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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60342 of 2016

[Arising out of Order-in-Original No. 03-04/YG/CE/2016 dated 27.01.2016 passed by the Commissioner of Central Excise, Gurgaon I]

Commissioner of C G S T, Gurugram-I ......Appellant
Plot No. 36-37, Sector 32 Opp. Medanta Hospital
NH-IV, Gurgaon,
Haryana 121001

VERSUS

M/s Suzuki Motorcycle India Pvt Ltd ......Respondent
Village Kherki Daula, Badshahpur, NH-8
Link Road, Gurgaon,
Haryana 122004

<u>APPEARANCE:</u>

Shri Aniram Meena with Shri Goverdhan Dass Bansal, Authorized Representatives for the Appellant
Ms. Krati Singh, Mr. Aman Singh and Ms. Jashanpreet Kaur, Advocates for the Respondent

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

FINAL ORDER NO. 60942/2025

DATE OF HEARING:25.07.2025
DATE OF DECISION:07.08.2025

<u>S.S.GARG:</u>

The present appeal filed by the Revenue is directed against the impugned Order-in-Original dated 27.01.2016 passed by the Commissioner of Central Excise, Gurgaon, wherein the learned

Commissioner has dropped the proceedings, initiated against the respondent Suzuki Motorcycle India Pvt Ltd.

2. Briefly the facts of the present case are that the respondent are engaged in the manufacture of motorcycles, scooters and parts thereof, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 and are availing facility of CENVAT credit under the CENVAT Credit Rules, 2004. During the audit, it was revealed that since September 2009-2010 to 2013-14, the respondent was not including the amount of transit insurance collected from the dealers in their assessable value though the same was collected from the dealers in connection with the sale of their goods i.e. motorcycles. It was further alleged that the amount of excess Transit Insurance is one of the considerations for the sale of the goods to the dealers and therefore their valuation will be governed by Rule 5 and Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Hence, by not including the excess Transit Insurance amount the respondent has short-paid excise duty by under-valuing of the assessable value of the goods manufactured and cleared by respondent. On these allegations, various show cause notices were issued and they were collectively adjudicated vide Order-in-Original dated 27.01.2016, wherein, the entire demand along with interest and penalties as proposed in the show cause notices were dropped and it was concluded that the excess transit insurance amount collected by the

respondent from dealers are not includible in the assessable value. Aggrieved by the said order, the Revenue filed the present appeal.

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

4. Learned authorized representative for the Revenue submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. He further submits that the excess transit insurance collected from the dealer should be includible in the assessable value and their valuation should be governed by Rule 5 and Rule 6 of the Central Excise Valuation Rules, 2000. He further submits that the excess transit insurance is one of the considerations for sale of goods and therefore should be included in the assessable value.

5. On the other hand, learned counsel for the respondent defended the impugned order and submits that the learned commissioner has considered all the facts and the relevant law and the agreement between the parties and has rightly come to the conclusion that the excess transit freight is not includible in the assessable value. In view of the various decisions of the Tribunal, she further submits that in the assessee's own case pertaining to excess freight collected by the respondent has been decided in favour of the respondent by the Tribunal in the case of ***M/s Suzuki Motorcycle India Pvt. Limited vs. Commissioner of Central Excise, Delhi-Ill, 2023 (12) TMI 247-CESTAT Chandigarh***,

wherein, it was held that excess freight collected by the assesse from the buyer is merely a profit and no excise duty can be levied on such profit. Further, it was held that the assesee has sold the vehicles to the dealers at the ex-factory price and the title is transferred to the buyer at the factory gate and the assessee made arrangement for the transportation of vehicles on the request of the dealers, as the title in the goods is transferred at the factory gate, therefore, the assessable value is the transaction value in terms of Section 4(1)(a) of the Act. She further submits that the Department in the case of the respondent has not filed appeal against the said order and it has attained finality.

5.2 She further submits that the sale of the goods is taking place at the factory gate and thus the place of removal of goods is the factory gate and then as such excess transit insurance charges recovered from the dealers has got nothing to do with consideration for sale of goods. She further submits that this fact is substantiated by clause 23 and clause 25 of the dealership agreements which is placed on record. She also submits that as per Section 4(1)(a) of the Excise Act, the assessable value of the excisable goods shall be the 'transaction value' where the goods were sold for delivery at the time and place of the removal, and price is the sole consideration for the sale. She further submits that it is not in dispute that place of the removal of excisable goods in the present case is the factory gate of the respondent and therefore, the excess transit insurance amount collected could not be the part of the assessable value of the vehicles., for this submission, she relied upon the following cases:

- ***Century Infrapower Pvt. Ltd. vs. Commissioner of Central Excise and Service Tax, Jaipur 2024 (6) TMI 376 CESTAT New Delhi.***
- ***My Home Industries Pvt. Ltd. vs. Commissioner of Central Tax, Vishakhapatnam 2022 (12) TMI 133-CESTAT Hyderabad.***
- ***Vijai Electricals Ltd. vs. Commissioner of Central Excise, Customs & Service Tax, Hyderabad-1 2020 (7) TMI 318-CESTAT Hyderabad.***
- ***Marpol Pvt. Ltd. vs. Commissioner of C. Ex., Goa, Panaji 2017 (2) TMI 247-CESTAT Mumbai.***
- ***Indian Sugar & General Engineering Corpn. Vs. CCE, Panchkula 2017 (8) TMI 99-CESTAT Chandigarh.***
- ***Commissioner of Customs and Central Excise, Nagpur vs. Ispat Industries Ltd. 2015 (324) E.L.T. 670 (S.C.).***
- ***Insulators & Electricals Company vs. Commissioner of C. Ex., Bhopal 2014 (313) E.L.T. 223 (Tri.- Del.).***
- ***Baroda Electric Meters Ltd. vs. Collector, 1997 (94) E.L.T. 13 (S.C.).***

- ***Mercedes Benz India Pvt. Ltd. vs. Commissioner 2010 (260) E.L.T. 149 (Tri. Mumbai).***
- ***Manchukonda Prakasam & Company vs. Commissioner of Central Tax, Secunderabad GST Commissionerate, Telangana 2020 (3) TMI 701 - CESTAT Hyderabad.***
- ***Indian Sugar & General Engineering Corpn. Vs. CCE, Panchkula 2016 (333) E.L.T. 109 (Tri. - Del.).***
- ***GSC Toughened Glass (P) Ltd. vs, CCE, Jammu and Kashmir 2015 (329) E.L.T. 835 (Tri.-Del.).***

5.3 She also submits that the amount of excess transit insurance collected by the assessee-respondent from their dealers is an amount which the dealers are liable to pay in connection with the sale of goods and arrangement of transit insurance, which is completely an independent activity after the final transaction is concluded, it has no connection with the manufacture or sale of vehicles. She further submits that the amount of excess transit insurance collected has no nexus with the manufacturing activity undertaken by the assesse-respondent. Hence, is not liable to excise duty. She further submits that the excess transit insurance collected by the assesse-respondent from the dealer is merely a profit, on which no excise duty is attracted. For this submission, she relied upon the following decisions:

- ***Suzuki Motorcycle India Pvt. Limited vs. Commissioner of Central Excise, Delhi-III, 2023 (12) TMI 247- CESTAT Chandigarh (Supra).***

- ***Baroda Electric Meters Ltd. vs. Collector, 1997 (94) E.L.T. 13 (S.C.) (Supra).***

- ***ICOMM Tele Ltd. v. Commissioner 2010 (251) E.L.T. 103 (Tri-Bang.) (Appeal filed before Supreme Court dismissed as withdrawn).***

- ***Commissioner of Central Excise & Cus., Bbsr-l vs. J.K. Paper Ltd. 2012 (284) E.L.T. 706 (Tri. - Kolkata) (Appeal filed before Supreme Court dismissed as due to monetary limit)***

- ***CCE, Delhi-IV vs. Haryana Concrete Products Ltd. 2019 (1) TMI 494-CESTAT Chandigarh.***

5.4 As regards the invocation of extended period of limitation, learned counsel for the respondent submits that the respondent has not suppressed any facts from the Department and alleged irregularity only came to light when audit was conducted; hence extended period of limitation is not invocable in the present case. She further submits that the demand has been raised on the basis of data furnished by the assessee-respondent. Hence, allegation of suppression is not sustainable; as regards the interest and penalty, learned counsel for the respondent submits that when the demand itself is not sustainable the question of interest and penalty does not arise.

6. After considering the submission of both the parties and perusal of the material on record, we find that as per the agreement between the respondent and its dealers, sale of goods takes place at the factory gate and the dealers are liable to take the delivery of the goods at the factory gate and the dealers will be liable to incur the cost of transportation from the factory gate to its own premises. Further, we find that as per the agreement, the title and risk in the goods being sold to dealers passed to the dealers at the factory gate. Further, we find that the excess transit insurance charges recovered from the dealers is in addition and is not in connection with the sale of goods. Further, we find that as per the Section 4(1)(a) of the Excise Act, the assessable value of the goods shall be the transaction value and the transaction value is the ex-factory price and the amount collected as excess transit insurance is not in connection with the sale of gods and it has no nexus with the manufacturing activity undertaken by the assessee.

7. We also find that the excess transit insurance collected by the assesse-respondent from the dealer is merely a profit on which no excise duty is attracted in view of the various decisions cited (Supra). Therefore, relying upon the ratio of the various decisions

cited (Supra), we are of the considered opinion that there is no infirmity in the impugned order passed by the learned commissioner and hence we uphold the Order-in-Original and dismissed the appeal of the Revenue.

(Order pronounced in the open court on 07.08.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash