

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50817 of 2020-SM

(Arising out of order-in-appeal No. 05(SM)/CE/JPR/2020 dated 31.01.2020/04/02/2020 passed by the Commissioner (Appeals), Central Excise & Central Goods, Service Tax, Jaipur).

M/s Takata India Pvt. Limited

Plot No. 48 to 51, SP2
New Industrial Complex,
Majrakath Japanese Investment Zone
Neemrana, Alwar (Rajasthan) -301705.

Appellant

VERSUS

Commissioner of Central Excise

RIICO Industrial Area, Behror,
Alwar, Rajasthan- 301701.

Respondent

APPEARANCE:

Sh. Ayush Agarwal & Sh. Puneet Bansal, Advocates for the appellant
Sh. Ravi Kapoor, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50374/2022

DATE OF HEARING: 25.11.2021
DATE OF DECISION: 28.04.2022

ANIL CHOUDHARY:

The appellant is inter alia engaged in manufacture of automotive parts namely cap body cover, module assembly, seat belt assembly etc.

2. The Appellant entered into an Agreement dated 09.05.2008 with M/s Honda Siel Cars (India) Limited ('Honda Siel') for supply of final products. In terms of Clause 22 of the Agreement, in case of termination of production of any product (vehicle), the Appellant is required to continue supplying replacement parts for 15

years from date of discontinuation termination of product. In terms of the aforesaid, the Appellant maintained following two types of inventories:-

- Mass production inventory for use in production of final products; and
- Spare Parts Division ('SPD') inventory for replacement parts to be supplied to Honda Siel.

3. During 2011 to 2017, due to lower production at Honda Siel, SPD inventory moved slowly as compared to mass production inventory. Consequently, as advised by statutory auditors, the Appellant created following provisions for slow moving inventory in 2013-14 & 2015-16.

(In Rs.)

Period	Opening balance	Provision for slow movement of goods	Closing balance
2012-13	-	-	86,27,462/-
2013-14	86,27,462/-	71,92,109	1,58,19,571/-
2014-15	1,58,19,571/-	(38,59,310)	1,19,60,261/-
2015-16	1,19,60,261/-	9,49,501	1,29,09,762/-
2016-17	1,29,09,762/-	(29,07,952)	1,00,01,810/-
2017-18	1,00,01,810/-	(49,99,750)	50,02,060/-

4. In view of the above, most of provision for slow-moving inventory was created in 2013 - 14 and resultantly, closing balance as on 31.03.2014 was Rs. 1,58,19,571/-. This provision was reduced year-on-year basis and reduced to Rs. 50,02,060/- in FY 2017-18. Each year, as soon as SPD inventory was sold, provision for slow-moving inventory was reversed. In this regard, copy of CA Certificate dated 21.01.2020 is enclosed at Page No. 85 of Paper

Book. Further, the Appellant have also enclosed the copy of reversal entries passed in this regard as Annexure-A to Synopsis.

5. Even though provision for the slow-moving inventory was made in 2013-14, show cause notice dated 02.11.2018 was issued proposing to raise demand for Cenvat credit on slow-moving inventory, considering closing balance as on 31.03.2017 under Rule 3(5B) of the Cenvat Credit Rules, 2004. Thereafter, demand of Cenvat credit was confirmed vide order-in-original and upheld by the Commissioner (Appeals) vide impugned Order, holding that in terms of Rule 3(5B) of the Credit Rules, provision for slow moving inventory made to write off their value in books of account require reversal of Cenvat credit on the said inputs. Aggrieved by the impugned Order, Appellant have filed appeal before this Hon'ble Tribunal on the following grounds.

Rule 3(5B) is not applicable to the facts of the present case

6. It is urged, in terms of Rule 3(5B) of the Credit Rules, Cenvat credit is required to be reversed wherein provision is made to write off an inventory fully or partially. Writing-off is done wherein an asset has ceased to have any value or would fetch negligible monetary benefit or where it is anticipated that its future value may be reduced or become nil, in view of the prevailing market trends.

7. In the present case, no inputs have been written-off. There is difference between writing off inputs vis-a-vis provision for slow-moving inventory. The goods continued to lie in the Appellant's factory and gradually used in manufacture of dutiable final products.

As certified by Chartered Accountant, the provision became negligible by 31.03.2018 as entire quantity of such goods were duly used by the Appellant.

8. Further, provision for slow-moving inventory was created in 2013-14 which became Rs. 1,58,19,571/- as on 31.03.2014. Since then provision has been declining as and when goods are sold and further reduced to Rs. 1,00,01,810/- as on 31.03.2017. During the period of dispute i.e. FY 2016-17, no provision was created. Instead, provision was reduced by Rs. 29,07,952/-. Thus, no provision was created in the disputed period, as contended by revenue in the present case.

9. In this regard, reliance is placed upon following decisions wherein Tribunal held, that wherein goods are not written off and mere provision for slow-moving inventory is created, Rule 3(5B) of the Credit Rules is inapplicable, and no Cenvat credit is required to be reversed:

Hindustan Zinc Ltd. v. CGST [2021 (8) TMI 935 - CESTAT Delhi]
Autoline v. CCE, Kolhapur [2017 (1) TMI 297 - CESTAT Mumbai]

Solvay Specialities India Private Limited v. CCE &ST [2018 (12) GSTL 82 (Tri. - Ahmd.).

Ester Industries Ltd v. CCE Dehradun [2019 (369) ELT 670 (Tri. - Del.)].

BCH Electric Ltd. v. CCE Faridabad [2016 (344) ELT 469 (Tri.-Chennai)].

Entire demand is revenue neutral

10. Proviso to Rule 3(5B) of the Credit Rules provides that in cases where inputs are subsequently used in manufacture of final product, an assessee is entitled to avail recredit of the same. Hence, even if the Appellant would have reversed credit, it was entitled to re-credit the same on subsequent use of such inputs. Hence, the entire exercise is revenue neutral.

11. Learned Authorised Representative for the Revenue, relies on the impugned order.

12. As submitted above, inventory was never written off in books of accounts and provision of slow-moving inventory was further reversed in subsequent period(s). Hence, the Appellant was entitled to re-credit of such amount. Hence, entire transaction was revenue neutral and demand is not tenable for this reason as well.

13. Having considered the rival contentions, I find that the appellant have only created a general provision for slow-moving inventory and have actually not written off the inventory from the inventory or the asset account. In actuality such provision have been made by appropriation in the profit and loss account, without writing off any amount from the assets / inventory account. Rule 3(5B) of the Cenvat Credit Rules is attracted only when the value of the assets and/or inventory is written off fully or partially or wherein any specific provision to write off fully or partially has been made in the books of account. In the facts of the present case, the appellant have made a general provision, which is not attributable to any particular assets / inventory. Admittedly, Revenue has not been

able to identify the details of inventory or asset, for which the general provision has been made. It is further evident that appellant have led evidence that such provision has been varied from year to year by way of writing back, on the usage of the inventory as required. I also find that the situation is revenue neutral as the appellant have written off the majority of the provision created on utilisation of the inventory in manufacturing and clearance of finished goods.

14. Accordingly, in view of my findings as above, the impugned order is set aside and appeal is allowed. The appellant is entitled to consequential benefits, in accordance with law.

(Pronounced on 28.04.2022).

(Anil Choudhary)
Member (Judicial)

Pant