CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 52983 of 2014

[Arising out of Order-in-Appeal No. 36/CE/Appeals/DLH-IV/2014 dated 21.03.2014 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s Perfect Mechanical Industries ......**Appellant**
14/1, Mathura Road,
Faridabad, Haryana 121003

VERSUS

Commissioner of Central Goods and Service Tax, Faridabad ......**Respondent**
GST Bhawan, New CGO Complex, NH IV,
Faridabad, Haryana 121001

APPEARANCE:

Shri D. K. Tyagi, Advocate for the Appellant

Shri Harish Kapoor, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60657/2024

DATE OF HEARING: 09.12.2024
DATE OF DECISION: 09.12.2024

S. S. GARG:

The present appeal is directed against the impugned order dated 21.03.2014 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2.1 Briefly stated facts of the present case are that the appellant is engaged in the fabrication and mounting of body on the duty paid chassis. The main customers of the appellant are M/s Ashok Leyland and General Manager, Vehicle Factory, Jabalpur. The customers send their chassis either purchased from the manufacturer or manufactured by themselves to the appellant for building/fabrication and mounting of body on the said chassis so as to convert the same into the completed vehicles. The appellant does not avail CENVAT Credit of duty paid on chassis and pays the duty on clearance of completed vehicles on the body building charges after availing the benefit of Entry No. 41 of the Notification No. 06/2006 dated 01.03.2006 as amended. The department does not dispute the admissibility of this notification.

2.2 The department issued a show cause notice on 10.09.2012 asking the appellant to show cause as to why duty should not be recovered on inflating the assessable value by 10% in terms of Rule 10A(iii) read with Rule 8 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000. After following the due process, the demand of differential duty raised by the Adjudicating Authority in respect of M/s Ashok Leyland Ltd has been set aside the first appellate authority as duty stands paid in terms of Rule 10A(i) of Valuation Rules; but demand in respect of Vehicle Factory, Jabalpur has been confirmed on the ground that since the completed vehicles are not sold by the Vehicle Factory, Jabalpur, but used captively by the Defense Establishment; Rule 10A(iii) read with Rule 8 of Valuation Rules has been invoked for determining assessable value at the rate 110% of the body building charges charged by the appellant. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

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.

4.2 The learned Counsel further submits that for determining the assessable value when the goods are not sold by the principal for whom the job worker manufactured the completed vehicle, it is Rule 10A(iii) read with Rule 6 of Valuation Rules applies. In such a case, the value of chassis is to be added with the body building charges for arriving at the assessable value and then value of chassis is to be deducted for arriving at the assessable value for payment of duty in terms of explanation of Entry No. 41 of the Notification No. 06/2006 dated 01.03.2006.

4.3 The learned Counsel further submits that this issue is no more *res integra* and for the previous period, in the appellant's own case, it has been decided by the Tribunal vide **Final Order No. 50410-50413 & 50424 of 2015 dated 12.02.2015**.

5. On the other hand, the learned AR for the Revenue reiterates 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 that in the appellant's

own case, on the identical issue, for the previous period, the Principal Bench of the Tribunal vide Final Order cited above, has considered the issue and has held as under:

> “**5**. We have considered the submissions from both the sides and perused the records. The appellant are a body builder who construct the body, on the chassis received by them. During the period of dispute, the appellant had received duty paid chassis from M/s Ashok Leyland and vehicle factory, Jabalpur who had received orders from the Directorate of Ordnance Services, New Delhi for supply of certain types of vehicles. There is no dispute that M/s Ashok Leyland and vehicle factory, Jabalpur have cleared the duty paid chassis to the appellant and the appellant have not taken the cenvat credit of that duty and after constructing the body on the chassis, the complete vehicles were returned by them to the depot of M/s Ashok Leyland and vehicle factory Jabalpur from where the vehicles were supplied to the Directorate of Ordnance Services, New Delhi. The appellant undisputedly have paid duty on the fabrication charges in terms of notification no. 6/06-E (Serial No. 41) whose applicability is not disputed by the Department. The fabrication charges have been determined by subtracting the value of the chassis from the price at which the vehicles were supplied to Armed Forces by M/s Ashok Leyland and vehicle factory, Jabalpur. The Department seeks to demand duty on 110% of the fabrication charges by invoking Rule 8 of the Central Excise Valuation Rules. Rule 8 of the Central Excise Valuation Rules is applicable only when the goods manufactured by a manufacturer are captively consumed by him or by some other manufacturer on his behalf but this is not the case here as the appellant after manufacturing the complete vehicle by constructing the body on the duty paid chassis received by them, returned the complete vehicles to M/s Ashok Leyland / vehicle factory Jabalpur, who in turn supplied those vehicles to the Armed Forces. In view of this factual background, the judgments of the Tribunal in the

> case of Indian Extrusions vs CE Mumbai (Supra), and Rolastar (P) Ltd. vs CCE Daman (Supra) would be applicable and the Rule 8 has no application. The judgment of the Tribunal in the case of Rolastar (P) Ltd. (supra) has been affirmed by the apex court vide judgment reported in 2013 (298) ELT-A-186 (SC). The impugned orders, therefore, are not sustainable. The same are set aside. The appeals are allowed."

7. Since the issue involved has been decided in favour of the appellant by the Tribunal in the appellant's own case for earlier period, therefore, 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 is liable to be set aside and we do so by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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