

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 2054 Of 2012**

[Arising out of OIO-13-14/SSS/CCE/2012 dated 10.04.2012 passed by the Commissioner of Central Excise, Delhi-III]

**M/s Hero Motorcorp Ltd. : Appellant (s)**

Unit-II, 37 K.M. Stone, Delhi-Jaipur Highway  
Gurgaon, Haryana-122001

Vs

**Commissioner of Central Excise, Delhi-III : Respondent (s)**

Udyog Minar, Vainijya Nikunj, Phase-V, Gurgaon

**with**

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Vs

**Commissioner of Central Excise, Delhi-III : Respondent (s)**

Udyog Minar, Vainijya Nikunj, Phase-V, Gurgaon

**APPEARANCE:**

Shri Srinivas Kotni, Shri Akshay Kumar, Advocate for the Appellant  
Shri Siddharth Jaiswal, Ms. Shivani, Departmental Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60338-60339/2023**

Date of Hearing:31.08.2023

Date of Decision:06.09.2023

**Per : S. S. GARG**

These two appeals are directed against the common impugned order No. OIO-13-14/SSS/CCE/2012 dated 10.04.2012 passed by the

Commissioner of Central Excise, Delhi-III wherein the recovery of cenvat credit was ordered under the provision of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 along with interest and equal penalty under Rule 15 of the Cenvat Credit Rules, 2004 and Rule 25 of Central Excise Rules, 2002.

2. Briefly the facts of the case are that the appellant during the period of dispute was engaged in the manufacture and clearance of two wheelers and spares thereof falling under Chapter No. 87 of the Central Excise Tariff Act, 1985 and were availing the Cenvat Credit of duty paid on inputs/capital goods as per the Cenvat Credit Rules, 2004. The department entertained a view that the appellant is not entitled to avail cenvat credit on Mirror Assemble (left and right) and Sari Guard as per the provision of Cenvat Credit Rules and accordingly, two show cause notices were issued.

3. The appellant filed reply to the show cause notices and after following the due process, the Ld. Commissioner has confirmed the demand by the impugned order. Against which the appellant filed the present two appeals.

4. Heard both the parties and perused the records.

5. Ld. Counsel for the appellant submitted that the impugned order denying the cenvat credit on Mirror Assembly (left & right) and Sari Guard is not sustainable in law as the same has been passed without properly considering the definition of 'input service' under Rule 2(k) of the Cenvat Credit Rules during the relevant period and also by not considering the various decisions in the appellant's own case wherein the cenvat credit on these two items were allowed by the Tribunal.

5.1 He further submitted that this issue is no more res-integra and in the appellant's own case, the Tribunal vide its order dated 17.10.2014 in the case of Commissioner of Central Excise, Delhi-I vs. Hero Honda Motors Ltd. 2015 (329) ELT 930 (Tri.-Del.) has allowed the cenvat credit on Mirror Assembly (left & right) and Sari Guard and dismissed the revenue's appeal.

5.2 He also relied upon the decision of the CESTAT, Principal Bench of New Delhi in the appellant's own case where the Tribunal vide final order No. 54236/2014 dated 17.10.2014 allowed the appeal of the appellant on the same issue and set-aside the order-in-original.

5.3 He further submitted that the Commissioner of Central Excise, Delhi -III, Gurgaon in Appellant's own case vide Order-in-Original No. 53-55/ SA/ CCE/2012 dated 21.08.2012 has also allowed the Cenvat credit of duty paid on Sari Guard and Mirror Assembly.

5.4 He further submitted that following precedent decisions, the Commissioner of Central Excise, Delhi-III in Appellant's own case vide Order-in-Original No. 72/ SA/ CCE/2014 dated 24.06.2014 has also allowed the Cenvat credit of duty paid on Sari Guard and Mirror Assembly by dropping the penalties initiated vide the show cause notice.

5.5. Ld. Counsel has placed on record the decisions given by the department in their own case cited (supra). He further submitted that on merit also, the appellant's case is covered as the Mirror Assembly (left & right) and Sari Guard come under the ambit of definition of 'Input' under Rule 2(k) of the Cenvat Credit Rules.

5.6 Ld. Counsel took us through the definition of input as defined under Rule 2(k) and submitted that mirror assembly (right & left) and

sari guard being accessories to the final product qualifies under the definition of input. He further submitted that mirror assembly and sari guard are the goods which are bought out items (on which applicable duty is paid at the time of purchase) and the same are cleared along with the motorcycle from the factory by paying excise duty on the final products. He further submitted as per the definition of input, an input need not be contained in the final product and an input includes accessories of the final product.

5.7 He further submitted that vide Notification No. 03/2011-Central Excise (N.T.) dated 01.03.2011 (effective from 01.04.2011) the definition of input' got amended by way of substitution. The new definition of input clearly provides that "inputs means any goods including accessories, cleared along with the final product, the value of which is included in the value of final product and goods used for providing free warranty for final product". Therefore, it is amply clear that inputs include accessories which are cleared along with the final products.

5.8 He further submitted that it is a statutory obligation under the Central Motor Vehicle Rules, 1989 for manufacture of two wheelers to clear the Motor Cycle/two wheelers from the factory with a side mirror (mirror assembly) and sari guard. Ld. Counsel took us through the relevant rules 128(13)(i) and rule 123 of the Motor Vehicle Act which provides a statutory requirement under the Motor Vehicle Rules that these items, namely, mirror assembly (right & left) and sari guard in motor cycle should be fixed while clearing the final product.

5.9 Ld. Counsel further submitted that recovery is not sustainable, the interest and penalty cannot be imposed because the present case

relates to interpretation issue and the appellant have not evaded any duty of Central Excise and has not suppressed or mis-declared any material information.

6. On the other hand, the Ld. DR defended the impugned order and submitted that the cenvat credit on mirror assembly (right & left) and sari guard cannot be allowed for the reason that the items though cleared fitted with certain models for performing secondary or minor function are merely optional extra attachment and are neither used directly or indirectly, in or in relation to the manufacture of final products nor have any nexus with process of manufacture nor integrally connected with the manufacture of final product.

6.1 He further submitted that mirror assembly and sari guard were not inputs covered under the definition of Rule 2(k) of Cenvat Credit Rules, 2004 and the final product is complete without use of the Sari-Guard and mirror assembly (Right and left) though cleared with the finished goods, is cleared separately with the finished goods hence cannot be termed as a part.

6.2 Ld. DR further submitted that the extended period of limitation has rightly been invoked because the appellant has suppressed the fact of taking cenvat credit from the department with intend to evade payment of central excise duty by utilizing the same towards payment of excise duty on goods manufactured by them.

7. We have considered the rival contentions of both the parties and perused the records. The issue for determination in these two appeals is whether or not the mirror assembly (right & left) and sari guard undisputedly sold by the appellant alongwith Motor Cycle fall within

the purview of the definition of Input eligible for cenvat credit under Rule 2(k) of the Cenvat Credit Rules, 2004.

7.1 In order to decide this issue, it is necessary to have a look at the relevant Cenvat Credit Rules, 2004. Rule 3 of the Cenvat Credit Rules provides that a manufacturer or producer of the final product shall be allowed to take cenvat credit on the excise duty or additional excise duty paid on any input or capital goods received in the factory for manufacture of final products. The definition of 'input' as provided under Rule 2(k) during the relevant period is reproduced herein below:-

“all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not *and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production*”.

7.2 Further, we find that this issue is no more res-integra and has been considered by various benches of the Tribunal in the appellant's own case and cenvat credit on these two items have been allowed. In this regard, it is pertinent to mention that in the case of Commissioner of Central Excise, Delhi-I vs. Hero Honda Motors Ltd. cited (supra), the Tribunal has held in Para 2 as under:-

“2. We find that the CESTAT order allowing Cenvat credit in respect of tool kit in respect of *M/s. Hero Motocorp Ltd.* (supra) has not been set aside by any competent Court. It is not disputed that all three impugned items are cleared along with the motor cycle and the value thereof is included in the assessable value of the motor cycle. The Punjab & Haryana High Court in its judgment dated 9-5-2013 in CEA No. 52 of 2012 [[2014 \(303\) E.L.T. 193](#) (P & H)] while allowing Cenvat credit in respect of tool kits and first aid kits to *M/s. Honda Motorcycle & Scooter India Pvt. Ltd.*, *inter alia*, observed that “the definition

of inputs shows that it is inclusive and wide as it is started with the words 'all goods'. The goods excluded are light diesel coil and high speed diesel coil and motor spirit which are in the nature of consumables". The High Court went on to add that "the final product cannot be given restricted meaning so as to mean as the engine of the vehicle or the chassis but all things which are necessary to make the final product marketable". The Hon'ble High Court held that "for motor vehicle, the tool kit and the first aid kit has to be part of the vehicle before the same can be put to use". **It is evident that the ratio on which the Cenvat credit has been allowed in respect of tool kit and first aid kit is squarely applicable for permitting Cenvat credit in respect of sari guard and rear view mirror assembly."**

7.3 Similarly, in the own case of the appellant, CESTAT, Principal Bench of New Delhi vide Final Order No. 54263/2014 dated 17.10.2014 has held as under:-

"Heard both sides. The only issue involved in this case in admissibility (or otherwise) of Cenvat Credit of duty paid on Sari Guard and Mirror assembly supplied by the appellants alongwith motor cycles and the value of which is included in the value of the motorcycle. The adjudicating authority vide Order-in-Original No. 31/SSS/CE/2011 dated 29.12.2011 has held such credit to be inadmissible and as a result disallowed credit amounting to Rs. 24,26,09,869/- ordering recovery thereof alongwith interest and mandatory, equal penalty.

2. Vide an inter parties order No. F/54214 dated 17.10.2014 CESTAT has held such Cenvat Credit to be admissible. Following the precedent and for reason alike, we allow the appeal and set aside the impugned Order-in-Original."

7.4. Further, we find that in the appellant's own case, the Ld. Commissioner of Central Excise-Delhi-III vide Order-in-Original No. 53-55/ SA/ CCE/2012 dated 21.08.2012 has also allowed the Cenvat credit of duty paid on Sari Guard and Mirror Assembly and the relevant findings are reproduced herein below:-

"58. I find that the Mirror assembly which is a duty paid bought item is cleared along with Motorcycle and to qualify as an input' as defined in Rule 2(K) of the Cenvat credit rules, it need not be contained in the final product or be used in or in relation to the manufacture of the final product. The Mirror assembly helps the driver of the Motorcycle to see the distance of the vehicles and to drive the Motorcycle carefully. **It is statutorily required under Rule 128(43) (i) read with Rule 138 of the Central Motor Vehicles Rules, 1989, that 'Mirror assembly' has to be provided along with the Motorcycle. It is the admitted case that it is an accessory and the noticee has correctly taken the Cenvat credit.**

59. I find that the purpose of Sari Guard which is a duty paid bought item is to protect the Sari of the woman pillion rider so that it does not get entangled with the rear/back wheel of the Motorcycle. **It is thus statutorily required under Rule 128(13)(i) read with Rule 138 of the Central Motor Vehicles Rules, 1989, that Sari Guard be provided at the time when the Motorcycle leaves the factory and hence the noticee has correctly taken the Cenvat credit.**

64. I, therefore, find that providing of Tool kits, Mirror assembly, Sari Guard and Helmet lock is a statutory requirement whose value is already included in the value of motorcycle which is cleared along with the motorcycle.

66. In view of the above I have come to the conclusion that the impugned goods are inputs used in or in relation to the manufacture of the final product and Cenvat credit was correctly availed by the noticee. The proceedings initiated vide the above said Show Cause Notice therefore does not sustain."

7.5. Further, we find that the Commissioner of Central Excise, Delhi-III in Appellant's own case vide Order-in-Original No. 72/ SA/ CCE/2014 dated 24.06.2014 has also allowed the Cenvat credit of duty paid on Sari Guard and Mirror Assembly by dropping the proceedings initiated vide the show cause notice.

7.6 Further, we find that these two items fall under the definition of 'input' as defined under Rule 2(k) of the Cenvat Credit Rules, 2004 because these two items were cleared along with the motor cycle from the factory by paying the excise duty on the final products.

7.7 We also find that as per the Motor Vehicle Act, it is a statutory obligation of the manufacturers of two wheelers to clear the motor cycle from the factory with mirror assembly (right & left) and sari guard.

7.8 In view of these circumstances, by following the ratio of the above said decisions, we are of the considered view that the impugned order is not sustainable in law and accordingly we set-aside the same



by allowing the appeals of the appellant with consequential relief, if any, as per law.

*(Pronounced on 06.09.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.