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

REGIONAL BENCH - COURT NO. I

### Excise Appeal No.50076 of 2014

[Arising out of Order-in-Original No. 125/SA/CCE/2013 dated 20.09.2013 passed by the Commissioner of Central Excise, Delhi-III]

**M/s Maruti Suzuki India Ltd.** **......Appellant**
Finance Division, Palam, Gurgaon Road,
Gurgaon, Haryana-122015

*VERSUS*

**Commissioner of Central Goods & Service Tax, Gurugram** **......Respondent**
Plot No.36-37,Sector-32, Gurgaon, Haryana-122021

**With**

**2. Excise Appeal No.50077 of 2014**
[Arising out of Order-in-Original No. 125/SA/CCE/2013 dated 20.09.2013 passed by the Commissioner of Central Excise, Delhi-III]

**3. Excise Appeal No.52939 of 2015**
[Arising out of Order-in-Original No.03/NKS/CCE/2015 dated 06.05.2015 passed by the Commissioner of Central Excise, Gurgaon-I,]

**4. Excise Appeal No.52940 of 2015**
[Arising out of Order-in-Original No.03/NKS/CCE/2015 dated 06.05.2015 passed by the Commissioner of Central Excise, Gurgaon-I,]

**5. Excise Appeal No.60306 of 2017**
[Arising out of Order-in-Appeal No.340/CE/Appl-II/Delhi/2016 dated 26.12.2016 passed by the Commissioner of Central Excise, Appeals-II, Delhi]

**6. Excise Appeal No.60650 of 2017**
[Arising out of Order-in-Appeal No.24/CE/Appeal-II/Delhi/2017 dated 19.05.2017 passed by the Commissioner of Central Excise, Appeals-II, Delhi]

**7. Excise Appeal No.60921 of 2017**
[Arising out of Order-in-Appeal No.68&69/CE/CGST-APPEAL-GURUGRAM/SG/2017 dated 18.09.2017 passed by the Commissioner (Appeals), CGST, Gururgram, Haryana]

**8. Excise Appeal No.60922 of 2017**
[Arising out of Order-in-Appeal No.68&69/CE/CGST-APPEAL-GURUGRAM/SG/2017 dated 18.09.2017 passed by the Commissioner (Appeals), CGST, Gururgram, Haryana]

**9. Excise Appeal No.60073 of 2022**
[Arising out of Order-in-Appeal No.75/CE/CGST-APPEAL-GURUGRAM/SKS/2021-22 dated 09.12.2021 passed by the Commissioner (Appeals), CGST, Gururgram, Haryana]

**APPEARANCE:**

Shri Aman Singh and Ms. Jashanpreet Kaur, Advocates for the Appellant
Shri Narinder Singh and Shri Yashpal Singh, Authorized Representatives for the Respondent

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

**FINAL ORDER NO.60025-60033/2025**

DATE OF HEARING: 08.01.2025
DATE OF DECISION: 08.01.2025

**P. ANJANI KUMAR:**

These appeals have been filed by the appellants M/s Maruti Suzuki India Ltd. against various impugned orders cited above.

2. Brief facts of the case are that the appellants M/s Maruti Suzuki are engaged in the manufacture of motor vehicles, parts and components; the appellants sell the vehicles through a network of independent dealers spread throughout the country; in order to streamline the production and sales of the motor vehicles, the appellants have put in place a scheme called "Planned Order in System" (POS); as per POS the dealers are required to place an order for the required number of vehicles twenty three in advance; in case the dealer fails to make payment the order stands cancel and the appellant charges 3% of the dealer's margin as cancellation fee; such cancelled vehicles under POS form "a Pool"; any dealer desirous of lifting any vehicle from the pool requires to pay 5% of the dealer's margin as pool lifting charges; there are some instances where the dealers could not lift the vehicles from the pool, due to lack of funds etc, are required to pay cancellation charges in

addition to pool lifting charges; in such cases the appellants retained the pool lifting charges collected from the dealer; the appellants accounted these charges recovered under the Head "Other Income". On the basis of audit conducted, the department entertained opinion that a pool cancellation charges, pool lifting charges, penalty on dealers and cancellation charges are includible in the assessable value of the motor vehicles. Series of show cause notices were issued to the Gurgaon and Manesar Units of the appellants and were confirmed by various OIO/OIA. Hence, these appeals.

3. Shri Aman Singh, Learned Counsel for the appellants assisted by Ms. Jashanpreet Kaur, submits that this Bench has decided the issue vide Final Order No.60414-60415/2024 dated 09.07.2024 and vide Rectification Order dated 03.10.2024, in respect of the appellants themselves; the Bench has decided the issue against the appellants; however, penalties were waived and cum-duty benefit was extended. He submits that in the present cases before the Bench, cum-duty benefit was extended in Appeal Nos. E/60306/2017, E/60650/2017, E/60921/2017, E/60922/2017&E/60073/2017; cum-duty benefit was not extended in Appeal Nos. E/50076/2014, E/50077/2014, E/52939/2015 &E/52940/2015. He submits that the impugned cases may be decided accordingly to the extent of being non-prejudicial to the interest of the appellants.

4. Shri Narinder Singh, learned Authorized Representative for the Revenue assisted by Shri Yashpal Singh, reiterates the findings of the OIO, OIA and relies on the Final order of this Bench cited above.

5. Heard both sides and perused the records of the case. We find that the impugned appeals pertain to Show Cause Notices issued for the subsequent to the period for which the issue was decided by this Bench vide Final Order cited above. This Bench held that:

> 11. We find that the appellants have introduced planned order in system as one window through which the entire supply chain of the appellants was to operate; the system was designed to integrate the three major supply chain links, dealers' order for vehicles, production and distribution. In the system in place, a dealer has to make an indent for the number of vehicles he plans to lift in a period before hand; in case some dealers failed to lift the planned number of vehicles the production schedules of the company get disturbed and accordingly the appellant charges some penal amounts from the dealers; whereas these amounts pertain to the vehicles not purchased by the dealers, learned Commissioner has rightly held that these penal charges do not relate to the vehicles sold to the dealers, the penal charges cannot be included in the assessable value. Learned Commissioner finds in respect of pool lifting charges that they are relatable to the number of vehicles sold to a particular dealer and as such the charges are includable in the assessable value. Whenever, any dealer fails to lift the specified number of vehicles he indented, he is penalized for the same and the vehicles are transferred to a pool from which other dealers can indent vehicles over and above their initial indent on payment of certain charges known as pool lifting charges. The pool lifting charges, as we understand, are to be paid by a dealer who places an order for additional number of vehicles, over and above his initial indent. Therefore, it is seen that they are relatable to the number of vehicles sold. In terms of the agreement with the appellants, though, the dealers cannot sale the vehicles over and above recommended MRP, they are free to charge a price lower than the MRP. Therefore, it is clear that the dealers can vary the price subject to the limit of MRP. It is in this context that the learned Commissioner observed that the dealer having paid the pool lifting charges cannot be expected not to include the same in the value of vehicles sold by him. Moreover, the pool lifting charges are received by the appellants over and above the transaction value reflected in the sale invoices

issued at the time of sale of the vehicles by the appellants to their dealers. Therefore, the same is to be treated as a consideration received by the appellants in course of sale of vehicles to the dealers. We find that Ld. Commissioner has rightly held that this is an additional consideration flowing back to the appellants.

12. Learned Counsel for the appellants submits that pool lifting charges do not form part of the assessable value and is an independent transaction. We are not inclined to accept such an argument as the charges are levied only with reference to the vehicles that are lifted by some dealers from the "pool". In view of our discussion as above, we find that it is a consideration received in respect of the some vehicles sold by the appellants. It is not the case of the appellants that the pool charges are charged irrespective of the sale of vehicles and are not related to the transaction. Therefore, it is apparent that the pool charges relate to the transaction of sale of additional vehicles, that the appellant has entered into with the dealers. We find that, as rightly held by the Commissioner, as per Section 4 of Central Excise Act, 1944, the 'transaction value' means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time. including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty commission or any other matter, but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

13. We are in agreement with the contention of the learned Authorized Representative that the case law relied upon by the appellant are not applicable to the facts of the case. We also find that the reasoning given by the appellants, stating that the pool lifting charges do not add any value to the marketability of the vehicles sold, is not acceptable. We find that Tribunal in the case of Victory Electricals Ltd (Supra) held that on the aforesaid analysis, we answer the reference by holding that whatever the assessee, as per the

> terms of the contract and on account of delay in delivery of manufactured goods is liable to pay a lesser amount than the generically agreed price as a result of a clause (in the agreement), stipulating variation in the price, on account of liability to "liquidated damages", irrespective of whether the clause is titled "penalty" or "liquidated damages", the resultant price would be the "transaction Value', and such value shall be liable to levy of excise duty, at the applicable rate.

6. In view of the above, we find no reason to deviate from the above order. Accordingly, we hold that the appellants are required to include the pool lifting charges in the assessable value of the vehicles cleared by them. All the demands are sustained and penalties are set aside; cum-duty benefit is ordered to be accorded. The appeals are allowed partly modifying the impugned orders to this extent.

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

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

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

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