



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलिफैक्स 07926305136



DIN: 20220364SW0000823948

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/490/2021-APPEAL / 7278-32
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-88/2021-22
दिनांक Date : 30.03.2022 जारी करने की तारीख Date of Issue 31.03.2022
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 59/ADC/2020-21/MLM दिनांक: 11-03-2021, issued by
Additional Commissioner, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Supreme Treon Pvt Ltd
Plot No. E/271, 272, Hirapur Kunvar,
Sanand, Ahmedabad - 382110

2. Respondent

The Additional Commissioner, CGST & C.Ex, Ahmedabad North
Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

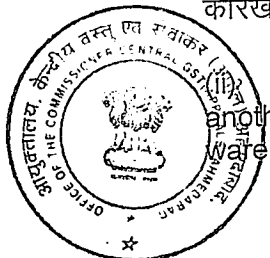
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a Warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (13) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

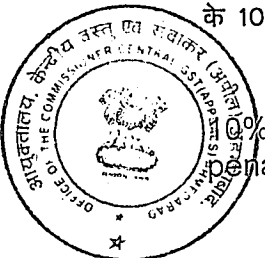
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xxii) amount determined under Section 11 D;
- (xxiii) amount of erroneous Cenvat Credit taken;
- (xxiv) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. Supreme Treon Pvt. Ltd, situated at Plot No.E-271, Hirapur Kunvar, Sanand, Ahmedabad-382110 (hereinafter referred to as '*the appellant*') have filed the instant appeal against the OIO No.59/ADC/2020-21/MLM dated 11.03.2021 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant holding Central Excise Registration No.AACCS4085QEM008 are engaged in the business of manufacturing motor vehicle parts for M/s. Ford India Pvt. Ltd (hereinafter referred to as 'M/s. Ford' for brevity) and M/s. Suzuki Motors Gujarat Pvt. Ltd (hereinafter referred to as 'M/s. Suzuki' for brevity). During the course of EA-2000 audit of records of the appellant, conducted by the officers of Central Tax Audit, Ahmedabad, on scrutiny of Trial Balance Sheet for the F.Y. 2015-2016 to F.Y. 2017-18, it was noticed that the appellant has sold tools/moulds to M/s. Ford worth Rs.6,99,50,000/- during F.Y. 2015-16 and worth Rs.3,83,80,000/- during F.Y.2016-17, totaling sales amounting to Rs.10,83,30,000/-. They procured the said tools/moulds from the third party and used them as capital goods in the manufacture of automotive parts. They sold these tools/moulds to M/s. Ford under commercial invoices, charging VAT and without payment of central excise duty.

2.1 On going through, the Trial Balance Sheet/Annual Report for the F.Y. 2015-16 & 2016-17, it was noticed that the appellant had reduced their inventories in their tools/moulds ledger to the extent of sale made during the relevant period. It, therefore, appeared that the appellant has removed the excisable capital goods, on which cenvat credit was availed, without discharging central excise duty in terms of Rule 3(5A)(a) of the CCR, 2004. It was also noticed that the appellant was following divergent practice as they were paying central excise duty on clearances of tools/moulds made to M/s. Suzuki but a similar practice was not followed in clearances made to M/s. Ford.

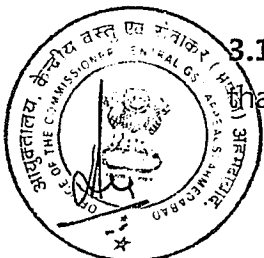
2.2 Based on the above audit observation, a Show Cause Notice (SCN for brevity) SCN dated 29.08.2019 was issued vide F.No.VI/1(b)CTA/Tech-17/Supreme/19-20, to the appellant invoking extended period of limitation and proposing; demand and recovery of central excise duty amount of **Rs.1,35,41,250/-** [not paid on clearance of tools/moulds] under Section 11A (4) of the CEA, 1944 read with provisions of Rule 14(1)(ii) of the CCR, 2004; recovery of interest on aforesaid demand under Section 11AA read with Rule 14(i)(ii) of the CCR,2004 and imposition of penalty under Section 11AC(1)(c) of the Act read with Rule 15(2) of the CCR, ibid. The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he confirmed and ordered recovery of central excise duty demand of Rs.1,35,41,250/- alongwith interest and also imposed equivalent penalty of Rs.1,35,41,250/- under Section 11AC(1)(c).

3. Aggrieved by the impugned order, the appellant preferred the present appeal, mainly on following grounds:-



- They are engaged in manufacture of automobile parts which are sold to various motor vehicle manufacturers such as M/s. Suzuki Motors Gujarat Pvt. Ltd and M/s. Ford India Pvt Ltd. In order to make precision parts and components for motor vehicles, it is necessary for them either to manufacture the tools, dies and moulds or get it manufactured by third party for M/s. Ford, as per their specification. On approval, these moulds/tools were sold to M/s. Ford without affecting physical delivery of the same as these goods were required to be used by the appellant in manufacture of motor vehicle components as required by M/s. Ford. Since these tools, dies and moulds were never actually removed from the factory, question of central excise duty payment does not arise.
- The value of such moulds and dies are eventually amortized in the motor vehicle parts and components, manufactured for M/s. Ford and appropriate central excise duty is being paid on clearance of these parts /components.
- Under Sale of Goods Act, sale can be affected even without the delivery of goods, if agreed upon by the seller and the buyer and the ownership of the goods sold gets transferred to the buyer. However, the central excise duty is not governed by such principles therefore though the goods were shown as sold in their accounts, but since they were never removed from the factory, Rule 3(5A)(a) of the CCR, 2004, cannot be invoked. The sale of capital goods which are retained in the factory cannot be equated with the term 'removal'. Duty of excise or cenvat credit can be recovered only upon removal. They relied on following decisions to support their argument;
 - Indica Laboratories Pvt. Ltd – 2007 (213) ELT 20 (Tri-LB)
 - Caltex Oil Refining India Ltd- 1979(4) ELT (J581) Del
 - J.K.Spining & Weaving Mills Ltd – 1987 (32) ELT 234 (SC)
- No contrary evidence has been produced by the department to prove that the goods were either removed from the factory or that the value of mould has escaped the levy of central excise duty. Even if the appellant had got the goods manufactured, then the manufacturer would have discharged the central excise duty and cenvat credit would have been availed by M/s. Ford, thereby rendering the entire transaction as 'revenue neutral'. In that scenario no demand can survive. They relied on following citations;
 - Indeos ABS Ltd-2010 (254) ELT 623 (Guj) & 2011(267) ELT A155 (SC)
 - Tenneco RC India Pvt Ltd. – 2009 (235) ELT 105-(Tri)
 - Jamshedpur Beverages'-2007 (214) ELT 321 (SC)
- All the details of its business activities including audited & certified profit and loss accounts had been subjected itself to central excise audit before and subsequent to the period involved in the impugned order. Thus the entire demand is time barred as suppression cannot be invoked in the present case. They mainly relied on the decision of Continental Foundation Jt Venture- 2007 (216) ELT 177 (SC). They also submitted that no penalty can be imposed u/s 11AC of the CEA.

3.1 In their additional written submission dated 13.01.2022, they further submitted that in their own case, on same issue, the Commissioner(A) vide OIA No.EXCUS-002-



APP-012/2021-22 dated 24.06.2021, had decided the case in their favour and requested for consequential relief.

4. Personal hearing in the matter was held on 17.01.2022 through virtual mode. Shri Mrugesh G.Pandya, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum as well as in the additional written submissions dated 13.01.2022.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the additional submissions made and the evidences available on records. The issue to be decided under the present appeal is whether the tools / moulds cleared by the appellant to M/s. Ford under commercial invoices during the F.Y. 2015-16 and F.Y. 2016-17 is liable to central excise duty or otherwise?

6. I find that the adjudicating authority has observed that the appellant got the tools, dies and moulds manufactured from the third parties so central excise duty shall be levied on such excisable goods in view of Section 3 of the CEA, 1944 and since these goods were subsequently sold to M/s. Ford, therefore, in terms of Section 2(h) of the CEA, the possession of such goods will get transferred to M/s. Ford. He observed that the invoices issued under Rule 11 of the CER, 2002, mentioning the date and time of removal of goods clearly indicate that the goods were removed from the factory and subsequently were received back in the factory of the appellant for use in further production of parts & components. He also finds that Chartered Accountant firm M/s. D. C. Shah & Associates, while issuing the certificates dated 17.08.2020 and 30.12.2020, ignored the fact that the invoice issued by the appellant contains the date and time of removal of goods. Similarly, he also examined the certificates dated 12.08.2020 and 25.09.2020, issued by Shri Ajay Kumar Verma, Cost Accountant, and accepted the fact that the value of tools, dies and moulds gets amortized into the value of the final products manufactured as these tools, dies & moulds gets used up in the production of parts and components of motor vehicles sold to M/s. Ford.

6.1 The appellant on the other hand have strongly contended that the commercial invoices were raised merely to transfer title of the goods to M/s. Ford. The goods in fact were never removed as they were to be returned back by M/s. Ford for further use in the manufacture of their final goods, i.e. motor vehicle parts, and that appropriate duty has been paid on removal of motor vehicle parts including amortized value of tools/moulds. They claim even if it is assumed that excise duty was payable on such sales, cenvat credit of such duty was admissible to M/s. Ford, thus making the demand revenue neutral.

6.2 It is observed that the central excise duty levied under the Central Excise Act, 1944, is on manufacture of goods. However, the payment of duty is required to be made only at the time of removal of goods from the factory. To levy central excise duty, it would be essential to establish that the appellant manufactured tools/moulds



and duty shall be paid when goods are removed from the place of manufacture. The fact that the appellant got the tools/moulds manufactured from the third parties after obtaining approval from M/s. Ford is not disputed by the department. The appellant then sold these tools, dies & moulds to M/s. Ford under commercial invoice but without physically removing the goods as these goods were to be used in further manufacture of motor vehicles components, which were subsequently cleared to M/s. Ford on payment of duty. I find that the adjudicating authority has not given any specific finding to corroborate the argument that the goods were physically removed from appellant's factory, instead he has relied on the detail of date and time of removal reflected in the commercial invoices, which the appellant have intensely contested taking a stand that commercial invoices were raised only to transfer title of the goods to M/s. Ford without actual removal of goods. As discussed above, liability to pay central excise duty on manufactured goods arises on the instance when the goods are removed. In the present case, other than the commercial invoices, I find that the department has not produced any corroborative evidence like lorry receipt or transport documents to corroborate their claim that the goods in question were physically removed from the appellant's factory premises. Removal cannot be established merely on the basis of commercial invoices wherein date and time of removal are mentioned when all other relevant details like transportation and vehicles details are missing. The argument that the appellant have received the goods back after being sold to M/s. Ford is also not rational because issuing commercial invoice for transferring the title of goods without actually removing them from factory is an understanding between the appellant and M/s. Ford. Such arrangement appears to have been made to avoid unnecessary transit of goods. Further, I am also not in agreement with the adjudicating authority that the removal of disputed goods from the inventory would tantamount to clearance from the factory and are leviable to excise duty. Even otherwise, the adjudicating authority at para -61 of the impugned order has accepted the fact that the appellant was discharging the excise duty on the amortized value of the tools/moulds, eventually at the time of raising invoice to M/s. Ford, for clearance of motor vehicle parts and components sold. As long as it is not in dispute that the said tools, dies and moulds were intended to be used in the manufacture of motor vehicle parts, their removal from appellant's factory would have made no logic, when they were to be received back from M/s. Ford. Therefore, the contention of the appellant that the goods have not been removed or cleared from the factory appears convincing.

6.3 Rule 3(5A) (a) of the CCR, 2004, prescribes that if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified for each quarter of a year or part thereof from the date of taking the CENVAT Credit, provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value. I find in the instant case that the capital goods (tools, dies & moulds) procured by the appellant from third party vendors on behalf of M/s. Ford, were shown as sold under commercial invoice, with the sole intent to merely transfer the title of the goods to M/s. Ford, but were never actually



removed. In fact these capital goods were used up in the manufacture of motor vehicle parts and their value was eventually amortized. They also discharged appropriate central excise duty on the final product cleared to M/s. Ford. The argument that the appellant has followed divergent practice, as they discharged central excise duty on their clearances made to M/s. Suzuki but on clearance made to M/s. Ford no duty was paid, is not sustainable because as per their contractual agreement with M/s. Suzuki they are required to physically transfer the capital goods to M/s. Suzuki on payment of central excise duty, which are subsequently returned back to the appellant, for further use in their final product. Whereas in the case of sale made to M/s. Ford, the capital goods are not actually cleared / removed but are retained as per the mutual agreement. Therefore, as long as there is no legal bar from following divergent practice for difference customers in accordance with the convenience and commercial requirement of the customer, I find that the capital goods shown as sold but not removed from the factory, shall not attract the provisions of Rule 3 (5A)(a) of the CCR, 2004. In terms of CEA, 1944, the taxable event is the manufacture of goods but duty can be charged on the removal of the goods. The appellant has not manufactured the tools, dies or moulds, therefore, no demand for payment of duty can be made before the goods are removed. Moreover, the rate applicable is the rate prevailing at the time of removal. In view of this position, the demand raised by the impugned SCN, is clearly not sustainable.

7. Hon'ble Tribunal, Ahmedabad in the case of Automative Stampings & Assemblies Ltd [2013 (298) ELT 591] held that mere fact of raising invoice in favour of company does not create a liability for charging duty. Levy of excise duty is in relation to manufacture and has nothing to do with sale. Further, on similar issue of M/s. Supreme Treves Pvt Ltd, also relied by the appellant, and in the case of M/s. Valeo India Pvt Ltd, it was noticed that the assessee without physically clearing tools & moulds from their factory transferred the ownership of the goods to M/s. Ford by issuing commercial invoices after paying applicable VAT. The values of moulds and dies have been amortized in the motor vehicle parts and components manufactured for M/s. Ford. Thus, by applying the ratio of Hon'ble Ahmedabad Tribunal's decision in the case of Automative Stampings & Assemblies Ltd, I, vide OIA No. AHM-EXCUS-002-APP-012/2021-22 dated 24.06.2021 and vide OIA No. AHM-EXCUS-002-APP-38/2021-22 dated 22.11.2021, upheld appeal filed by M/s. Supreme Treves Pvt Ltd and M/s. Valeo India Pvt Ltd, respectively, by holding that removal of goods from the inventory would not tantamount to clearance from the factory when the goods in question were not physically cleared from the factory, hence excise duty is not payable in such circumstances.

8. I find that the issue covered in the above cases of M/s. Supreme Treves Pvt Ltd and M/s. Valeo India Pvt Ltd, is identical to the present appeal. In the present case, the appellant vide their letter dated 11.03.2019, clearly stated that the tool/moulds manufactured/procured from various vendors were never physically cleared to M/s. Ford, as they were to be used in the manufacture of dutiable goods (motor vehicle parts), which were subsequently cleared to M/s. Ford on payment of duty. The value of such tools was recovered from M/s. Ford by raising commercial invoice, on which appropriate VAT has been paid and the amortized value of these tools were included



in the dutiable value of finished product (i.e. motor vehicle parts) on which appropriate Central Excise duty has been discharged. When the finished motor parts are subsequently sold to M/s. Ford on payment of excise duty, which includes duty on amortized tools/moulds cost I find that central excise duty demand cannot be raised merely because said goods were shown as sold under commercial invoices raised to M/s. Ford. Even if commercial invoices were raised, as long as the payment of VAT on such commercial invoice is not disputed by the department, liability to pay Central Excise duty does not arise unless it is proven that these goods are physically removed from their factory. Therefore, by following the precedent of stand taken by me in my earlier decision, I hold that the appellant is not required to pay excise duty on tools / moulds when the same were not actually removed to M/s. Ford.

9. In view of the above discussion, I find that the demand of Rs.1,35,41,250/- is not sustainable. When the demand is not legally sustainable, question of interest and penalty does not arise.

10. I therefore, set-aside the impugned order and allow the appeal filed by the appellant.

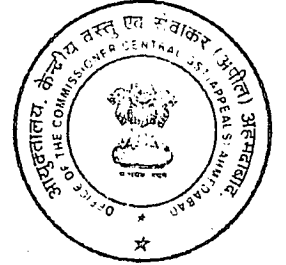
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

Aruna
30 March, 2022
(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: .03.2022

Attested

Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Supreme Treon Pvt. Ltd,
Plot No.E-271, Hirapur Kunvar,
Sanand, Ahmedabad-382110,

- (Appellant)

The Additional Commissioner,
CGST, Ahmedabad North
Ahmedabad-380009

- (Respondent)

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)

- 2-4. Guard File.
5. P.A. File

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