relation to manufacture of final products, are the goods supplied by

the job worker and not the imported raw materials.

8. Per contra, the learned counsel for the respondent has submitted that there is no infirmity in the order passed by the learned Tribunal, and consequently, warrants no interference by this Court. No substantial question of law arises out of the dispute, which requires adjudication by this Court. He submitted that the job worker used the imported raw materials for the manufacture of intermediate products and cleared such intermediate products to them on payment of excise duty, which accordingly became inputs of the respondent for the manufacture of the dutiable final products, and thus, the CENVAT credit of CVD, as paid on the imported raw materials, has rightly been availed. He further submitted that the imported raw materials were directly sent to the job worker, who thereupon, discharged duty liability on the intermediate goods, without availing CENVAT credit of CVD, as paid on imported materials. The duty paid by the job worker on the intermediate products, and, the CVD duty paid on imported materials, availed as credit by the respondent, was in accordance with law.

9. Before we proceed to consider the submissions, as made by both the learned counsels for the parties, it is apt to first analyze the relevant Rules. Rule 3(1) of the CENVAT Credit Rules, 2004 is reproduced as under:-

RULE 3. CENVAT credit. — (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -
(i) the duty of excise specified in the First Schedule

to the Excise Tariff Act, leviable under the Excise Act;

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi);

(viiia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act:

Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;

(viii) the additional duty of excise, leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004); and

[(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005),]] paid on -

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

Rule 4(5)(a) of the CENVAT Credit Rules, 2004 is reproduced as under:-

RULE 4. Conditions for allowing CENVAT credit.

— (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.

(5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for

further processing, testing, repairing, re-conditioning [or for the manufacture of intermediate goods necessary for the manufacture of final products] or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

10. A conjoint reading of the above extracted Rules makes it abundantly clear that an assessee can avail CENVAT credit of CVD paid on inputs duly imported by him, and, also can take credit of duty paid on inputs/capital goods even though inputs are used by the job worker for executing a job work. In case, the job worker opts to pay excise duty despite having exemption (Notification No. 214/86), the supplier can also take credit of duty paid by the job worker. In the case in hand, it is not in dispute that the job worker was liable to pay duty, if he did not avail the benefit of Notification No. 214/86, as the intermediate product manufactured by them was dutiable and

availment of Notification No.214/86 is not mandatory. Thus, the respondent had correctly taken the credit of the duty paid by the job worker and they are also entitled to CENVAT credit of CVD paid on such inputs. It is a case of double payment of duty on same inputs. The payment of duty twice is not disputed, thus, it would be unfair and against the scheme of CENVAT to deny credit of said duty. This aspect has already been considered by the High Court of Gujarat in case titled "Commr. of C. Ex., Ahmedabad-I V/s Rohan Dyes & Intermediated Ltd.". The relevant paragraphs of the judgment (supra) are extracted hereunder:-

11. In such case, it was contended on behalf of the appellant that the entire transaction between the TELCO and the appellant was covered by Rule 57F(2)(b) of the Central Excise Rules, 1944. According to the said appellant under those Rules, the assessee is the manufacturer of final product and in that case, excavators. The manufacturer of the final product, according to the appellant, was permitted to remove the inputs to a place outside the factory for the purpose of manufacture of intermediate products so that they return to the factory for further use in the manufacture of final product. The appellant therein contended that in such a case, the credit can be taken by the manufacturer of the final product on the inputs purchased by it which are made available to the intermediate product produces. According to the appellant therein, Modvat credit is taken by the manufacturer of the final product on the inputs supplied by it to the manufacturer of the intermediate products which credit is reversed

ultimately when the final product is removed from such manufacturers' factory. The appellant therein further contended that as far as the appellant (the intermediate purchaser) was concerned, it was not liable to pay duty on the inputs supplied by TELCO since it had not taken credit for modvat in respect of those inputs nor could value of the inputs be added to the excisable value of the assemblies.

12. In such case, the Supreme Court made the following observations:

"We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were supplied

free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons."

13. *If we apply the aforesaid principle to the facts of the present case, there is no dispute that according to the modvat scheme, it is the modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product and thus, in the facts of the present case, the Tribunal rightly rejected the contention of the Revenue that the respondents should have reversed the Cenvat credit taken before sending the goods to the job worker since the job worker had not followed the procedure of job work. It may not be out of place to mention here that that what was earlier provision contained in Rule 57F(2)(b) is exactly the present provision of Rule 4(5A) of the Cenvat Credit Rules, 2004.*

14. *We do not find any substance in the contention of Mr. Ravani that the job workers cannot prefer to pay excise duty in spite of having exemption notification bearing No. 214/86 exempting the job workers from paying duty in view of the mandatory provision of Section 5A(1A) of the*

Act. Similarly, we are also not impressed by the submission of Mr. Ravani that it was a case of sale and not the case of job work so as to attract the aforesaid principle laid down by the Supreme Court in the above case. On consideration of the entire materials on record, we thus hold that the Tribunal below rightly applied the decision of the Supreme Court in the case of International Auto Ltd. (supra) to the facts of the present case and allowed the appeal of the respondents.”

11. In view of the above settled proposition of law, we do not find that any substantial question of law arises out of the present appeal. Therefore, in view of the foregoing discussions, we feel that the impugned judgment passed by the learned Tribunal does not warrant any interference, it being free from vice of infirmity or perversity, and hence, the present appeal is hereby **dismissed**.

(RITU BAHRI)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 10, 2023
'dalbir'/devinder

Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No