IN THE CUSTOMS, EXCISE & SERVICE TAX

APPELLATE TRIBUNAL

SOUTH ZONAL BENCH, CHENNAI

E/970/2006

(Arising out of Order-in-Appeal No.66/2006 (M-II) dated 18.9.2006 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Hyundai Motor India Ltd. Appellant

Vs.

CCE, Chennai II Respondent

Appearance

Shri S. Muthuvenkataraman, Advocate for the Appellant

Shri B. Govindarajan, AC (AR) for the Respondent

CORAM

Honble Shri D.N. Panda, Judicial Member

Honble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: 02.11.2016

Final Order No. 42136 / 2016

Per D.N. Panda

Learned counsel says that the primary issue in this case whether the refund due to the appellant is adjustable against the disputed demand pending before the higher courts. Such appeals have been disposed and result thereof has gone back to the lower authority. But whimsical attitude of adjustment has caused prejudice to the interest of justice for which refund is to be allowed to it.

2. In view of the facts narrated above, it would be preferable to remand the matter back to the adjudicating authority to look into the consequence of the disputed demand which were before higher courts and impact thereof against claim of refund as stated above which was adjusted against disputed demands. If no demand is payable, appellant is entitled to refund.

3. The matter being very old, both sides are directed to carry out reconciliation of the refund and demand as stated above and reduce the litigation at the grass root level without burdening the Tribunal. It is expected that both sides shall reduce the litigation by 31.3.2017.

4. Another issue raised by the appellant is that whether interest is payable on the amount of reversal of the CENVAT credit taken but not utilized when adequate credit existed in statutory records. It is the consistent view of this Bench following the ratio of the Honble Supreme Court in the case of Commissioner of Central Excise, Mumbai I Vs. Bombay Dyeing & Mfg. Ltd. 2007 (215) ELT 3 (SC) that when there is adequate credit available, reversal arising out of unutilized credit which was taken wrongly shall not result in levy of interest. Therefore, the authority shall examine the record to find out whether on the date of taking credit, there were adequate credit available on record. If he is satisfied, there shall be no levy of interest.

5. In the result, appeal is remanded to the adjudicating authority with the above direction.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR) (D.N. PANDA)

Technical Member Judicial Member

Rex