
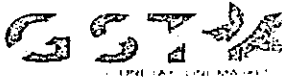


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- qaahmedabad2@gmail.com</p>

F.No:- V.87/15-46/OA/2019

आदेश की तारीख/Date of Order : - 11.03.2021
जारी करने की तारीख/Date of Issue :- 12.03.2021

DIN No.:20210364WT000000BD72

द्वारा पारित/Passed by:-

एम. एल. मीणा / *M. L. Meena*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 59/ADC/2020-21/MLM

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(85) उक्त अपील की प्रति।

(86) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(85) Copy of accompanied Appeal.

(86) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No.VI/1(b)CTA/Tech-17/Supreme/19-20 dated 29.08.2019 issued to M/s. Supreme Treon Private Limited, Plot No.E-271, 272, Hirapur Kunvar, Sanand, Ahmedabad – 382 110.



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Brief Facts of the Case:

M/s. Supreme Treon Private Limited, Plot No.E-271, 272, Hirapur Kunvar, Sanand,Ahmedabad - 382110 (herein after also referred to as "the assessee") are engaged in manufacture of Motor Vehicle parts for M/s. Ford India Pvt Ltd & M/s. Suzuki Motor Gujarat Pvt Ltd, falling under Chapter 87 of the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No.AACCS4085QEM012 and Service Tax Registration No.AACCS4085QSD016.

2. The audit of the assessee covering the period from 15.09.2014 (Date of Registration) to 2017-18 (Upto June-2017) was conducted by the Officers of the Central Tax Audit, Ahmedabad and in terms of Revenue Para 8 of the Final Audit Report No.1605/2018-2019 dated 29.04.2019 issued by the Deputy Commissioner, Circle-VI, CGST Audit, Ahmedabad, the following objection was raised.

REVENUE PARA 6: Non-payment of Central Excise Duty on Sale of Tools/Moulds.

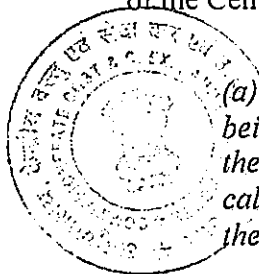
3. During the course of audit, on scrutiny of Trial Balance Sheet of the assessee for the period 2014-15 to 2017-18 (Upto June-2017), it was observed that the assessee had procured Tools/ moulds and availed Cenvat Credit on the same as Capital Goods. The assessee had carried out modification on the said Tools/moulds as and when required. The said assessee had raised Invoices in favour of M/s. Ford India Pvt. Ltd and sold the said Tools /Moulds to them during the F.Y. 2015-16to 2016-17(Upto June-2017) as detailed in the below mentioned table.

Year	Value of Tools/Moulds	Central Excise Duty involved @12.5 %
2015-16	Rs. 6,99,50,000/-	Rs. 87,43,750/-
2016-17	Rs. 3,83,80,000/-	Rs. 47,97,500/-
GRAND TOTAL	Rs. 10,83,30,000/-	Rs. 1,35,41,250/-

4. It was further noticed that the said assessee had imported as well as locally procured the said Tools/moulds etc. and after carrying out necessary modifications, were further used by them (the assessee) for manufacturing the automotive parts. During the period 2015-16 & 2016-17, the assessee had sold the Tools/Moulds to M/s. Ford India Pvt. Ltd under Commercial Invoices by charging VAT but without charging Central Excise Duty. Thus, the assessee removed the excisable/capital goods without discharging proper Central Excise duty in terms of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004;

(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%

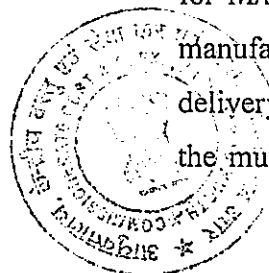
(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

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.

5. The assessee had entered into an agreement with M/s. Ford India Pvt Ltd. to procure the Tools & Moulds as and when M/s. Ford India Pvt. Ltd issues Tool Purchase Order. The Tools/moulds in question were put in use by the said assessee. The assessee has issued Tax invoices in the name and address of M/s. Ford India Pvt. Ltd., Revenue Survey No.1, Village : North Kotpura, Taluka: Sanand, Dist. Ahmedabad, showing sale of the said Tools/moulds. They have discharged their VAT liability but did not discharge Central Excise duty liability.

6. Further on going through the Trial Balance Sheets/Annual Reports for the F.Y. 2015-16 & 2016-17, the assessee had reduced their inventory in their Tools/Moulds Ledger to the extent of sales made during the relevant period.

7. Regarding the sale of tools, the assessee vide letter dated 11.03.2019 submitted their clarifications. It was opined that the assessee are engaged in the manufacture of, inter-alia, automobile parts which are sold by them to various motor vehicle manufacturers such M/s. Ford India Private Limited & M/s. Suzuki Motor Gujarat Private Limited; that in order to make precision parts and components for motor vehicles, it is necessary for them to manufacture tools, dies and Moulds; that upon approval of such tools, dies and moulds, they carry out production of parts and components of motor vehicles as required by different customers; that the business practices adopted by them in respect of different customers are in accordance with convenience and commercial requirements of the customers; that in so far as their supply of tools, dies and moulds to M/s. Suzuki Motor Gujarat Private Limited is concerned, the business practice followed and agreed upon by them and M/s. Suzuki Motors is that they shall manufacture such tools, moulds and dies and sell the same to M/s. Suzuki Motors on payment of appropriate duty of Central Excise; that once the title and ownership of these tools, dies and moulds are physically transferred to M/s. Suzuki Motors, the same are returned by M/s. Suzuki Motors to their factory for further use in the manufacture of motor vehicle parts and components; that although such tools, dies and moulds have suffered duty once, the value of the same is being amortized by them in the value of their finished goods i.e. motor vehicle parts and components; that this practice has been followed by them consistently more than 5 years and it is their bonafide belief that such practice is in accordance with law; that in so the tools, dies and moulds manufactured by them for M/s. Ford India Private Limited is concerned, they are following a practice whereby they manufacture these and sell the same to M/s. Ford India Pvt Ltd without effecting physical delivery; that in other words, they retain these tools, dies and moulds in their own factory as per the mutual agreement with M/s. Ford India Pvt Ltd and them; that since such tools, dies and



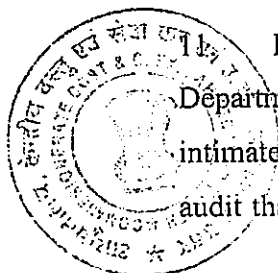
moulds manufactured for M/s. Ford India Pvt Ltd are not removed from their factory, the question of payment of Central Excise duty does not arise; that they say this because it is their understanding that duty of excise is payable only if the goods are removed from the factory; that notwithstanding this, they further clarify that value of such tools, dies and moulds manufacture for M/s. Ford India Pvt Ltd is eventually amortized in the motor vehicle parts and components manufactured for M/s. Ford India Pvt Ltd and upon which appropriate Central Excise Duty are being paid; that they would also like to appreciate that the above practices are commonly followed by most OEM manufacturers; that in their case, these practices have been followed since past many years and which have been subject to verification and audit by Central Excise auditors from time to time; that strengthening their bonafide belief that the practices followed by them are in accordance with the law. The assessee submitted the details of Tools/moulds sold to M/s. Ford India Pvt. Ltd during the F.Y. 2015-16 & 2016-17 along with Invoices and Ledgers at the time of audit.

8. The contention raised by the assessee vide their letter dated 11.03.2019 is not tenable in as much as the assessee had physically removed the Capital goods i.e. Tools/Moulds (on which Cenvat credit was availed) by issuing Invoices to M/s. Ford India Pvt. Ltd (and thereby transferring the ownership of the said goods), which were still lying at their premises. However, no Central Excise duty was paid on such clearances. The assessee has also reduced the Inventory of such Tools/Moulds as is reflected in their financial records. Further, the assessee has also recovered Sales tax. Recovery of consideration in the form of Invoices and recovery of sales tax shows that effective sale has been taken place.

9. Thus, the assessee had 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. Ford India Pvt. Ltd. The same is therefore required to be recovered under the provisions of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, with appropriate interest and penalty, on the same.

10. Therefore, the assessee had contravened the provisions of Rule 6 of Central Excise Rules, 2002, inasmuch as they failed to correctly assess their Central Excise duty liability on sale of tools/moulds, Rules 4(1) read with Rule 8 (1) of CER, 2002 as they failed to pay the appropriate duty on tools/moulds sold to M/s. Ford India Pvt. .Ltd within the prescribed time frame, Rule 12 of the Central Excise Rules, 2002 in as much as they failed to submit a correct monthly return incorporating the details of removal of the goods and other relevant particulars within 10 days after the close of the month to which the return relates.

In this case there is a deliberate withholding of essential material information from the Department about the above transactions relating to removal/sale of tools which were not intimated or disclosed to the Department at any point of time and it was only during the course of audit that the above facts came to the notice of the Department. Therefore, it appeared that, the



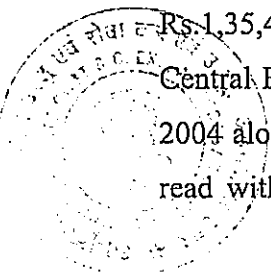
assessee had deliberately suppressed/withheld the material facts from the Department with intent to evade payment of Central Excise Duty on sale of Tools/moulds.

12. The Government has reposed trust on manufacturers/service providers and has introduced measures like Self-assessments etc., and filing of ER-1/ST-3 Returns online. No documents whatsoever are submitted by the assessee to the department and therefore, the Department would come to know about such wrong doings only during audit or preventive/other checks. In the case of Mahavir Plastics Vs CCE Mumbai, 2010(255)ELT 241, it has been held that if facts are gathered by the department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in the case of Lalit Enterprise Vs CST Chennai, it is held that extended period is invokable when the department came to know of service charges received by appellant on verification of his accounts.

13. It is a fact that they have never disclosed the clearance of goods to the Department. They also never sought any clarification from the Department. A person giving his own interpretation to the provisions of law and then arguing that he was under a bona fide belief cannot escape from liability to pay duty arising out of invocation of extended period of limitation of 05 (Five) years.

14. Further the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 are unequivocal. The provisions are explicit to the effect 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 therein for each quarter of a year or part thereof from the date of taking the CENVAT Credit. The assessee who was well aware of these provisions ought to have paid duty on such clearances and therefore, it appeared that the assessee knowingly suppressed the clearance of the said tools with an intent to evade the payment of Central Excise duty on Tools/Moulds sold to M/s. Ford India Pvt. Ltd and therefore this is a fit case for invoking the extended period for demand of duty not paid, by resorting to the provisions of Section 11A(4) of the Central Excise Act, 1944.

15. It appeared that the assessee has procured/manufactured tools/Moulds; sold the goods to M/s. Ford India Pvt. Ltd, under Commercial invoices but have deliberately suppressed the details in ER-1 returns filed by them and also deliberately failed to pay Central Excise duty on the assessable value of the tools cleared by them to M/s. Ford India Pvt. Ltd. As per their financial records, the assessee has cleared and sold tools valued at Rs.6,99,50,000/- in 2015-16 and Rs.3,83,80,000/- in 2016-17, thus totalling to Rs.10,83,30,000/- on which Central Excise duty comes to Rs.1,35,41,250/- . As the assessee has not paid Central Excise duty of Rs.1,35,41,250/- on the tools removed by them under commercial invoices to M/s. Ford India Pvt. Ltd, the duty of Rs.1,35,41,250/- is liable to be demanded and recovered from them under Section 11A(4) of Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with interest under the provisions of Section 11AA of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. By deliberately



suppressing the fact of sale of tools/moulds and by contravention of the Act and the Rules made thereunder, the assessee has also rendered themselves liable to penalty under Section 11AC of the Central Excise Act, 1944 read with the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004.

16. Pre-Show Cause Notice consultation in terms of Instructions issued from F.No.1080/09/DLA/MISC/15 dated 21.12.2015, F.No.1080/DLA/CC Conference/2016 dated 13.10.2016 and Master Circular No.1053/02/2017-CX dated 10.03.2017 was granted on 26.06.2019, before the Additional Commissioner, Central Tax Audit, Ahmedabad.

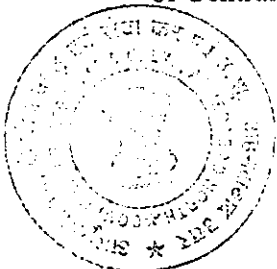
17. The assessee stated that by virtue of Notification No.67/95-CE dated 16.03.1995 as amended by Notification No.19/2004-CE dated 11.07.2014, capital goods manufactured in a factory and used within the factory of production are exempt from payment of duty. Further, vide their letter dated 01.07.2019 the assessee submitted that they can be collected only on physical removal of goods from the factory whether or not the goods are sold by them; that to recover the Central Excise duty on the basis of sale would amount to defeating the basic tenet of Central Excise duty which is a duty levied on manufacture and collected at the time of removal from factory. It is further submitted by the assessee that they have not removed the moulds from their factory but have captively used the moulds to manufacture excisable finished products.

18. The submissions of the assessee can not be accepted as an essential pre-condition for availing exemption under Notification No.67/95-CE dated 16.03.1995 is that the goods should be manufactured in a factory and used within the factory of production, i.e. they should be captively consumed. In the present case, the Tools/Moulds have been procured by the assessee from other manufacturers and have, therefore, not been manufactured in the factory premises of the assessee. The assessee has also availed Cenvat Credit on such tools/moulds. The assessee has issued invoices to M/s. Ford India Pvt. Ltd, thereby recovering the cost of the tools and also transferring the right and ownership of the said tools/moulds. The assessee has also recovered VAT from M/s. Ford India Pvt. Ltd, implying that effective sale has been taken place.

19. The provisions of repealed Central Excise Act, 1944 and Rules made there under have been saved under Section 174 (2) of Central Goods and Service Tax Act, 2017. Therefore, provisions of repealed Act and Rules are enforced for the purpose of recovery of duty, interest and for imposing penalty under this Notice.

20. Therefore, M/s. Supreme Treon Private Limited, Plot No.E-271, 272, Hirapur Kunvar, Sanand, Ahmedabad – 382110 were called upon to show cause to the Additional Commissioner of Central Goods and Service Tax, Ahmedabad North, Ahmedabad as to why:

- i. Central Excise duty of Rs.1,35,41,250/-(Rs. One Crore Thirty Five Lakhs Forty One Thousand Two Hundred and Fifty Only) should not be demanded and recovered from them 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.

- ii. Interest at appropriate rate should not be charged and recovered from them under Section 11AA of Central Excise Act, 1944; read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.
- iii. Penalty should not be imposed upon them 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.

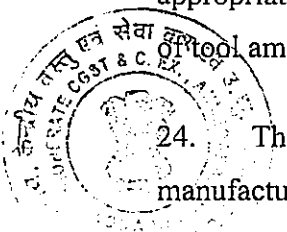
Defence Reply

21. Vide their letter dated 31.12.2019, M/s. Trivedi & Gupta, Advocates submitted reply to the show cause notice on behalf of M/s. Supreme Treon Pvt.ltd, wherein they stated that –

22. They denied all the allegations made in subject SCN. They stated that their Company is engaged in the manufacture of, inter-alia, 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 their Company to manufacture or get manufactured tools, dies and moulds. In the present case such tools, dies and moulds are got manufactured by them from third parties as per the required specifications. Upon approval of such tools, dies and moulds they sells such tools, dies and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles as required by Ford India Pvt. Ltd.

23. They stated that the business practices adopted by their Company in respect of different customers are in accordance with convenience and commercial requirements of the customers. In so far as the tools, dies and moulds got manufactured by their company for M/s. Ford India Pvt. Ltd. is concerned, their Company is following a practice whereby they gets the tools, dies and moulds manufactured from third party and sells the same to Ford India. In other words, they receive these tools, dies and moulds after the same has been sold to Ford India Pvt. Ltd. in its factory as per the mutual agreement with Ford India and their Company. Since such tools, dies and moulds got manufactured for Ford India are sold to Ford India and received in their factory the question of payment of Central Excise duty does not arise. They further clarified that the value of such tools, dies and moulds got manufactured for Ford India is eventually amortized in the motor vehicle parts and components manufactured for Ford India and upon which appropriate Central Excise duty are being paid. For ready reference they enclosed sample copy of tool amortization rate sheet provided by Ford India Pvt. Ltd.

24. They stated that the above practices are commonly followed by most OEM manufacturers. In their case these practices have been followed since past many years and which



have been subject to verification and audit by Central Excise auditors from time to time. Thus, strengthening the bonafide belief of their Company that the practices followed by it are in accordance with the law. They stated that the tools/ dies/ moulds got manufactured in respect of Ford India Ltd., though sold, are received in their factory for further manufacture of components and parts which are cleared on payment of duty on the value which includes the amortized value of the tools/ dies / moulds. They further elaborated that under the provisions of the Sales of Goods Act, sale can be effected even without the delivery of goods if agreed upon by the seller and the buyer. For ready reference they enclosed copies of invoices for sale issued by their Company to Ford India Pvt. Ltd and stated that no transport vehicle number or LR number are mentioned in these invoices.

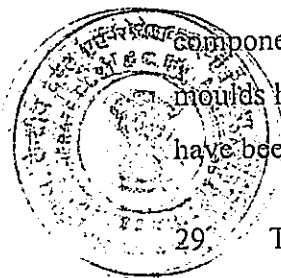
25. They stated that the SCN has not observed that the value of tools/dies/moulds in respect of Ford India Ltd have been amortised subsequently though the same was brought to the notice of the auditors. They submitted that the SCN states that their Company had procured the capital goods (tools/moulds). The said capital goods were got manufactured by them and used within the factory of production of finished excisable goods.

26. They stated that it is not disputed that the said moulds/ tools were sold to M/s. Ford India. It may be correct that under the Sale of Goods Act the ownership of the goods sold gets transferred to the buyer. However, the duty of Central Excise being a tax on manufacture is not governed by the Sale of Goods Act. Thus, even if the said capital goods are shown as sold in the accounts of the Noticee Company, the liability of payment of Central Excise duty does not arise since the value of such tools, moulds and dies are amortized and factored into the value of finished goods i.e. automobile parts and components.

27. They further stated that in absence of any such evidence invocation of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004 is unsustainable and the SCN has theorized that they should have adopted the same practice and method as was used by it in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd. No law or authority can compel a business entity to follow any particular business practice. The tools/dies/moulds got manufactured by them for Ford India Ltd. are after their sale received by their Company from Ford India Ltd . They have clarified this position vis-a-vis' the position in case of M/s. Suzuki Motors vide its letter dated 5.3.19 and their pre-show cause notice consultation reply.

28. They stated that there is no loss of revenue or leakage of revenue in this case since the value of moulds got manufactured by them has been amortized in the value of the parts and components cleared by them on payment of duty of Central Excise. Therefore the value of moulds has not escaped the levy of duty of Central Excise merely because the same, though sold, have been received in their factory.

29. They stated that merely because their Company was under the self assessment procedure does not take away from the Revenue Department its responsibility to help and guide



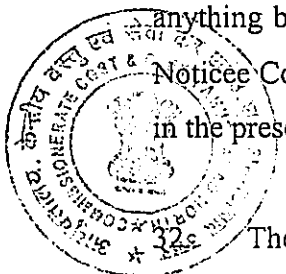
the manufacturers. This is exactly what "the Citizen Charter" prescribes for the Department to follow. That the subject SCN does not bring on record anything so as to even remotely suggest that they acted in a malafide manner, by resorting to any fraud, suppression or willful misstatement with any intention to evade duty payment. That making a bald assertion in the body of the SCN to the effect that "there was intention to evade" is not sufficient so as to make available the extended period of limitation. Further, it is indeed a matter of fact that they had supplied all the details of its business activities including audited and certified profit and loss accounts and had subjected itself to various Central Excise audits from time to time before, during and after the period involved in the SCN.

30. They submitted that the issue involved is that of substantial interpretation of the statutory provisions. The SCN does not show any evidence how the Noticee Company had any malafide intent to evade payment of duty, which burden is cast upon the Department to prove. Under the circumstances, it cannot be said that there was any malafide intent of evading payment of duty by reasons of fraud, misstatement, suppression etc. on part of their Company. Therefore, the entire demand of duty is patently time barred. They relied upon the following judgments / decisions in support of their contention.

- a) M/s. Balco 2007(8) STR 27 (Tri-Del)
- b) 2004(173)ELT 337 (All)
- c) 2004(174) ELT A034 (SC)
- d) 2005(179) ELT 120 (Tri)
- e) 2004(178) EL T 596 (Tri)
- f) 2003(161) ELT 287 (Tri)
- g) L&T Ltd. 2007(211) ELT 513(SC)
- h) Continental Foundation Jt. Venture 2007 (216) E.L.T. 177 (S.C.)

31. They stated that when the Tax authorities were privy to all the transactions made by them no malafide intent to evade payment of tax can be gathered under such facts and circumstances on their part. That for the same reasons, in light of the above legal position, especially in light of the ruling of the Hon'ble Apex Court in the case of Hon'ble Apex Court in the case of Continental Foundation (Supra), the entire demand is patently time barred. Moreover, this is not the case of failure to disclose correct information. Even if it was so, per se it does not amount to "suppression" for the purpose of invoking extended period of limitation. Moreover, in absence of anything brought on record by the revenue to suggest any active act or omission on part of the Noticee Company "with an intent" to evade payment of duty, extended period cannot be invoked in the present case. For the same reasons, the entire demand deserves to be dropped/withdrawn.

They stated that even if their Company had got manufactured the said capital goods, the manufacturer would have discharged the duty of Central Excise on value of the same. Such duty



of Central Excise would have been availed as Cenvat Credit by M/s. Ford India thereby rendering the entire transaction as "Revenue Neutral". That it is a settled legal position that in case of such revenue neutral situation, no demand itself can survive. They relied the following case laws-

- a) Commissioner v. Indeos ABS Ltd. 2010 (254) E.L.T. 628 (Guj.)
- b) Commissioner v. Indeos ABS Ltd. - 2011 (267) E.L.T. A155 (S.C.)
- c) Tenneco RC India Pvt. Ltd. v. Commissioner 2009 (235) E.L.T. 105 (Tribunal)
- d) Jamshedpur Beverages v. Commissioner of Central Excise reported in 2007 (214) E.L.T. 321 (S.C.)
- e) Reliance Industries Ltd. 2009(244) ELT 254 (Tri-Ahmd)
- f) Punjab Tractors Ltd. 2005 (181) E.L.T. 380 (S.C)
- g) Hindustan Level Ltd. 2010 (262) E.L. T. 1041 (Tri. - Mumbai)
- h) SRV Print Pack Pvt. Ltd. 2011-TIOL-611-HC-DEL-CX
- i) Moser Baer Ltd. 2010 (250) E.L.T. 79 (Tri. -Del)
- j) Siddeshwar Textile Mills Pvt. Ltd. 2009 (248) E.L.T. 290 (Tri. -Mumbai)
- k) Dineshchandra R. Agrawal Infracon Pvt. Ltd. 2010(18) STR 39 (Tri-Ahmd)
- l) Amco Batteries 2003(153) ELT 7(SC)
- m) IOCL 2010(262) ELT 75I(Tri)
- n) LG Electronics Pvt. Ltd. v. Commissioner 2010 (255)ELT 135 (Tribunal)
- o) Associated Drug Co. v. Commissioner- 2009 (245) ELT 252 (Tribunal)
- p) PR. Rolling Mills Pvt. Ltd. 2010(249) ELT 232 (Tri-Bang)
- q) Commissioner v. P.R. Rolling Mills Pvt. Ltd. - 2010 (260) E.L.T. A84 (S.C)
- r) CCE V/s. Sankala Industries 2010 (262) E.L.T. 893 (Tri. - Bang)
- s) Cepharm Laboratories Ltd. 2007 (214) E.L.T. 286 (Tri.- Del)
- t) Ispat Industries Ltd. 2007 (213) E.L.T. 439 (Tri. - Mumbai)

33. They stated that in view of the above facts including the legal positions emanating from the judgments of the Hon'ble Supreme Court, High Courts and CESTAT, they are not liable to pay any duty, interest or penalties as suggested in the subject SCN. They requested for a personal hearing in the interest of justice.

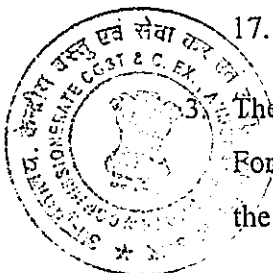
Further, vide their letter dated 11.01.2021, they submitted additional submission wherein they submitted that-

"In addition to and without prejudice to the contentions raised in our replies dated 31.12.19 and 26.6.19 as well as documentary evidences annexed with these replies to the subject SCN we further submit the following submissions which Your Honour may kindly take into consideration while adjudicating the subject SCN.

1. The issue involved in the present SCN is confirmation of demand by the Adjudicating Authority under Rule 3(5A) of CCR, 2004. The demand is confirmed on the ground that the Noticee Company has sold moulds/tools to Ford India Pvt. Ltd. by charging appropriate VAT.
2. The demand was confirmed on the basis of financial records for the year 2015-16 and 2016-

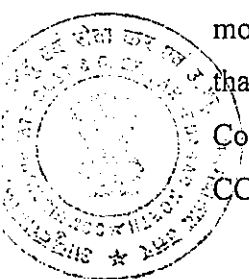
17.

The Noticee Company submits that they have not removed the tools / moulds procured from Ford India Pvt. Ltd. from their factory premises. The Noticee Company has already provided the copy of invoices issued to Ford India Pvt. Ltd. in which it is established that there is no



movement of tools/moulds from the factory premises of the Noticee Company. The invoices were annexed at Annexure – 2 to our reply dated 31.12.19.

4. The Noticee Company submits that by using these moulds/tools the Noticee Company has manufactured the components against which proper amortization was done during the material period. The detailed amortization sheets were already provided with our reply dated 31.12.19 at Annexure – 1.
5. The Noticee Company submits that the tools/moulds were not removed from the factory after the same had been sold to Ford India Pvt. Ltd. and the same moulds/tools are still lying in the factory premises of the Noticee Company. The said facts are certified by the independent Chartered Accountant by way of certificate dated 17.8.2020 and 30.12.2020. For ready reference copy of both certificates of the Chartered Accountant are annexed hereto and marked collectively as ANNEXURE – 1.
6. The Noticee Company submits that by using the moulds/tools the Noticee Company had manufactured the components against which proper Excise duty was discharged and proper amortization was done as per the accounting records. The practice adopted by the Noticee Company for amortization of the value of moulds/tools into the value of final products is certified by the Cost Accountant by way of Certificate dated 12.8.2020 and 25.09 .2020. For ready reference copy of both certificates of the Cost Accountant are annexed hereto and marked collectively as ANNEXURE – 2.
7. The Noticee Company submits that amortized value of moulds/tools are included in the final value of components manufactured against which appropriate Excise duty was paid during the material period. The summary of Excise duty paid on amortization in sales invoice of components manufactured are annexed hereto and marked as ANNEXURE – 3 as summary sheet certified by Cost Accountant along with detailed amortization schedule.
8. The Noticee Company submits that there is a difference between the pattern adopted for sale to Suzuki Motors Gujarat Pvt. Ltd. and Ford India Pvt. Ltd. The moulds removed from the factory premises for the sale pertains to the mould of Suzuki Motors Gujarat Pvt. Ltd. in which Vehicle Number, Transporter details are available For ready reference sample copy of invoice issued to Suzuki Motor Gujarat Pvt. Ltd. are annexed hereto and marked as ANNEXURE – 4.
9. The invoices issued to Ford India Pvt. Ltd. in which there is no transportation details as well as vehicle details which proves that there is no movement of moulds as well as removal of moulds from the factory premises of the Noticee Company. The Noticee Company submits that from the above facts of non-removal of moulds from the factory premises of the Noticee Company which proves that moulds are still lying in the factory premises. Rule 3(5A) of CCR, 2004 could not be invoked because Rule 3(5A) mandates that capital goods are



removed after being used. For ready reference Rule 3(5A) of CCR, 2004 is reproduced as below:

“Rule 3-[(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:-

10. The Noticee Company submits that moulds removal in the case of Suzuki Motor Gujarat Pvt. Ltd. there is a proper delivery challan issued by the transporter company for movement of goods upto the premises of Suzuki Motor Ahmedabad. While in the case of sale to Ford India Pvt. Ltd. there is no delivery challan issued by any transporter because there is no movement of goods from the premises of the Noticee Company.
11. The Noticee Company submits that the leviability of Central Excise duty will be governed by Section 3 of the Central Excise Act, 1944 and the collection of the excise duty will be governed by Rule 4 read with Rule 8 of Central Excise Rules, 2002. For better clarification as regards to the collection of Central Excise duty by the Government of India, the Noticee Company wants to reproduce Rule 4 and Rule 8 of Central Excise Rules, 2002.

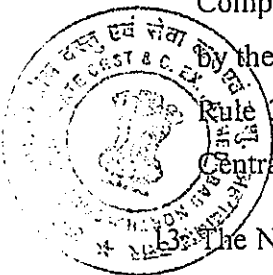
Section 4-(1) Every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty livable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided:

Rule 8. Manner of payment.-

(1) The duty on the goods removed from the factory or the warehouse during a month shall be paid by the the ⁴[6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case:]

12. The Noticee Company submits that as per the aforesaid Rules when every person who produces or manufactures any excisable goods shall pay the duty leviable on such goods in the manner provided in Rule 8 i.e. the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month. The Noticee Company submits that since no removal of excisable goods were taken place then collection by the Central Government under Rule 4 read with Rule 8 of Central Excise Rules, 2002 and Rule 3(5A)(a) of the Cenvat Credit Rules, 2004 will not be governed by the provisions of Central Excise Act, 1944 read with the Rules made thereunder.

13. The Noticee Company submits that the demand is raised on the basis of Trial Balance during the EA 2020 audit conducted in the year 2018-19. The basis of Show Cause Notice is the



Trial Balance and invoices only but the Department has not physically verified the moulds/tools which are available at the factory premises of the Noticee Company. The demand raised without physical verification of moulds which are available at the factory premises which seems to be unlawful activity on part of auditors while formulating the subject SCN.

14. The Noticee Company relies upon the following judgments which are squarely applicable to the case of the Noticee Company.

i) Mutual Mecaplast Ltd. v/s CCE, Daman – 2007 (220)ELT 888 (Tri. Ahmd.)

“Transfer of ownership of capital goods from one company to another company by raising an invoice without physical removal of goods cannot be termed as deemed removal from factory premises”.

ii) DCM Engineering Products v/s CCE, Jalandhar – 2010 (251) ELT 91 (Tri. Del.)

“Physical delivery of pattern tools not made the present case – Rule 52A of erstwhile Central Excise Rules 1944 not covers deemed removals – mere issuance of invoice not called for reversal of credit”.

iii J.K. Spinning & Weaving Mills Ltd. and Anr. v/s UOI & Ors. – 1987 (32) ELT 234 (S.C.)

iv) CCE&ST , Panchkula v/s Polyplastics Industries (I) Pvt. Ltd. – 2017 (351) ELT 129 (P&H)

v) Polyplastics Industries (I) Pvt. Ltd. v/s CCE&ST , Panchkula – 2016 (332) ELT 895 (Tri. Del)

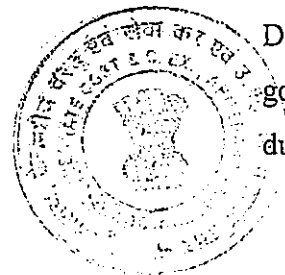
“Revenue alleged removal of moulds from factory under an invoice – Since Chartered Engineer after verification of records and visiting factory, certified that said moulds continued to be installed in factory and in running condition, therefore credit could not be defined – Rule 3(5) of Cenvat Credit Rules, 2004, not applicable and assessee not required to reverse credit as goods not removed as such – Also ownership of control of capital goods by assessee claiming Cenvat Credit, not a decisive factor of eligibility to Cenvat Credit.”

vi) CCE, Vadodara v/s. Automotive Stamping & Assemblies Ltd. – 2013 (298) ELT 591 (Tri. Ahmd)

vii) Elcon Clipsal India Ltd. v/s. CCE, Ahmedabad-I - 2002 (146) ELT 360 (Tri. Del))

viii) Indica Laboratories Pvt. Ltd. v/s. CCE, Ahmedabad - 2007 (213) ELT 20 (Tri-LB)

Duty liability – Liability when arises – Duty becomes payable on removal of excisable goods unless such goods are exempted – Sale not necessary condition for charging excise duty – Rule 4 of Central Excise Rules, 2002

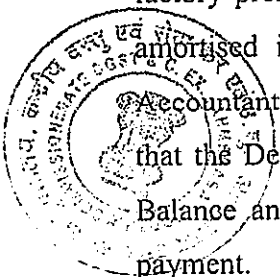


15. The Noticee Company submits that the SCN dated 14.6.19 issued to Supreme Treves Pvt. Ltd. which covered the period for the Financial Year 2015-16, 2016-17 and 2017-18 (April to June). The SCN issued by the Audit Commissionerate extending the limitation period of five years alleging the suppression of the clearances of tools. The very same Commissionerate issued SCN dated 29.8.19 extending the limitation period by alleging suppression in the present SCN.
16. The Noticee Company submits that since the earlier SCN dated 14.6.19 covered the extended period by alleging suppression then the subsequent SCN dated 29.8.19 cannot be issued for the extended period. We say this because the same Commissionerate were in knowledge of the fact that earlier SCN covered the allegation of suppression. For ready reference a copy of SCN dated 14.6.19 is annexed hereto and marked as ANNEXURE- 5.
17. The Noticee Company submits that since the first SCN covered the extended period of limitation then in the subsequent SCN the same allegation of suppression could not be invoked as per the judgment of Nizam Sugar Factory v/s Collector of Central Excise (AP)- 2006 (197) ELT 465 (SC). The same judgment is accepted by CBIC Board vide its Circular No.1063/2/2018-CX dated 16.2.18.

In above view of the facts and the legal position the subject SCN deserves to be withdrawn / vacated in the interest of justice”.

Personal Hearing:

34. Personal hearing in this case was fixed on 18.12.2020 and 11.01.2021. Shri Mrugesh G Pandya (Advocate) appeared for the virtual hearing. He stated that the noticee company have not removed the tools/moulds procured from Ford India Pvt. Ltd from their factory premises. The company already provided copy of invoices issued to Ford India Pvt. Ltd which is established that there is no movement of tools/moulds from the factory premises of the noticee. He stated that he has submitted additional written submission through mail today which may be taken into consideration. He also promised to send a few case laws along with post copy. He argued that as per the judgment of Nizam Sugar Factory Vs Collector of Central Excise (AP-2006(197) ELT 465 (SC). The said judgment has been accepted by the CBIC vide Circular No.1063/2/2018-CX dated 16.02.2018. He requested to take into consideration of all his written submission and case laws and requested to drop the proceedings initiated in the show cause notice. Further to the aforesaid discussion, Mr. Mrugesh Pandya has also pointed out that tools were not moved from factory premises, certified by Chartered Accountant by its certificate. The value of mould also amortised in component and on components the proper Excise Duty were paid. The Cost Accountant certified this amortisation along with certificate and summary sheet. He also argued that the Department has not verified the moulds and issued the SCN only on the basis of Trial Balance and Invoices. He further argued that Rule 4 and Rule 8 will apply for Excise duty payment.

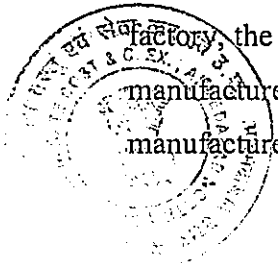


Discussion and findings: -

35. I have gone through the impugned Show Cause Notice with its relied upon documents, Defence Reply dated 31.12.2019, additional submission dated 11.01.2021 and depositions made by the assessee at the time of personal hearing.

36. I find that the impugned Show Cause Notice was issued demanding Central Excise duty of Rs. 1,35,41,250/- on the value of Tools/Moulds of Rs. 10,83,30,000/- sold to M/s. Ford India Pvt. Ltd., Sanand 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, which is arisen on account of audit observation raised vide Revenue Para-8 of the Final Audit Report No. 1605/2018-19 dated 29.04.2019, wherein, it had been observed by the Audit Officers that the assessee had procured the tools, dies and moulds and had availed CENVAT credit and had used such tools/moulds for manufacturing automotive parts, subsequently, they sold Tools/Moulds amounting to Rs. 10,83,30,000/- to M/s. Ford India Private Limited, Sanand without payment of Central Excise duty, however, they had paid VAT thereon; in view of Rule 3(5A)(a) of the CENVAT Credit Rules, 2004 on removal of used capital goods on which CENVAT credit has been taken, the assessee was liable to pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method and if the amount so calculated was less than the amount equal to the duty leviable on transaction value, then the assessee was liable to pay an amount equal to the duty leviable on transaction value; thus, it appeared that the assessee was liable to pay Central Excise duty on sale of tools/moulds to M/s. Ford India Pvt. Ltd., Sanand.

37. I find that the assessee in their defence reply, had submitted, *inter-alia*, that they are engaged in the manufacture of, *inter-alia*, automobiles 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 to manufacture or get manufactured tools, dies and moulds; in the present case such tools, dies and moulds are got manufactured by them from third party as per the required specifications; upon approval of such tools, dies and moulds they sell such tools, dies and moulds to M/s. Ford India Pvt. Ltd., who in turn supply the same to them to be used for production of parts and components of motor vehicles as required by Ford India Pvt. Ltd.; the business practice adopted by them in respect of different customers are in accordance with convenience and commercial requirements of the customers; in so far as the tools, dies and moulds got manufactured by them for M/s. Ford India Pvt. Ltd. is concerned, they are following a practice whereby they get tools, dies and moulds manufactured from third party and sell the same to Ford India; in other words, they receive these tools, dies and moulds after the same has been sold to Ford India; since such tools, dies and moulds got manufactured for Ford India are sold to Ford India and received in their factory, the question of payment of Central Excise duty does not arise; the tools/dies/moulds got manufactured in respect of Ford India, though sold, are received in their factory for further manufacture of components and parts which are cleared on payment of duty on the value which



includes the amortized value of the tools/dies/moulds; under the provisions of the Sales of Goods Act, sale can be effected even without the delivery of goods if agreed upon by the seller and the buyer; it is not disputed by the assessee that the said moulds/tools were sold to M/s. Ford India; it may be correct that under the Sale of Goods Act the ownership of the goods sold gets transferred to the buyer; the tools/dies/moulds got manufactured by them for Ford India Ltd. are after their sale, received by them from Ford India Ltd.; they had not removed the tools/moulds procured from Ford India Pvt. Ltd. from their factory premises; that as per the provisions of Section 4(1) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Rules, 2002 duty is required to be paid on removal of goods from the factory; they had already provided the copy of invoices issued to Ford India Pvt. Ltd. in which it is established that there is no movement of tools/moulds from their factory premises; the tools/moulds were not removed from the factory after the same had been sold to Ford India Pvt. Ltd. and the same moulds/tools are still lying in their factory premises; the said facts are certified by the independent Chartered Accountant by way of Certificate dated 17.08.2020 and 30.12.2020; by using the moulds/tools they had manufactured the components against which proper Excise duty was discharged and proper amortization was done as per the accounting records; the practice adopted by them for amortization of the value of moulds/tools into the value of final products is certified by the Cost Accountant by way of Certificate dated 12.08.2020 and 25.09.2020; the invoices issued to Ford India Pvt. Ltd. in which there is no transportation details as well as vehicle details which proves that there is no movement of moulds as well as removal of moulds from their factory premises; the levability of Central Excise duty will be governed by section 3 of the Central Excise Act, 1944 and collection of the excise duty will be governed by Rule 4 read with Rule 8 of the Central Excise Rules, 2002.

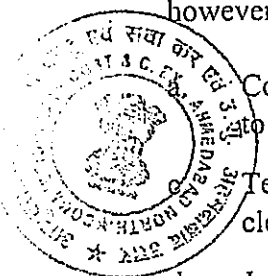
38. I also find that the assessee had relied upon a series of the judgments in their written submissions, however, they had not provided the copy thereof or examination and reference. I also find that the assessee had raised objection regarding limitation relying on a series of judgments, without producing copy thereof for examination and reference of the same.

39. I find that the assessee had also submitted that even if they had got manufactured the said capital goods, the manufacturer would have discharged the duty of Central Excise on the value of the same, such duty would have been availed as Cenvat credit by M/s. Ford India thereby rendering the entire transaction as "Revenue Neutral"; it is a settled legal provisions that in case of such revenue neutral situations, no demand itself can survive; they had refer to and rely upon a series of the judgments without providing copy of the judgments for examination and reference, however, they had submitted the gist in some of the judgments as under:

Commissioner v. Indeos ABS Ltd. – 2010(254)E.L.T.628(Guj.) - pertains to goods cleared to sister concern;

Tenneco RC India Pvt. Ltd. v. Commissioner – 2009(235)E.L.T.105(Tribunal) - pertains to clearances between two units of the same company;

d. Jamshedpur Beverages v. Commissioner of Central excise reported in 2007(214)E.L.T.321(S.C.) – pertains to irregular Modvat credit;



- e. Reliance Industries Ltd. - 2009(244)ELT254(Tri-Ahmd) – Revenue neutrality with reference to Cenvat credit;
- f. Punjab Tractors Ltd. - 2005(181)E.L.T.380(S.C.) – Duty paid on exempted goods and Modvat credit availed and reversed at the time of clearance of final products;
- g. Hindustan Lever Ltd. – 2010(262)E.L.T.1041(Tri.-Mumbai) – Duty paid on goods captively consumed and credit taken;
- h. SRV Print Pack Pvt. Ltd. – 2011-TIOL-611-HC-DEL-CX – final product not excisable but duty paid and credit taken less than duty paid;
- i. Moser Baer Ltd. 2010(250)E.L.T.79(Tri.-Del) –Inter unit transfer of old/used capital goods ;
- j. Siddeshwar Textile Mills Pvt. Ltd. – 2009(248)E.L.T.290(Tri-Mumbai) – AED paid on bleached cotton fabrics available as Cenvat credit;

40. I find that the assessee also relied upon a series of judgments to the effect that in case of revenue neutral situations, the demand is time-barred.

- i. Dineshchandra R. Agrawal Infracon Pvt. Ltd. – 2010(18)STR39(Tri-Ahmd) – non-payment of Service tax by recipient of Goods Transport Agency service;
- ii. Amco Batteries - 2003(153)ELT7(SC) – waste & scrap of lead removed by the appellant and sent to the job-workers without payment of duty to recovery of metal from the scrap;
- iii. IOCL – 2010(262)ELT751(Tri) – Clearance of cenvatted inputs to sister unit on separate set of invoices without payment of duty;
- iv. LG Electronics Pvt. Ltd. v. Commissioner – 2010(255)E.L.T.135(Tribunal) – short reversal of Cenvat credit when Cenvatted inputs removed for further manufacture – credit reversed before issuance of show cause notice;
- v. Associated Drug Co. v. Commissioner – 2009 (245) E.L.T.252(Tribunal) – Stock transfer to sister concern;
- vi. P.R.Rolling Mills Pvt. Ltd. – 2010(249)ELT232(Tri-Bang) –duty paid by the job worker was taken as credit by principal manufacturer;
- viii. CCE V/s. Sankala Industries – 2010(262)E.L.T.893(Tri-Bang) – Duty short paid on clearances to sister unit and made goods with interest before issuance of SCN;
- ix. Cepharm Laboratories Ltd. – 2007(214)E.L.T.286(Tri.-Del) – non-disclosure of the transactions to revenue cannot rightly be construed as resulting from intent to evade duty;
- x. Ispat Industries Ltd. – 2007(213)E.L.T.439(Tri.-Mumbai) – Clearance to sister concern, non-inclusion of depreciation of plant and building in cost of production.

41. I further find that the assessee vide their additional written submissions dated 11.01.2021, had submitted that they had not removed the tools/moulds procured from M/s. Ford India Pvt. Ltd. from their factory premises; in the invoices issued to M/s. Ford India, provided by them, it is established that there is no movement of tools/moulds from their factory premises as there is no transportation details as well as vehicle details which proves that there is no movement of moulds as well as removal of moulds from the factory premises; they had relied upon a series of judgments and they had submitted the gist of the judgments as under:

1) Mutual Mecaplast Ltd. v/s CCE, Daman – 2007(220)ELT888(Tri. Ahmd.) - Transfer of ownership of capital goods from one company to another company by raising an invoice



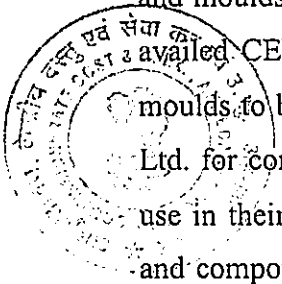
without physical removal of goods cannot be termed as deemed removal from factory premises;

- ii) DCM Engineering Products v/s CCE, Jalandhar – 20109251)ELT91(Tri. Del.) – Physical delivery of pattern tools not made in the present case – Rule 52A of erstwhile Central Excise Rules not covers deemed removals – mere issuance of invoice not called for reversal of credit;
- v) Polyplast Industries (I) Pvt. Ltd. v/s CCE&ST, Panchkula – 2016(332)ELT895(Tri. Del) – Revenue alleged removal of moulds from factory under an invoice – since Chartered Engineer after verification of records and visiting factory, certified that the said moulds continued to be installed in factory and in running condition, therefore credit could not be denied;
- viii) Indica Laboratories Pvt. Ltd. v/s CCE, Ahmedabad – 2007(213)ELT20(Tri-LB) –Duty becomes payable on removal of excisable goods unless such goods are exempted – Sale not necessary condition for charging excise duty – Rule 4 of Central Excise Rules, 2002.

42. I also find that the assessee submitted that the SCN dated 14.6.19 issued to M/s. Supreme Treves Pvt. Ltd. which covered the period for the Financial Year 2015-16, 2016-17 and 2017-18 (April to June); the SCN issued by the Audit Commissionerate extending the limitation period of five years alleging the suppression of the clearance of tools; the very same Commissionerate issued SCN dated 29.8.19 extending the limitation period by alleging suppression in the present SCN; since the first SCN covered the extended period of limitation then in the subsequent SCN the same allegation of suppression could not be invoked as per the judgment of Nizam Sugar Factory v/s collector of Central Excise (AP) – 2006(197)ELT465(SC); the same judgment is accepted by CBIC Board vide its Circular No. 1063/2/2018-CX dated 16.2.18; in view of the facts and the legal position the subject SCN deserves to be withdrawn / vacated in the interest of justice.

43. Thus, I find that the main contention in the instant case is whether the tools, dies and moulds got manufactured by the assessee from third party on which CENVAT credit had been availed by them and sold to M/s. Ford India Pvt. Ltd. were actually removed from their factory premises and an amount equal to Central Excise duty leviable on transaction value was required to be paid by the assessee.

44. In view of submissions made by the assessee, I find that the assessee are engaged in the manufacture of Automobile parts and sold to M/s. Suzuki Motors Gujarat Pvt. Ltd. and M/s. Ford India Pvt. Ltd. In order to manufacture Automobile parts, the assessee requires tools, dies and moulds, which they got manufactured from the third parties on behalf of both their buyers, and CENVAT credit thereon as capital goods and subsequently sold these tools, dies and moulds to both their buyers viz. M/s. Suzuki Motors Gujarat Pvt. Ltd. and M/s. Ford India Pvt. Ltd. for consideration. These sold tools, dies and moulds are received back by the assessee for use in their factory premises for the manufacture of their finished goods i.e. Automobile parts and components. In respect of tools, dies and moulds sold to M/s. Suzuki Motors Gujarat Pvt. Ltd., the assessee used to pay Central Excise duty as well as VAT, whereas, in respect of tools, dies and moulds sold to M/s. Ford India Pvt. Ltd., the assessee do not pay any Central Excise



duty but they pay VAT as per the business practices adopted by the assessee in accordance with convenience and commercial requirements of the customers.

45. I find that 'Sale' has been defined under Clause (h) of Section 2 of the Central Excise Act, 1944, which reads as –

(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;

46. I find that the assessee had not disputed that they had sold the tools, dies and moulds to M/s. Ford India Private Limited; it is also not disputed that they transfer the possession of tools, dies and moulds to M/s. Ford India Pvt. Ltd. The activity of transfer the possession of the tools, dies and moulds by the assessee to M/s. Ford India Pvt. Ltd. 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.

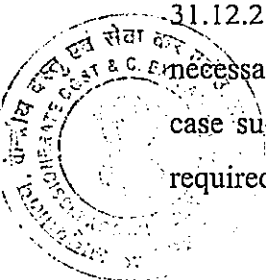
I find that Section 3(1) of the Central Excise Act, 1944 provides that -

"There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule:"

47. I find that the assessee had got tools, dies and moulds manufactured from the third parties, 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 got manufactured from the third party. They had only disputed that in view of the provisions of Rule 8 of the Central Excise Rules, 2002 the Central Excise duty was payable only when the tools, dies and moulds had been removed from the factory premises.

48. I find that in view of Rule 3(5A) of the CENVAT Credit Rules, 2004, 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 specified straight line method 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.

49. I find that the assessee had submitted at Para 5.2 and 5.3 of their written submission dated 31.12.2019 that in order to make precision parts and components for motor vehicles it is necessary for them to manufacture or get manufactured tools, dies and moulds; in the present case such tools, dies and moulds are got manufactured by them from third parties as per the required specifications; upon approval of such tools, dies and moulds they sold such tools, dies



and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles as required by Ford India Pvt. Ltd.; the business practices adopted by them in respect of different customers are in accordance with convenience and commercial requirement of the customers.

50. I also find that the assessee at Para 5.4 of their written submissions dated 31.12.2019 had submitted that in so far as the tools, dies and moulds got manufactured by them for M/s. Ford India is concerned, they are following a practice whereby they gets the tools, dies and moulds manufactured from third party and sell the same to M/s. Ford India; in other words, they receive these tools, dies and moulds after the same has been sold to M/s. Ford India in its factory.

51. I find from the above submissions of the assessee, where emphasis provided, that the assessee had got the tools, dies and moulds manufactured from third parties and thereafter sold such tools, dies and moulds to M/s. Ford India Pvt. Ltd. without payment of Central Excise duty and then received back in their factory for use for production of parts and components; these practice had been adopted by the assessee for convenience and commercial requirements of M/s. Ford India. I have also examined the copy of invoices produced by the assessee with their written submissions. I find that the assessee had issued the invoices under Rule 11 of the Central Excise Rules. Provisions of Rule 11 is reproduced as under for ease of reference:

“(1)no excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorised agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory.

(2) the invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon.”

52. I further find on examination of the invoices produced by the assessee with their written submissions that the invoices contained the details of the Date and Time of Removal of Goods. Thus, by issuing invoices under the provisions of Rule 11 of the Central Excise Rules and mentioning therein the details of Date and Time of Removal of Goods, itself indicates that the assessee had removed the tools, dies and moulds after getting the same manufactured from the third party and thereafter received back the same in their factory premises for use for production of parts and components, as also admitted by the assessee in their submissions.

I find that Rule 4(1) of the Central Excise Rules, 2002 provides that –

“every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided.”



53. I find that the assessee had to pay the duty leviable on tools, dies and moulds got manufactured from the third party in the manner provided in rule 8.

I find that Rule 8(1) of the Central Excise Rules, 2002 provides that -

"the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case :

Provided that in case of goods removed during the month of March, the duty shall be paid by the 31st day of March."

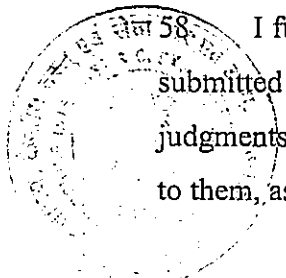
54. I find that Rule 6(1) of the Central Excise Rules, 2002 provides that the assessee shall himself assess the duty payable on any excisable goods.

55. In view of the above, I find that the assessee had removed the tools, dies and moulds got manufactured from the third party to M/s. Ford India Pvt. Ltd. on which they were required to pay an amount equal to the Central Excise duty leviable on transaction value, duly assessed on their own in terms of the provisions of Section 4 of the Central Excise Act, 1944 read with Rule 4, 6 and 8 of the Central Excise Rules, 2002 and Rule 3(5A) of the CENVAT Credit Rules, 2004.

56. I also find that the submissions of the assessee is contradictory as, on the one hand they submitted that the tools, dies and moulds got manufactured from third party and sold to M/s. Ford India Pvt. Ltd. were not removed from their factory premises, whereas on the other hand, they had submitted at Para 5.2 of their written submission dated 31.12.2019, as discussed *supra*, that upon approval of such tools, dies and moulds they sold such tools, dies and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles as required by Ford India Pvt. Ltd.; they at Para 5.4 of their written submissions dated 31.12.2019 had submitted that in so far as the tools, dies and moulds got manufactured by them for M/s. Ford India is concerned, they are following a practice whereby they gets the tools, dies and moulds manufactured from third party and sell the same to M/s. Ford India; in other words, they receive these tools, dies and moulds after the same has been sold to M/s. Ford India in its factory; the assessee had issued the invoices under Rule 11 of the Central Excise Rules, 2002 mentioning therein the 'date and time of preparation of invoice' as well as 'date and time of removal of goods'.

57. In view of the above, I find that the tools, dies and moulds, got manufactured from third party and sold to M/s. Ford India Pvt. Ltd., were actually removed from their factory premises without payment of an amount equal to duty leviable on the transaction value, however, in order to mislead the Department, they had knowingly not mentioned the transportation and vehicle details in the invoices issued under the provisions of Rule 11 of the Central Excise Rules, 2002.

I further find that the assessee had though relied upon a series of judgments and they had submitted the gist of some of the judgments, as mentioned *supra*. I have examined these judgments and find that these judgments relied upon by the assessee are not squarely applicable to them, as -



Central Excise Rules not covers deemed removals – mere issuance of invoice not called for reversal of credit;

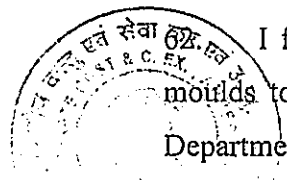
- v. Polyplast Industries (I) Pvt. Ltd. v/s CCE&ST, Panchkula – 2016(332)ELT895(Tri. Del) – pertains to allegation by revenue for removal of moulds from factory under an invoice – since Chartered Engineer after verification of records and visiting factory, certified that the said moulds continued to be installed in factory and in running condition, therefore credit could not be denied;
- w. Indica Laboratories Pvt. Ltd. v/s CCE, Ahmedabad – 2007(213)ELT20(Tri-LB) – pertains to duty becomes payable on removal of excisable goods unless such goods are exempted – Sale not necessary condition for charging excise duty – Rule 4 of Central Excise Rules, 2002.

59. I also find that the SCN dated 14.6.19 was issued to M/s. Supreme Treves Private Limited, holding ECC No. AACCS4085QEM008, whereas the present SCN dated 29.08.2019 was issued to M/s. Supreme Treon Pvt. Ltd., holding ECC No. AACCS4085QEM012. As per the provisions of the Central Excise law, both the assessee are different, therefore, I find that the judgment of Nizam Sugar Factory v/s Collector of Central Excise (AP) – 2006(197)ELT465(SC) is also not squarely applicable to the assessee, as this judgment has been given in respect of SCNs issued to the same assessee for different period invoking the extended period. Thus, I find the submission of the assessee not correct.

60. I have examined the certificates dated 17th August, 2020 and 30th December, 2020, both issued by the Chartered Accountant firm, M/s. D C Shah & Associates. I find that as the assessee had already submitted in their written submissions that upon approval of such tools, dies and moulds, they sell such tools, dies and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles sold to M/s. Ford India Pvt. Ltd. The reason of tools, dies and moulds lying in the factory is clear from the above submission of the assessee. I also find that the learned Chartered Accountant firm M/s. D C Shah & Associates might have been forget to peruse the invoices issued by the assessee, wherein the 'date and time of removal' of goods have been mentioned. The CA's firm should have been more vigilant in issuing such certificates.

61. I have also examined the certificates dated August 12, 2020 and September 25, 2020, both issued by the Cost Accountant, Shri Ajay Kumar Verma. I find that as the assessee had already submitted in their written submissions that upon approval of such tools, dies and moulds, they sell such tools, dies and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles sold to M/s. Ford India Pvt. Ltd. The reason for amortization of the value of tools, dies and moulds into the value of the final products manufactured and sold by the assessee is clear.

I find that the assessee had suppressed the material facts of removal of tools, dies and moulds to M/s. Ford India Pvt. Ltd. from their factory premises and in order to mislead the Department, they had not mentioned the transportation and vehicle details in the invoices issued under the provisions of Rule 11 of the Central Excise Rules, 2002, which requires to be issued only for removal of excisable goods. The invoices also containing the details of 'date and time of



removal'. I find that the assessee had contravened the provisions Rule 6 and 8 of the Central Excise Rules, 2002 and Rule 3(5A) of the CENVAT Credit Rules, 2004 in as much as they failed to assess the duty payable on removal of tools, dies and moulds and also they failed to pay an amount equal to the duty leviable on transaction value in the prescribed manners. These shows the *malafide* intention of the assessee, which proves the intention of the assessee to evade payment of Central Excise duty on removal of tools, dies and moulds.

63. In view thereof, I find that the assessee was required to pay an amount equal to duty leviable on the transaction value in respect of tools, dies and moulds got manufactured from third party and sold to M/s. Ford India Pvt. Ltd., as they had not paid the said Central Excise duty at the time of removal of the same from their factory premises, as proved in view of the discussions, *supra*, the same is required to be recovered along with interest thereon from the assessee in view of the provisions of Section 11(4) and Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 by invoking the extended period of the limitation, as suppression of the facts and mis-declaration of removal of tools, dies and moulds from their factory premises and contravention of the provisions of the Central Excise Act and rules made thereunder in order to evade payment of Central Excise duty stands proved in view of discussion and findings *supra*.

64. I find that the assessee has also made themselves liable for penal action under the provisions of Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004.

65. In view of the above discussion and findings, I pass the following orders.


ORDER

1. I confirm the demand of Central Excise duty of Rs. 1,35,41,250 (Rupees One Crore Thirty-Five Lakh Forty-one Thousand Two Hundred and Fifty only) under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 and order the assessee to pay the said confirmed demand forthwith;
2. I order the assessee to pay interest at the applicable rate on the above said confirmed demand under Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004; and
3. I impose a penalty of Rs. 1,35,41,250 (Rupees One Crore Thirty-Five Lakh Forty-one Thousand Two Hundred and Fifty only) on M/s. Supreme Treon Private Limited, Plot No.E-271, 272, Hirapur Kunvar, Sanand, Ahmedabad – 382 110 under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.
4. In terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s. Supreme Treon Private Limited, Plot No.E-271, 272, Hirapur Kunvar, Sanand,Ahmedabad – 382 110 pays the Central Excise duty confirmed above as determined at Sl. No. (i) and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Supreme Treon Private Limited, shall be twenty-five per cent of the

penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

66. Show Cause Notice No.VI/1(b)CTA/Tech-17/Supreme/19-20 dated 29.08.2019 issued to M/s. Supreme Treon Private Limited, Plot No.E-271, 272, Hirapur Kunvar, Sanand, Ahmedabad – 382 110 is disposed-off in the above manner.




(M. L. Meena)
Additional Commissioner
CGST & Central Excise
Ahmedabad North

BY REGISTERED AD/HAND DELIVERY

F. No. V.87/15-46/OA/2019

Date :12.03.2021.

To,

M/s Supreme Treon Pvt.Ltd
Plot No.E-271, 272,
Hirapur Kunvar, Sanand,
Ahmedabad 382 110.

Copy to:

- (i) The Commissioner, Central GST, Ahmedabad North, Ahmedabad.
- (ii) The Deputy Commissioner, Central GST, Division III (Sanand), Ahmedabad North.
- (iii) The Superintendent, Central GST, Range-III (Sanand), Division III (Sanand),
Ahmedabad North
- (iv) Guard File