CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

Appeal No. E/3984,4096/2010, E/1110/2011, E/1090/2012-DB

Date of Hearing/ Decision : 24.05.2018

[Arising out of Order-in-Appeal No. OIA- 01/DM/ADJN/2010-11 dated 28.09.2010, OIA- 05/DM/ADJN/2010-11 dated 10.02.2011 and OIA-14/CE/APPL/DLH-IV/2012 dated 01.03.2012 passed by the Commissioner (Appeals) Central Excise & ST, Delhi-IV]

M/s. Sita Singh & Sons Pvt. Limited : **Appellant**
M/s. Sita Singh & Sons Pvt. Limited (Unit-II)
M/s. Swaraj Mazda Limited

vs.

Commissioner of Central Excise & ST, Delhi -IV : **Respondent**

Appearance:

Shri Amrinder Singh, Advocate for the Appellant(s)
Shri A.K. Saini, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Final Order No. 62421-62424 / 2018

Per : Ashok Jindal

The appellants are in appeal against the impugned orders wherein demand of duty along with interest has been confirmed and penalties were imposed on the appellants

2. The brief facts of the case are that the appellants are engaged in fabrication of body chassis supplied by M/s Swaraj Mazda Limited (SML for short). During the relevant time, the appellant received chassis from SML and paid duty under Section 4 of Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The proceedings were initiated against the appellant under Rule 10A of the Central Excise valuation Rules, wherein the appellant was required to pay duty of whole of the body built and inclusive of the valuation of chassis in the goods cleared by SML. In these set of facts, the proceedings were initiated against the appellants to demand differential duty in terms of Rule 10A of the Rules and the matters were adjudicated, demand of duty was confirmed along with interest and penalties were also imposed. Against the said orders, the appellants are before us.

3. The ld. Counsel for the appellant submits that in their own case, for the earlier period, vide Final Order No. 61971-61972/2017 dated 10.10.2017, this Tribunal has confirmed the demand along with interest but dropped the penalties against the appellant. The said order is under challenge before the Hon'ble Apex Court, therefore he prays that penalties on the appellants are to be evaded. On the other hand, ld. AR supported the impugned order.

4. Heard the parties and considered the submissions. We find that in the appellant's own case, for the earlier period, this Tribunal observed as under:-

> "**3.** Heard the parties considering the fact that the identical issue came up before this Tribunal in the case of Audi Automobiles V. CCE-2010 (249) ELT 124 (Tri. Del.) wherein it has been held that the assessee is liable to pay duty in terms of Rule 10A of the Rules i.e. on the value at which the principal manufacturer cleared the goods on payment of duty, therefore, the differential duty is confirmed along with interest.
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> **4.** The Ld. Counsel for the appellant also disputed invokation of extended period of limitation and imposition of penalty on them, on the ground that the issue whether they are required to pay duty in terms of Rule 10A of the Rules was in dispute and the same has been settled by this Tribunal in the case of Audi Automobiles (Supra) on 21.05.2009. We take a note of the fact that in the case of Audi Automobiles (Supra) itself, this Tribunal observed that the appellant cannot be accused of my suppression documents. In that circumstance, we hold that the extended period is not invokable. Consequently, the demands pertaining to the extended period of limitation are set aside. As the extended period of limitation is not invokable, and there is no mala-fide intention of the appellant, moreover, the issue is of a valuation, therefore, the penalty is not imposable on the appellant.
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> **5.** With these terms, the following order is passed:
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> (A) Demand of duty within the period of limitation is confirmed along with interest.
>
> (B) Penalties are not imposable on the appellant."

5. As the issue has already been settled in the appellant's own case, therefore, the duty along with interest is confirmed. Considering the fact that in the case of Audi Automobiles vs. CCE, Indore – 2010 (249) ELT 124 (Tri. Delhi), it was held that in such a circumstances, no penalty is imposable. Therefore, penalties imposed on M/s. Sita Singh & Sons Pvt. Limited are set-aside.

6. We further take note of the fact that penalty of Rs. 25 Lakh has been imposed on M/s. Swaraj Mazda, on the ground that they were having the knowledge that job worker M/s. Sita Singh & Sons are paying short duty

therefore, penalty is imposable. We find that as in the case of M/s. Sita Singh & Sons Pvt. Limited, the penalty has been set-aside therefore, penalty on M/s. Swaraj Mazda is not imposable. Accordingly, penalty imposed on M/s. Swaraj Mazda is also set-aside.

With these terms, the appeals are disposed of.

(Order dictated and pronounced in the court)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

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