CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 51003 of 2015

[Arising out of Order-in-Original No. 03/MV/CCE/2014 dated 16.12.2014 passed by the Commissioner of Central Excise, Gurgaon-I]

Suzuki Motorcycle India Private Limited **......Appellant**
Village Kherki Daula, Badshahpur,
NH 8, Link Road,
Gurgaon, Haryana 122004

VERSUS

Commissioner of Central Excise, Gurgaon-I **......Respondent**
Utpad Shulk Bhawan,
Plot No. 36-37, Sector 32,
Gurgaon, Haryana

<u>APPEARANCE:</u>

Present for the Appellant: Ms. Krati Singh and Sh. Aman Singh, Advocates
Present for the Respondent: Sh. Nikhil Kumar Singh, Sh. Narinder Singh and Sh. Yashpal Singh, Authorized Representatives

<u>CORAM:</u>

HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Sh. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60090/2024

DATE OF HEARING: 12.03.2024
DATE OF DECISION: 12.03.2024

PER : S. S. GARG

The present appeal is directed against the impugned order dated 16.12.2014 passed by the Commissioner of Central Excise, whereby the learned Commissioner has confirmed the demand of duty of Rs.58,70,602/- under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') along with interest and also imposed equivalent penalty under Section 11AC of the Act.

2. Briefly stated facts of the case are that the appellant is engaged in the manufacture of 'two wheeler vehicles and parts thereof' falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 and clearing the same on payment of excise duty. The appellant sells their final product through a network of dealers appointed by them through dealership agreement, which is placed on record. The dealers purchase the vehicles from the appellant at an ex-factory price and sell them to the ultimate customer after including dealer's margin at price not exceeding maximum price. All final products sold by the appellant are subject to manufacturers' warranty for any manufacturing defects. It is further alleged that in order to avail the warranty claim, customers are required to fulfill certain pre-conditions as mentioned in the customer/owner's manual, for e.g. the customers are required to mandatorily avail 6 free services and 9 paid services to make a valid claim for warranty; the vehicle is to be maintained in a good condition etc. As per the dealership agreement, the dealers are responsible for providing free service to the customers from time to time and the expenses incurred in respect of such free services are reimbursed by the appellant on the basis of claims made by the dealers. Further, once the goods are sold to the dealers, the dealers are also required to conduct a pre-delivery inspection of the vehicles sold to the ultimate customers, so that latent and patent defects can be detected and corrected. The

audit of the records of the appellant was undertaken and the Department was of the view that after sale services provided by the dealers are includible in the assessable value of the excisable goods as it is one of the considerations for sale of excisable goods. In this background, a show cause notice dated 02.05.2012 was issued to the appellant alleging that excise duty is payable on value of After Sales Service (ASS) in the form of free services provided by the dealers and Pre-Delivery Inspection (PDI) charges. Though the Department in the show cause notice raised the allegation that excise duty on value of ASS and PDI, however, no demand on the PDI charges was quantified. After following the due process, the learned Commissioner has confirmed the demand of excise duty under the category of ASS charges as well as PDI. Aggrieved by the said impugned order, the appellant has preferred the present appeal.

3. Heard both the parties and perused the records.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law and binding judicial precedents on the same issue.

4.2 She further submits that the issue of inclusion of value of PDI and ASS in the assessable value stands settled in appellant's own case for the previous period by the judgment of this Tribunal vide order dated 08.11.2023 in Appeal No. E/3425/2012 reported at ***Suzuki Motorcycle India Private Limited vs. Commissioner of***

Central Excise, Delhi-III 2023 (11) TMI 370 - CESTAT Chandigarh. She further submits that this issue is no more *res integra* and should to be decided on the basis of the principles laid down by the Tribunal in the appellant's own case vide order dated 08.11 2023.

4.3 She also submits that the issue of inclusion of value of PDI and ASS in the assessable value has also been settled by various judicial forums and it has been held that the cost of ASS shall not be includible in the assessable value of the goods.

4.4 She also submits that such expenses are incurred by the dealers after the appellant has sold his goods to the dealers. The dealer thereafter provides ASS to the customer and incurs expenditure on that; therefore, it cannot be added back to the sale price charged by the manufacturer from the dealer for computing the assessable value. She further submits that the price paid by the dealers to the appellant is the sole consideration for computation of assessable value in terms of Section 4(3) of the Act and no additional consideration is given to the appellant.

4.5 She further submits that the PDI and free ASS provided by the dealers are as per the obligations provided under the dealership agreement, which is placed on record. Further, the appellant reimburses the amount of expenses incurred by the dealers for ASS and the cost of such free ASS, which is reimbursed, is in fact borne by the appellant and already included in the assessable value of the goods and the same cannot be liable to be included in the assessable value again. In support of her submission, she relies on the following case-laws:

a) ***General Motors India Private Limited vs. Commissioner of Central Excise, Pune-I - 2022 (4) TMI 1539 CESTAT MUMBAI***

b) ***Skoda Auto Volkswagen India Private Limited vs. Commissioner of Central Excise, Aurangabad - 2021 (12) TMI 239 CESTAT MUMBAI***

c) ***Tata Motors Ltd vs. Commissioner of CE & ST (LTU) - 2019 (12) TMI 1647 CESTAT MUMBAI***

d) ***Commissioner of Central Excise, Mysore vs. TVS Motors Company Ltd - 2015 (12) TMI 874 SUPREME COURT***

e) ***CNH Industrial (India) Pvt Ltd vs. Commissioner of Central Excise, Mumbai-ll - 2018 (8) TMI 602 CESTAT MUMBAI***

f) ***Bajaj Auto Limited vs. Commissioner of Central Excise & Service Tax (LTU) - 2018 (5) TMI 395 CESTAT MUMBAI***

g) ***Commissioner of Central Excise, Kolkata vs. Hindustan Motors Ltd - 2017 (3) TMI 1407 CESTAT KOLKATA***

h) ***Escorts Limited vs. CST, Delhi - IV, Faridabad (Vice Versa) - 2016 (11) TMI 344 CESTAT CHANDIGARH***

i) ***Tata Motors Ltd vs. Union of India & Others - 2012 (9) TMI 244 BOMBAY HIGH COURT***

4.6 She further submits that neither in the show cause notice nor in the impugned order, the demand on PDI charges is quantified and the entire demand is quantified only on the reimbursement towards free

ASS and therefore, the finding in the impugned order including PDI charges in the assessable value, is not sustainable in law.

4.7 She further submits that the PDI is carried out by the dealer at his own expense before the delivery of the vehicle to the ultimate customer and the same is performed at the dealer's premises. The appellant has no connection or control over the actual performance of the PDI by the dealers as the appellant is not a privy to the same.

4.8 Further, she submits that the demand of interest and penalty is not sustainable because the demand of duty itself is not sustainable.

5. On the other hand, the learned DR for the Revenue reiterated the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find this Tribunal in the appellant's own case for the previous period has decided the issue in favour of the appellant involving identical issue, which is cited supra. We also find that this issue is no more *res integra* and has been settled by various judicial forums as relied upon by the appellant cited supra. It has been consistently held that the cost of ASS shall not be includible in the assessable value of the goods. Here, it is relevant to reproduce the relevant findings in the appellant's own case for the previous period decided by this Tribunal as cited supra, which are reproduced herein below:

> ***"8***. *Heard both sides and perused the records of the case. We find that the show-cause notice mentions at Para 2 that:*

> *"During the course of audit of the Noticee's records by the Internal Audit Team of the Commissionerate from 19th to 22nd January 2011, it was noticed that the Noticee was not including the "After Sales expenses reimbursed to the dealers" in the assessable value. It is a well-known fact in case of motor vehicles manufacturers that After Sales service and pre-delivery inspection (PDI) are services provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as the Valuation Rules 2000). That is, in such cases the after-sales service charges and PDI charges will be included in the assessable value."*

9. *Further, we find that the Department called for after sale expenses reimbursed to the dealers for the period 2006-07 to 2010- 11 which were submitted by the appellants; the total duty short paid, allegedly on account of non-inclusion of after sale expenses reimbursed to the dealers during the period August 2006 to March 2010 was Rs.1,31,15,550/- which was also the duty demanded in the show-cause notice. We further find that Para 8 of the show-cause notice is as under:*

> *"It appears therefore that the Noticee had contravened the provisions of Rule 6 ibid and Clause (a) of sub section (1) of section 4 of the CEA 1944 by not including the After Sales expenses reimbursed to the dealers by them in the assessable value and by not doing so the Noticee had short paid excise duty on under-valued finished goods which were manufactured and cleared by them. Hence, the short-paid duty by the Noticee amounting to Rs.1,31,15,550/- appears to be recoverable under first proviso to Section 11A(1) of the CEA, 1944."*

10. *Though, the appellants and the Adjudicating Authority have considered the "reimbursed expenses" as the demand on the includability of post-delivery inspection charges and after sale service charges, no clarity as to what the reimbursed expenses constitute is given in the show-cause notice. The Show Cause Notice makes a bland and general averment, in Para 2 of the show-cause notice, that it is a well-known fact in case of motor vehicles manufacturers that After Sales service and pre-delivery inspection (PDI) are services provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him). It is also not made clear, in the show-cause notice, as to whether the amounts reimbursed, by the appellants to their dealers, were towards PDI and ASS. Moreover, the show-cause notice seeks to demand duty on the expenses, understandably incurred by the appellants, reimbursed to the dealers. During the course of arguments, department advanced an argument that the dealers instead of getting the expenses reimbursed by the appellants are collecting the same from the customers. Learned Counsel for the appellants counters the claim and submits that dealer's margin is paid by the appellants to their customers. The Show Cause Notice seeks to demand duty on expenses reimbursed by the appellants to their dealers. It is beyond our imagination as to how these amounts constitute flow of additional consideration unless it is evidenced either that the appellants are allowing the dealers to collect the margin payable, by the appellant to the dealers, from ultimate customers or that the additional amounts charged by the dealers from ultimate customers is actually flowing back to the appellants. Only under these two conditions the said expenses can be held includable in the assessable value even under the old or amended definition of Section 4 of CEA, 1944. We find that Adjudicating Authority also finds at Para 17.3 of the impugned order as follows:*

> *"I find that from the perusal of Rule 6 ibid and Clause (a) of sub section (1) of section 4 of the CEA 1944 it becomes clear that the After Sales expenses reimbursed to the dealers by the Noticee were includible in the assessable value and by not doing so the Noticee had short paid excise duty on under-valued finished goods which were manufactured and cleared by them. In their reply to the SCN's has inter-alia, submitted that the said PDI and after sale charge are included in the Dealer's margin and that the Dealer margin cannot be added to the Transaction value. I find that the said PDI and three free services and necessary on the part of a customer to remain eligible for any claim under warranty. It is obligatory on the part of dealer to provide three free services as mentioned under the warranty clause and he has no free will to deny the same."*

11. *We further find that learned Adjudicating Authority accepts the fact that the notice is on the after-sale expenses reimbursed to the dealers by the Noticee. However, he finds that the said PDI and three free services are necessary on the part of a customer to remain eligible for any claim under warranty; it is obligatory on the part of dealer to provide three free services as mentioned under Warranty Clause and he has no free will to deny them. We find that the whole case of the Department is based on the accepted fact that the appellants are reimbursing certain expenses incurred to the dealers. We find that there is no provision either under Section 4 of the CEA, 1944 or under the Valuation Rules thereof to include an amount which flows out from the manufacturer to their customers. It is not the case of the Department that the appellants, instead of reimbursing the expenses on account of PDI and ASS, allowed the dealers to recover the same from the customers or that the appellants have received some amounts as extra consideration under these Heads.*

12. *The learned Authorized Representative for the Department tries to argue the case on the assumption that since the dealer has charged price to the customers over and above the price at* *which they are required to sell the vehicles as per the Dealership Agreement and that it should be understood that the appellants instead of reimbursing the expenses to the dealer on account of PDI and ASS are allowing them to recover the same from the ultimate customers. However, it is not the case envisaged in the show-cause notice and the impugned order also did not confirm the case on this ground. Even more, it is not the case of the show-cause notice that the dealer is incurring the expenditure on behalf of the appellants. Moreover, we find that the two sample invoices demonstrated by the Authorized Representative during the hearing are of different dates. Hence, we are of the opinion that the same cannot be compared. In case the dealer has defaulted on the Dealership Agreement, the same in itself cannot be a reason to include such amounts, collected by the dealer from the customers, in the assessable value.*

13. *It is not forthcoming from the show-cause notice or from the records of the case that the amount recovered by the dealers over and above the listed price sanctioned by the appellants is towards the amount reimbursable by the appellants to the dealers. It is also not established that the amount extra collected is towards the PDI and ASS. There is no evidence to prove that the amount charged extra by the dealers is flowing back towards the appellant. In view of this, we find that the impugned order as well as the arguments of the learned Authorized Representative and to some extent, argument of the Counsel also is beyond the scope of the show-cause notice. No case is made for the inclusion of "after sale expenses reimbursed to the dealers by the Noticee" except for a bland averment in Para 2 of the show-cause notice that it is a well-known fact in case of motor vehicles manufacturers that After Sales service and pre-delivery inspection (PDI) are services provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him).It is not evidenced that* *the appellants instead of paying the dealers have allowed or authorized them to recover the amounts, towards the expenses incurred for the PDI and ASS, from the ultimate customers. It has been held in a number of cases by the Hon'ble Apex Court, High Courts and the Tribunal that the show-cause notice is the foundation of the case. A good case cannot be made where the foundation itself is not strong. No fresh case can be made at this stage. The show-cause notice and the impugned order following or traversing the same cannot hold to be sustainable.*

14. *As discussed, it is not made clear in the show-cause notice as to whether these expenses reimbursed by the appellants were towards PDI and ASS. In case they are supposed to be towards PDI and ASS, the issue stands settled in favour of the appellants by a number of judgments as cited above. We find that Coordinate Bench of this Tribunal at Mumbai in the case of General Motors India Pvt. Ltd. (supra) held that:*

> *"19. The sequitur of the aforesaid discussion would be to hold that PDI charges and free ASS charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The view taken by the Tribunal in favour of assessee in this behalf is correct in law and all the appeals of the Department i.e. C.A Nos.5155-5156/2017, 1763-1764/2009, 2204/2013, 2205/2013, 957-959/2014, 7854- 7865/2014 and 7444/2008 are dismissed. On the other hand, Larger Bench view in Maruti Suzuki does not lay down the law correctly and is, therefore, overruled and the appeals filed by the assesses i.e., C.A. Nos.7007/2011, 7550/2011 and 3768-3769/2011 are allowed."*

15. *Under the circumstances, we find that the impugned order cannot be sustained. Accordingly, the appeal is allowed.***"**

7. Since, the issue stands settled in favour of the appellant in their own case as cited supra, by following the ratio of the above said decision, we are of the considered opinion that the impugned order is

not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi