सत्यमेव जयते

आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
☎ 26305065-079 : टेलेफैक्स 26305136 - 079 :
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DIN-20220564SW000000B01A

781 To 785

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/495/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-03/2022-23**
दिनाँक Date : **28.04.2022** जारी करने की तारीख Date of Issue : **04.05.2022**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **65/ADC/2020-21/MLM dated 24.03.2021**, passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Tata Autocomp Systems Ltd., Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No. 01, Village-North Kotpura, TA- Sanand, Virochnagar, Ahmedabad-382170.

Respondent- Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

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 पूवोक्त 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 प्रकिया के दौरान हुई हो।

(ii) 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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 .

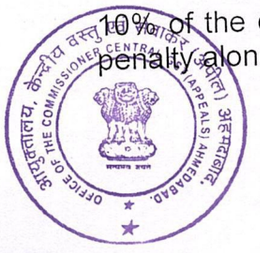
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) 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

1. This order arises out of an appeal filed by M/s. Tata Autocomp Systems Ltd., (Interior and Plastic Division), Plot No. A-2, Tata Motors Vendor Park, Survey No. 1, Village-North Kotpura, Tal-Sanand, Dist-Ahmedabad-382170 (hereinafter referred to as '*appellant*') against Order in Original No. 65/ADC/2020-21/MLM dated 24.03.2021 (hereinafter referred to as '*the impugned order*') passed by the Additional Commissioner, CGST& Central Excise, Commissionerate:Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant are engaged in the manufacture of Motor Vehicle Parts for M/s. Tata Motors Ltd. (hereinafter referred to as "TML"), falling under Chapter 87 of the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AAACT1848EEM014 and Service Tax Registration No. AAACT1848ESD017. Audit of the financial records of the appellant was undertaken by the departmental audit officers for the period from March, 2014 to June, 2017 and Final Audit Report No. 1810/2018-2019 dated 29.05.2019 was issued, mentioning following discrepancies:

- **Revenue Para-2**: On scrutiny of the Trial Balance for the Financial Year 2015-16 and 2016-17 and Sales Invoices, it was noticed that the appellant had procured Tools/Moulds on payment of duty and availed Cenvat Credit on the same. The appellant had sold Tools/Moulds amounting to Rs. 4,39,00,525/- to M/s. Tata Motors Ltd., Sanand, by issuing commercial invoices without payment of Central Excise duty. Accordingly, it appeared that the appellant had violated the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 and made themselves liable to pay Central Excise duty amounting to Rs. 54,87,566/- under the provisions of Section 11A of Central Excise Act, 1944 along with interest and penalty.

2.1 Based on the audit observations, Show Cause Notice F. No. VI/1(b)-187/IA/AP-39/Cir-VI/18-19 dated 14.08.2019 was issued to the appellant demanding Central Excise duty amounting to Rs. 54,87,566/- from them, under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004, alongwith Interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14(i)(ii) of the Cenvat Credit Rules, 2004. Further, penalty was also proposed to be imposed on the appellant under Section 11AC(1)(c) of the Central Excise

Act, 1944 read with the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004.

2.2 The Show Cause Notice F. No. VI/1(b)-187/IA/AP-39/Cir-VI/18-19 dated 14.08.2019 has been adjudicated by the adjudicating authority vide the impugned order, as briefly reproduced below:

(i) He confirmed the demand of Central Excise duty of Rs. 54,87,566/- against the appellant under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 and ordered to be recovered alongwith Interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.

(ii) Penalty of Rs. 54,87,566/- has been imposed on the appellant, under the provisions of Section 11AC(1)(c) of Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds, which are as reproduced in following paragraphs.

3.1 The appellants sold Tools/Moulds amounting to Rs. 4,39,00,525/- to M/s. Tata Motors Ltd., Sanand, by charging only VAT under Tax Invoice raised for the purpose of payment of VAT, as there was not physical movement of said Tools/Moulds to the customer and hence, the provisions of Rule 3(5A) of CCR, 2004 is not applicable and need for issue of excise invoice under Rule 11 of CER, 2002 is also not warranted in law. The contention of the department is that once the sale of tools procured from the vendor has happened charging VAT by reducing the inventory, the said Tools/Moulds attracts Central Excise duty under Rule 3(5A) of CCR, 2004 and even if tax invoice has been issued charging only VAT, yet excise duty needs to be paid. The said aspect has come up before the Tribunal and other legal forums and it is a settled position of law that mere transfer of ownership way of sale do not attract excise duty and hence, the appellant urged that the said decisions are binding precedents, which needs to be followed. The appellant has relied upon the following judgments:

- *Polyplastics Industries (I) Pvt. Ltd., Versus Commr. of C.Ex. & S.T., Panchkula [2016 (332) ELT 895 (Tri. Del.)]*
- *Commr. of C. Ex. & S.Tax, Panchkula Versus Polyplastics Industries (I) Pvt. Ltd. [2017 (351) ELT 129 (P&H)]*
- *DCM Engineering Products Versus Commissioner of C. Ex., Jalandhar [2010 (251) ELT 91 (Tri. Del.)]*

- *TC Healthcare P. Ltd. Versus Commissioner of Central Excise, Ghaziabad [2015 (329) ELT 529 (Tri. Del.)]*
- *L.G. Balakrishnan & Bros. Ltd., Versus Commissioner of C. Ex., Trichy [2016 (340) ELT 708 (Tri. Chennai)]*
- *Commissioner of C.Ex., Tiruchirappalli Verus CESTAT, Chennai [2015 (323) ELT 290 (Mad)]*

3.2 The factual position is that the appellant did not make any physical movement of said Tools/Moulds to the customer, which has also been supported by affidavit filed by the appellant. The Show Cause Notice however based on certain assumptions and it has been mentioned as "*in the tax invoice issued it contain details of Purchase Order Number and date, delivery note, door delivery and date and shipping address of M/s. Tata Motors Ltd and hence, it is evident from all details mentioned in the invoices that clearance of Tools has taken place from their factory premises*". The appellant had explained that as tax invoice for VAT purpose was raised from SAP, due to inadvertent oversight, it also picked up certain details contained in the format of excise invoice due to which SAP had indicated the delivery document number which number gets generated in SAP system, but no delivery note was physically issued, as the said tools were not physically removed from out factory. In law, this singular error cannot lead to an assumption by the department that Tools/Moulds were physically removed to the customer, more so in particular, when the appellants have defended at each stage and that the said Tools/Moulds remained continuously in the possession of appellants for use in further production of excisable goods to be supplied to the same customer and nothing contrary by way of concrete evidence which stand established by the department.

3.2.1 The appellants have produced specimen copy of Tax Invoice Doc. No. 974124502/18.06.2016 (Commercial Invoice without Excise) as well as Tax Invoice cum Excise Invoice as per "5416057533 dated 01.01.2017" to give a clear comparison, as to how the regular Excise Invoice used for physical movement of goods differ from Commercial Tax Invoice prepared for effecting Sale and payment of VAT to the Commercial Tax department. This by itself demonstrate and provides the evidence that Commercial Tax Invoice used for recovery of sale consideration of Tools/Dies/Mould from the customer is not with a purpose and intent to clear/dispatch the said Tools/Dies/Moulds to Customer but it is a mere Commercial Tax Invoice was made only to effect Sale of the same, without involving any physical movement of such goods and to pay VAT to the Commercial Tax department.

3.2.2 The appellants had also submitted an affidavit dated 17.09.2019 stating that the tools involving the value amount of Rs. 4,39,00,525/- were not physically removed or cleared by them to M/s. Tata Motors Limited. But no steps have been taken by the department to get it verified from the Customer who also falls in the same jurisdiction nor any statement has been recorded of appellant Company or of the Customer or of the Transporter or any report in this regard has been sought for from the Range Superintendent. These are the essential and crucial parameters to decide, when such conclusion is arrived, contrary to the averments made by the appellant and hence, the said onus which lies on the adjudicating authority do not stands discharged in the impugned matter. When there has been clear demonstration on the part of the appellant that said Tools/Moulds were not removed, invoking the provisions of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004 is not legally sustainable and thus the impugned order merits to be set aside.

3.2.3 It is averred in the findings at Para-58 of the impugned order that "*I find the assessee had suppressed the material facts of removal of tools, dies and moulds to M/s. Tata Motors Ltd., from their factory premises and in order to mislead the department, they had mentioned the transportation and vehicle details in the Invoices issued under the provisions of Rule 11 of the Central Excise Rules, 2002, which required to be issued only for removal of excisable goods. The Invoices also containing the details of 'date and time of removal'*". The said findings are factually not correct as the appellants have not mentioned the transportation and vehicle details in the 'Commercial Tax Invoice issued for payment of VAT and hence, the demand needs to be set aside and once again the Order travels beyond the scope of Show Cause Notice.

3.3 As regards the observation of the adjudicating authority at Para-47 of the impugned order that "I find that the assessee had got tools, dies and moulds further processed and manufactured therefore, the Central Excise duty shall be levied on such excisable manufactured i.e. tools, dies and moulds in view of Section 3 of the Central Excise Act, 1944. I find that the assessee had never disputed that Central Excise duty was leviable on the tools, dies and moulds. They had only disputed that the Central Excise duty was payable only when the tools, dies and moulds had been removed from the factory premises", the appellant contended that they never claimed that they had manufactured the said tools, dies and moulds, which is the purchased items on which Cenvat Credit has been availed and hence, there is a factual infirmity in the impugned order to that extent. Further, it is only

for this reason that even Show Cause Notice issued, refers to the provisions of Rule 3(5A) of CCR, 2004, and hence, not only the adjudicating authority is speaking contrary to the facts but is also going beyond the scope of allegations made in the impugned Show Cause Notice.

3.3.1 As a normal practice in Automobile Industry, the appellant had received purchase orders from their customer viz. M/s. TML, to manufacture certain components and for which they requested the appellant to purchase tools/moulds so that it can be used for further manufacturing of components. The appellant in turn placed purchase order on vendors for such tools and bought capital goods "from various parties" and they had taken Cenvat Credit to the tune of Rs. 53,72,719/- thereon. Subsequently, the appellant had raised commercial invoices on the Customer viz. M/s. TML, for sale of such tools without involving any physical movement of such tools to their premise. The appellant also do amortization of cost, when such final products made out of such tools are cleared to customers on payment of excise duty. Thus, excise duty is paid on the final products cleared to the customer by adding cost of amortization over and above the PO price of such final product.

3.4 The appellant also contended that the demand for extended period and levy of penalty is not applicable in the impugned matter, as per the grounds reproduced below:

- *The appellants have not suppressed any material fact with an intention to evade payment of duty and hence, the question of invoking extended period of demand under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944, alongwith interest and penalty is totally unsustainable in law.*
- *The whole matter arises on account of interpretation of law and hence, the allegation of willful suppression of facts with deliberate intent to evade duty do not arise. Further, even if the excise duty had been paid by the appellant, the Customer would have availed Cenvat Credit and hence, the whole issue is revenue neutral.*
- *When the availment of Cenvat Credit figures have been made available to the department in the ER1 return filed, the department in no way can allege suppression of facts.*

3.4.1 The appellant also relied on the following decisions is support of their contention on limitation and penalty imposed on them.

- *CCE, Mumbai-IV Versus Damnet Chemicals Pvt. Ltd. [2007 (216) ELT 3 (SC)]*
- *Continental Foundation Jt. Venture Versus Commr. of C. Ex., Chandigarh [2007 (216) ELT 177 (SC)]*

- *Union of India Versus Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)]*
- *Mexim Adhesive Tapes Pvt. Ltd., Versus CCE, Daman [2013 (291) ELT 195 (Tri. Ahmd)]*
- *MR Utility Products Pvt. Ltd. Versus CCE, Delhi II [2017 (7) GSTL 248 (Tri. Del.)]*
- *CCE Verus Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]*

4. The appellant was granted opportunity for personal hearing on 23.02.2022 through video conferencing. Shri S.Narayanan, Advocate, appeared for hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum as well as those made in the additional written submission dated 21.02.2022.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum as well as the additional written submission and oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are as under:

(i) Whether the demand of Central Excise duty of Rs. 54,87,566/- confirmed against the appellant under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 alongwith interest under Section 11AA of the Central Excise Act, 1944 and Penalty under the provisions of Section 11AC(1)(c) of the Central Excise Act, 1994 read with Rule 15(2) of the Cenvat Credit Rules, 2004, is legally correct or otherwise?

6. It is observed from the case records that the officers of Central GST Audit, Ahmedabad had, on scrutiny of Trial Balance Sheet of the appellant for the Financial Year 2015-16 and 2016-17 and relevant Sales Invoices, observed that the appellant had procured Tools/Moulds on payment of duty and availed Cenvat Credit thereon. Subsequently, the appellant had sold such Tools/Moulds amounting to Rs. 4,39,00,525/- to M/s. Tata Motors Ltd., Sanand, by issuing Commercial Invoices without payment of Central Excise duty. It was the contention of the audit officers that since the invoices contained the details of Purchase Order and delivery etc., it amounted to clearance from factory premises, on which Central Excise duty was payable. Accordingly, the demand in the present case was raised and confirmed against the appellant on the basis that the appellant had violated the provisions of Rule 3(5A) of the Central Excise Rules, 2004, by way of non-

payment of Central Excise duty amounting to Rs. 54,87,566/- thereon.

6.1 I find that the adjudicating authority, as mentioned in Para-45 to Para-46 of the impugned order, has observed that "*the appellant had not disputed that they had sold the tools, dies and moulds to M/s. Tata Motors Limited. The activity of transfer the possession of the tools, dies and moulds by the appellant to M/s. Tata Motors Limited in the ordinary course of trade or business for consideration covered under the definition of 'sale' provided under Clause (h) of Section 2 of the Central Excise Act, 1944. I find that the appellant had got tools, dies and moulds further processed and manufactured therefore, the Central Excise duty shall be levied on such manufactured i.e. tools, dies and moulds in view of Section 3 of the Central Excise Act, 1944. The assessee had never disputed that Central Excise duty was leviable on the tools, dies and moulds. They had only disputed that the Central Excise duty was payable only when the tools, dies and moulds had been removed from the factory premises*".

6.2 Further, as regards the said contention of the adjudicating authority, the appellant has strongly contended that "*they never claimed that they had manufactured the said tools, dies and moulds, which is the purchased items on which Cenvat Credit has been availed and hence, there is a factual infirmity in the impugned order to that extent. Further, it is only for this reason that even Show Cause Notice issued, refers to the provisions of Rule 3(5A) of CCR, 2004, and hence, not only the adjudicating authority is speaking contrary to the facts but is also going beyond the scope of allegations made in the impugned Show Cause Notice*".

6.3 On going through the Show Cause Notice, it is observed as per the discussion at Para-3.7 of the SCN that the charges against the appellant vide the said SCN were framed as, "*Thus, the assessee has therefore violated the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 by not paying the Central Excise duty on the date of issue of invoices in respect of sale of such Tools/Moulds to M/s. Tata Motors Ltd. The same is therefore required to be recovered under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 alongwith interest....*". Accordingly, I find that the contention of the appellant appears to be factually correct to the extent that reference to the provisions of *Section 3 of the Central Excise Act, 1944* by the adjudicating authority while issuing the impugned order is neither relevant nor within the scope of the allegations made in the Show Cause Notice.

6.4 The relevant provisions under Rule 3(5A) of the Central Excise Rules, 2004 is reproduced below:

"(5A) (a) 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 below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

***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".*

6.5 I find in the instant case, as per the contention of the appellant, that the capital goods (tools, dies & moulds) were procured by them from third party vendors on behalf of M/s. Tata Motors Limited and they were shown as sold under commercial invoice, with the sole intent to merely transfer the title of the goods to M/s. Tata Motors Limited, 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. Tata Motors Ltd. The appellants had also submitted an affidavit dated 17.09.2019 stating that the tools involving the value amount of Rs. 4,39,00,525/- were not physically removed or cleared by them to M/s. Tata Motors Limited. In the present case, I also find that the adjudicating authority has not produced any documentary evidences viz. verification report, transportation documents or any confirmation at the end of the recipient etc. showing that the capital goods shown as sold have been removed from the factory. Accordingly, in absence of any substantial evidences showing removal of the capital goods from the premise of the appellant, I find that the transaction of sale of Tools/Moulds to M/s. Tata Motors Ltd. by the appellant for recovery of the Tooling cost in the present case without physical movement shall not attract the provisions of Rule 3 (5A)(a) of the CCR, 2004 and hence, the demand confirmed vide the impugned order is not legally sustainable.

7. It is pertinent to mention that the 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, 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, this authority has 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 and hence excise duty is not payable in such circumstances under Rule 3(5A) ibid.

8. I find that the facts and 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 affidavit dated 17.09.2019, clearly stated that the tool/moulds manufactured/procured from various vendors were not physically removed or cleared by the appellant to M/s. Tata Motors Ltd., Sanand, since the said tools/dies were not intended to be used nor has been used in production by M/s. Tata Motors Ltd., Sanand at their works. Accordingly, 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. Tata Motors Ltd. 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 this authority in the earlier decisions, 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. Tata Motors Ltd.

9. In view of the above discussion, I find that the demand of Central Excise duty of Rs. 54,87,566/- confirmed by the adjudicating authority against the appellant vide the impugned order is not legally 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. The appeal filed by the appellant stands disposed off in above terms.

Kumar.
..28 April, 2022..

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28/APRIL/2022

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D

To,
M/s. Tata Autocomp Systems Ltd.,
(Interior and Plastic Division),
Plot No. A-2, Tata Motors Vender Park,
Survey No. 1, Village-North Kotpura,
Tal-Sanand, Dist-Ahmedabad-382170

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate:Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-III (Sanand), Commissionerate:Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate:Ahmedabad-North.
5. Guard file
6. PA File