

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41610 of 2017

(Arising out of Order-in-Original No. LTUC/246/2017-C dated 17.04.2017 passed by Commissioner, Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101.)

1. M/s. Ford India Private Limited

S.P. Koil Post,
Kancheepuram District 603 204.

2. M/s. Ford India Private Limited,

Survey No.1, Village North Kotapur,
Post Sanand, Ahmadabad

....Appellants

VERSUS

The Commissioner of GST & Central Excise,

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040

...Respondent

APPEARANCE :

Shri Raghavan Ramabadran, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 41145/2026

DATE OF HEARING : 04.08.2026
DATE OF DECISION : 29.10.2026

Per: Shri P. Dinesha

This Appeal is filed by M/s. Ford India Private Limited, Chennai (FIPL, Chennai) hereinafter referred to as the Appellant. Brief undisputed facts as could be gathered from the impugned Order-in-Original LTUC/246/2017-C dated 17.04.2017 are that the Appellant is a manufacturer of passenger cars at their factory at S.P Koil Post, Kancheepuram District, they were also having another registered manufacturing plant at Survey No.1, Village North Kotapur Post Sanand, Ahmadabad (hereinafter referred to as M/s. FIPL, Sanand). The Chennai factory was set up in 1999 and Sanand Factory started its commercial production in June 2015, both the units were availing CENVAT credit for the inputs, capital goods and input services used by them under the CENVAT Credit Rules, 2004 and it is also a fact borne on record that M/s. FIPL, Sanand was transferring the CENVAT credits availed by it to Chennai unit in terms of Rule 12A of CCR, 2004. The Appellant being a Large Taxpayer Unit, the provisions of Rule 12A were applicable

and in terms of sub-Rule (4) to Rule 12A which enabled a Large Taxpayer to transfer the CENVAT credit to their other registered premises by making suitable entry regarding such transfer and on issuing a transfer challan; the recipient factory of the Large Taxpayer could take CENVAT credit on the basis of such challan and utilize for payment of Excise Duty. Accordingly, the Sanand factory appears to have issued challan for transfer of credit to Chennai factory as the Sanand factory was under construction.

2. During the course of verification of CENVAT credit availment of the Appellant, it appears that the Revenue noticed that on some occasions M/s. FIPL, Sanand had availed CENVAT credit on certain capital goods without having received the same within their factory. It is also a fact on record that during the material period CENVAT credit was taken in Books of Accounts on fortnightly basis or at the end of the month at Sanand Factory, during the relevant period CENVAT Credit was taken on 7600 tax paid documents for total of Rs. 178,86,72,625/- at Sanand factory. The scope of the present *lis* as confined to 4 Bills of Entry, which are captured in the table at

para 5 of the impugned order, reproduced below for convenience:

Sl. of the CENVAT Register	Date of taking Cenvat Credit	Bill of Entry No.	Bill of Entry date	Supplier's information	Gate/ Material Inward Ledger No.& Date of receipt
2728	10.07.2014	310	01.07.2014	THYSSENKRUPP SYSTEM ENGINEERING GMBH	6624/ 11-07-2014
2729	10.07.2014	6096647	14.07.2014	HYUNDAI ROTEM COMPANY	6709/ 19-07-2014
2730	10.07.2014	6117399	15.07.2014	JBL SYSTEMS	6708/ 19-07-2014
2731	10.07.2014	6070117	09.07.2014	KARL STRZ GMBH & CO, KG.,	6726/ 17-07-2014

3. It is the case of Revenue that since in respect of the above 4 Bills of Entry the Appellant had wrongly taken the cenvat credit as the goods were received later. Show Cause Notice dated 30.06.2016 was issued on the allegations that the cenvat credit taken by Sanand factory on capital goods imported *vide* 4 Bills of Entry without receipt of capital goods, transfer of impugned cenvat credit on capital goods to Chennai factory was in violation

of Rule 12A as amended *vide* Notification No.21/2014-CE(NT) dated 11.07.2014, the Sanand factory had taken 100% cenvat credit on capital goods in the same financial year, the Sanand factory transferred cenvat credit of Rs.31,86,40,000/- to Chennai factory on 21.08.2014 which included the disputed cenvat credit of Rs. 3,03,86,410/-, as at the time of transfer of credit, Sanand factory had not commenced its commercial production. Hence, the restriction brought out in Rule 12A (4) stood violated wilfully and the Chennai factory did not take necessary steps to ensure the eligibility of credit before taking the impugned credits.

4. In its reply to the SCN, the Appellant appears to have explained *inter alia* that the demand of Rs.3,03,86,410/- would amount to recovering twice i.e., both from Sanand factory as well as the Chennai factory; Chennai factory had huge credit balance, that transferred credit from Sanand factory was not required for immediate usage at their Chennai factory and the Chennai factory had reversed the above cenvat credit *vide* CENVAT credit register Sl. No.3542 dated 29.05.2015 which was duly brought to the notice of the Department *vide* their letter

dated 09.06.2015. The Original Authority however, *vide* impugned Order-in-Original (*supra*) confirmed the demand of Rs.3,03,86,410/- against both the Chennai factory and Sanand factory on the grounds that the burden of proof that the credit was taken in terms of CCR has not been discharged, the Appellant is a Large Taxpayer Unit, the Sanand factory had taken CENVAT Credit worth Rs.623.14 lakhs on 10.07.2014 to circumvent the amendment to Rule 12A (*supra*) and the amount has not been demanded twice as the credit has only been denied for Sanand factory, while the amount was demanded from Chennai factory. Aggrieved by the above, the present Appeal has been filed before this forum.

5. We have heard Shri Raghavan Ramabadrnan, Ld. Advocate for the Appellant and Shri M. SelvaKumar, Ld. Departmental Representative defended the impugned order. After hearing both sides, we find that the only issue to be decided is, 'whether the present demand confirmed in the impugned order is in accordance with law?'

6.1 We have heard the rival contentions and perused the documents placed on record carefully and also judicial pronouncements relied upon during hearing; we find that it is not disputed by the Revenue that during the relevant period the Appellant's Sanand factory was under construction. Further, it is also an undisputed fact Sanand unit had transferred capital goods on which it had taken 100% credit to its Chennai unit, though the Appellant has all along pleaded that the above happened due to unintended mistake, without any *mala fide* reasons, due to oversight by the staff and lack of qualified staff, but the Commissioner has not accepted the same. However, the fact remains that the Chennai unit had reversed the cenvat credit much before the issuance of SCN.

6.2 We also find from the record that neither Sanand unit nor Chennai unit had taken credit of the disputed amount and the Chennai unit had even reversed the transfer credit since the Department intimated about the ineligibility of the same. Even after such reversal Sanand unit admittedly did not take credit of the same though, the said unit was eligible for the cenvat credit. Thus, we

find that the total denial of cenvat credit by the Sanand unit is not in accordance with law.

7. It is also an undenied fact that upon commencement of production activity, Sanand unit was eligible to avail the cenvat credit and hence, at the most, it may amount to availment of cenvat credit prematurely i.e. prior to the receipt of the capital goods.

8. The above holds good in respect of the 4 Bills of Entry and in respect of the 5th Bill of Entry the case of the Revenue is that 100% of credit pertaining to the capital goods was prematurely availed in the first year instead of 50%.

9. In the case of **Commissioner of Service Tax, Chennai Vs Ad2Pro Global Creative Solutions Pvt. Ltd.** [2023 (5) TMI 1131 – CESTAT Chennai] this Bench had an occasion to consider the decide the allegation of premature availment of cenvat credit and after detailed analysis, this Bench concluded that it was only a procedural lapse and substantive right cannot be taken away when there is no dispute as to the eligibility of

cenvat credit of service tax paid and when conditions like payment of tax and receipt of services have been found to satisfied. We find that similar views have been expressed in **India Cement Ltd. Vs CCE, Customs & Service Tax, Tirupati** [2018 (5) TMI 603-CESTAT Hyderabad] and **Emerson Innovation Center, Pune Vs CCE Pune** [2016 (6) TMI 1299-CESTAT Mumbai].

10. With regard to the denial of cenvat credit on the ground that 100% credit could not have been availed in the same year of receipt, we find that this issue has also been addressed to by the Hon'ble Bombay High Court in the case of **Commissioner of Central Excise, Pune Vs Satish Industries** [2012 (9) TMI 383-Bombay High Court = 2013 (298) ELT 188 (Bom.)] and the Hon'ble High Court has held at para-3 as under:

“3. On perusal of the order passed by the Commissioner (Appeals) as also CESTAT, it is seen that the said authorities have not upheld the action of the assessee in availing 100% of the credit in the initial year but have held that by the time the appeal was heard the initial financial year being over in addition to the 50% credit of the initial year, the assessee became entitled to the remaining 50% of the credit available in the following financial year and thus the assessee was entitled to 100% credit on the date of the appellate order. It is not the case of the Revenue that the credit wrongly availed by the assessee has been utilized in the initial financial year. If the credit of the subsequent financial year wrongfully taken in the initial financial

year if not utilized till the commencement of the subsequent financial year, then no prejudice is caused to the Revenue and the decision of the Tribunal deserves acceptance.”

11. We find from the impugned order that it is not the case of the Revenue that the Appellant was ineligible to avail the cenvat credit on the capital goods even subsequently, since at paragraph 10 of the impugned order, the Commissioner himself admits that ‘.....*Though the taxpayer is eligible for the balance credit in the subsequent financial years....*’. The above fact coupled with the decision of the Hon’ble Bombay High Court (*supra*) makes it clear that the denial of credit in the hands of Sanand unit cannot sustain.

12. We find that the appellant has raised an additional ground to support the above view but however, as we have held that the denial of cenvat credit and the demand of the same confirmed in the impugned order cannot sustain, the other grounds would only be academic in nature.

13. In view of the above discussion, we are of the view that the impugned order cannot sustain, for which reason the same stands set aside and the Appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 29.10.2026)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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