CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. IV

Excise Appeal No. 86211 of 2017

[Arising out of Order-in-Appeal No. SK/51/TH-II/2017 dated 21.02.2017 passed by Commissioner of Central Excise (Appeals), Mumbai-I]

Grafica Flextronica **.... Appellant**
Plot No.92, Survey No.66,
Waliv Phata, Vasai (E),
Palghar, Maharashtra 401 208.

Versus

Commissioner of GST & CE, Palghar **....Respondent**
Central GST Bhavan, Plot No. C-24, Sector-E,
Bandra-Kurla Complex, Bandra (E),
Mumbai 400 051.

APPEARANCE:

Shri C.A. Prakash Jhalari, Advocate for the Appellant
Shri Rajiv Ranjan, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85701/2026

Date of Hearing: 06.05.2026
Date of Decision: 03.06.2026

Order for recovery of allegedly inadmissible cenvat credit of Rs.23,40,974/- taken under the provisions of Rule 16(1) and Rule 16(2) of the Central Excise Rules, 2002 along with applicable interest and equal penalty, invoking extended period, that received affirmation by the Commissioner (Appeals), is assailed before this Tribunal by the unsuccessful assessee-appellant.

2. Factual background of this case is that the appellant-manufacturer had cleared one screen printing machine to M/s. Yogi Display Arts Pvt. Ltd. (YDA) under invoices dated 15.07.2004 and dated 18.07.2015 on payment of central excise duty of Rs.23,40,974/- but due to certain technical problem, as the machine could not function properly, it was returned back with the original invoices to the appellant and the appellant took credit for the entire duty paid under the provisions of Rule 16 of the Central Excise Rules, 2002 read with Cenvat Credit Rules, 2004. By using components of the returned machine, the appellant manufactured a smaller size machine

and sold it to another buyer M/s. Ace Media Solutions Pvt. Ltd. (AMS), Bangalore and paid applicable central excise duty on the manufacture of new machine. Unused parts and components of rejected machines were cleared as scrap on payment of central excise duty also. Such transaction was unacceptable to the department since same kind of machine was not returned to the same customer from whom it was brought back, for which the respondent department felt that the said taking of credit under Rule 16(1) & (2) of the Central Excise Rules was irregular and accordingly served show cause-cum-demand notice on the appellant, after which the entire process continued and ultimately the matter reached this Tribunal stage for determination of applicability of the said Rule to appellant's case by challenging the Commissioner (Appeals)'s order, who gave a finding to the contrary.

3. During the course of hearing of the appeal, learned counsel for the appellant, Mr. C.A. Prakash Jhalari, Advocate, submitted that the entire dispute revolves round the fact, as revealed from the show cause notice, that the same machine after restructuring/remanufacturing was not returned to the same customer and the adjudication order confirming the demand is also based on the same ground. While the learned Commissioner (Appeals), in exceeding his jurisdiction had travelled beyond the grounds mentioned in the show cause notice, in stating that the appellant failed to prove that all parts of the old machines were used in the manufacture of new machine and confirmed denial of the credit on this ground also. He further submitted that the use of the words in the CBEC circular F.No. 354/66/2001-TRU dated 21.06.2001 explains that the goods must be 'eventually returned' is to be applicable to the availment of cenvat credit under Rule 16(1) of the Central Excise Rules alone, but the appellant's case is squarely covered under Rule 16(2) of the said Rules, as being a manufacturer it had manufactured another machine of less dimension and size with the old machine components and, therefore, it was entitled to avail the said credit and there is nothing available in the Rule to suggest that it has to be returned back to the same buyer, who earlier had purchased the same and returned it back for refurbishment/reconditioning/remanufacture etc. and, therefore, such a finding of the Commissioner (Appeals) in accepting the order-in-original that some machine was not manufactured and sold to the same customer YDA, is unsustainable both in law and facts. In citing a decision passed by this Tribunal at its Kolkata Bench in the case of *Indian Aluminium Co. Ltd. vs. Commissioner of Central Excise* that

received approval of Hon'ble Kerala High Court as reported in 2009 (233) ELT 190 (Ker.), wherein it has been explicitly mentioned that there was no requirement for a manufacturer to clear returned goods to the same party who returned the goods, learned C.A. submitted that this finding squarely applies to the appellant's case. He also argued against invocation of period of limitation which, to him, is not applicable in appellant's case as the receipt of machine was recorded in the Cenvat Credit register on 21.04.2009 and also the credit was disclosed in monthly ER-1 return and there was nothing to suppress from the department since duty was repaid upon clearance of goods after remanufacturing. He nests this submission in stating that the entire demand was paid out rightly with interest but the appellant is contesting as such demand was not payable so that it would be entitled to get refund upon proper judicial finding.

4. *Per contra*, learned Authorised Representative Mr. Rajiv Ranjan led his argument in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and argued that in violation of circular F.No. 354/66/2001-TRU dated 21.06.2001 that prompts the appellant to inform the department that the credit was taken upon return of goods, appellant had taken the credit. Further, with reference to the decision of the Tribunal in the case of *Menon Piston Rings Pvt. Ltd. vs. Commissioner of Central Excise, Pune-II* as reported in 2007 (211) ELT 394 (Tri.-Mumbai), that has been upheld by Hon'ble Bombay High Court on 10.07.2008, he argued that such non-disclosure to the department upon taking of credit after receipt of goods would amount to suppression and that it was also decided by this Tribunal in the case of *Kalyani Forge Limited vs. Commissioner of Central Excise, Pune-III*, reported in 2007 (211) ELT 129 (Tri.-Mumbai) that manufacture, having been carried out in respect of the goods on which credit was taken, rejected goods should have been returned to the customer after repair and payment of duty, which was not done in the instant case, for which credit was not admissible and the demand with penalty was sustainable. He also concluded his argument in saying that in view of such judicial precedent, the order passed by the Commissioner (Appeals) in holding the credit as inadmissible and confirming its recovery etc. need not be interfered with.

5. I have gone through the appeal paper book, relevant provisions of law, relied upon decisions filed by the parties and also gone through their written submissions. Before delving into the issue, it would be appropriate

to reproduce sub-rule (1) and (2) of Rule 16 of the Central Excise Rules, 2002, to bring clarity to the issue.

> "***Rule 16. Credit of duty on goods returned to the factory. -*** *(1) Where any goods on which duty has been paid at the time of removal thereof are subsequently returned to the factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such return in his records and shall be entitled to have CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2001 and utilise this credit according to the said rules.*
>
> *(2) If the process to which the goods are subjected before returning does not amount to manufacture the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods returned under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be."*

5.1 In compliance to the above provisions, the appellant had admittedly taken cenvat credit of the entire duty paid upon return of the manufactured machine to the factory for being remade, reconditioned or remanufactured, which may also cover under "any other reason". Had it been a case of not amounting to manufacture, the manufacturer shall have to pay an amount equal to the cenvat credit taken under sub-rule (1) of Rule 16, but if it is a manufacture, that is covered under sub-rule (2) that states "*and in any other case the manufacturer shall pay duty on goods returned under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be*". In the entire provision, only the word used as a condition precedent for payment of duty was the date of removal meaning the date of clearance. It has not been stated that such removal was for the purpose of return of the goods to the sender of the goods from whom it was received earlier. Further, in the said provision, the words used like "re-made, refined, re-conditioned or for any other purpose" do not specifically say that the resultant outcome should be the same manufactured product as it was at the time of return.

6. The respondent-department has placed heavy reliance on circular F.No. 354/66/2001-TRU dated 21.06.2001, which has explained Rule 16 and states that the goods received must be eventually returned and if for

any reason the goods are not returned, then the credit owned and utilised cannot be said to be admissible but it does not relate to Rule 16(2) since under Rule 16(1), such return to the manufacturer is expressly enumerated while under sub-rule (2), removal of goods is the determining factor but need not be necessarily to the same sender. Moreover, neither the said Circular nor the Rule has specifically made for reference to the fact that re-make or re-conditioning as mentioned in Rule 16(1) would mean that the goods (machine) would be of the same shape and size, but what should be inferred that it would be necessarily not a different variety of machine or goods from the variety of its use and application as of the previous one. Therefore, the credit availed by the appellant was rightly admissible.

7. At this juncture, it is required to be placed on record that it is an admitted fact that not the entire components of the machine were used to manufacture the new machine as the rest of the unused components were being sold as scrap upon payment of duty. The case law cited by learned AR for the respondent-department, viz. *Menon Piston Rings Pvt. Ltd.*, cited supra, brings the situation where no finished goods was brought back but the defective one was sold after converting them into scrap, for which this Tribunal had given a finding that the assessee was not entitled to get credit of the duty paid on removal of goods (piston rings). In the instant case, at the best, the respondent would have pleaded for proportionate reversal of credit against scrap cleared but neither such a proposal was made in the show cause notice nor even contested since primarily they restricted their stand to non-returning of the machine to the previous buyer.

7.1 Another aspect that is also required to be placed on record is that despite the fact that the show cause notice was founded on the premises that the appellant had used some of the components of the said machine in the manufacture of other machinery but they have not re-made or re-manufactured the same machine which they have received under Rule 16 of the Central Excise Rules, 2002 (para 8). Learned Commissioner (Appeals) has observed in his finding that the appellant's claim of using parts of old machine to manufacture new machine is not practical and unsustainable (para 7). The same observation has travelled beyond the grounds raised in the show cause notice which he was not legally empowered to do as per settled positon of law that not only goes against the proposal in the show cause notice but completely changes the stand

taken by the department and hence not acceptable to be a proper legal analogy.

8. Last but not the least, though reliance has been placed on the said circular No.354/66/2001-TRU by learned AR that it was a mandatory requirement that the assesse should have informed the department when credit was taken upon return of goods but, going by para 5 and in acceptance of the submissions made by learned counsel for the appellant, it can very well be concluded that if the goods have been removed at the time of return with original invoice, such a requirement is not at all contemplated since as an example, it has been clearly referred in the said para that in situation when goods have been removed originally long back and original invoice was not available, in such cases the goods can be received and returned on the basis of the permission to be accorded by the Commissioner of Central Excise. Therefore, the argument of learned AR, though being restricted to intimation to the department, would have value only when the said machinery had been removed from the buyer's site to the manufacturer without being accompanied by original invoice, but in the instant case, the show cause notice itself starts with a description that the said machine was returned back to the appellant under cover of all the original invoices bearing Nos. 51 to 59 issued by the appellant. Hence the order:-

ORDER

The appeal is allowed and the order passed by the Commissioner (Appeals) is set aside with consequential relief of refund of the confirmed demand of Rs.23,40,974/- with applicable interest as per law and the respondent-department is directed to pay the same within two months of receipt of this order.

(Pronounced in court on 03.06.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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