IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal Nos.42482 & 42483 of 2014

(Arising out of Order in Original Nos. 22 & 23/2014 dated 28.08.2014 passed by the Commissioner of Central Excise, Chennai IV)

M/s. Dynamatic Technologies Ltd., **Appellant**
F-67, SIPCOT Industrial Park,
Irungattukottai, Sriperumpudur,
Kanchipuram - 602 105.

Vs.

Commissioner of GST & Central Excise **Respondent**
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Shri Harendra Singh Pal, (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40704-40705/2024

Date of Hearing : 06.05.2024
Date of Decision: 20.06.2024

Per M. Ajit Kumar,

The above appeals are against Order in Original Nos.22 & 23/2014 dated 28.08.2014 passed by the Commissioner of Central Excise, Chennai IV Commissionerate.

2. Brief facts are that the appellant is a manufacturer of Engine parts and Aluminum raw castings for automobile sector falling under Chapter heading 84099191 and 76169910 of Schedule I to Central Excise Tariff Act 1985 on which they are availing CENVAT credit on inputs, capital goods and input services. The appellant received

Catalyst (hereinafter referred to as the 'impugned goods') from their customer and Principal Manufacturer M/s Hyundai Motors India Ltd., (hereinafter referred as M/s HMIL) for the manufacture of components viz., Manifold Catalystic Assy Exhaust, on job work basis, by using the impugned goods and cleared them to M/s HMIL on payment of duty. The appellant has availed Cenvat credit of the duty paid by M/s HMIL. M/s HMIL had not paid the VAT at 4 % until 11.07.11 and at 5 % with effect from 12.07.11 on the impugned goods when supplied to the appellant and the same was not included in the assessable value of the finished goods. Hence the appellant cleared their finished goods on payment of duty without inclusion of 4% /5% of VAT on the impugned goods.

3. In terms of guidelines of ICAI on manufacturing cost for captive consumption, the cost of material consumed shall consist of cost of material, duties and taxes, freight inwards, insurance and other expenditure directly attributable to procurement. Thus the landed cost of the material has to be arrived by adding cost of material, duties and taxes, freight inwards, insurance and other direct expenditure attributable to the procurement.

4. In the instant case, the appellant has not calculated the correct assessable value of the goods cleared to M/s HMIL, as per the provisions of Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 by not including the VAT element on the goods supplied by M/s HMIL. Thus, it appeared that the appellant has contravened the provisions of Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with

Section 4(1) of the Central Excise Act, 1944, resulting in short payment of duty to the tune of Rs.50,73,540/- (consists of Basic Excise Duty Rs.49,25,767/- + Education Cess Rs.98,515/- + Secondary Higher Education Cess Rs.49,258), during the period from 01.04.2008 to 31.12.2012 prompting issuance of a Show Cause Notice No.12/2013 dated 2.5.2013 . For the subsequent period from 01.01.13 to 30.11.13 another notice on the same issue vide Statement of Demand No.4/2014 dated 20.01.2014, for an amount of Rs.6,04,836/- (Basic Education Duty Rs.5,86,691/- + Education Cess Rs.12,097/- + Secondary Higher Education Cess Rs.6,048/-).

5. After due process of law, the original authority confirmed the demand, interest and imposed penalty. Aggrieved by such order the appellant is now before the Tribunal.

6. The Ld. Counsel Shri. M.N. Bharathi, appeared and argued for the appellant. Ld. AR Shri. Harendra Singh Pal, appeared and argued for the department.

7. We have heard the rival parties and carefully perused the appeal. The appellant has stated that they have received the component from HMIL on payment of duty and adopted the invoice price/transaction value for payment of duty under Section 4(1) of CEA 1944 as price is the sole consideration. Hence Invoking provisions of Rule 6 of Central Excise Valuation (Determination of price of Excisable goods) Rules 2000 does not arise. VAT is a tax on the value of the material or goods cleared to the buyer. Hence non-inclusion of VAT In the value of goods cannot be considered as an additional consideration. HMIL has not paid VAT on the basic value of the goods in question and

they cannot be expected to include the same in the value of their finished goods and hence, they cannot be held responsible for any omission on the part of the seller. It is an accepted fact that there is no assessment at the receiver's end. Inclusion of Central Excise duty in the cost of the material supplied by the principal manufacturer does not arise as they are availing cenvat credit of duty paid on the component. Similarly, if the seller has paid VAT they would have availed the same as credit. As there is no VAT payment they have not availed any VAT credit. The Cost Accounting Standard CAS-4 has not been properly interpreted. This CAS-4 clearly states that material cost should be net of discounts, Cenvat credit, sales tax and VAT (if any) etc. This is so because material cost becomes lower if credit of duty/tax paid is obtained. As held in CCE vs. Elgi Treads 2010 (252) ELT 79, there is no provision to include notional duties which have not been paid on the inputs. The department is aware of the issue as early in May 2010 vide Superintendent's letter dated 13-05-2010. The demand is hit by time-bar as the demand for the period April 2008 to December 2012 had been raised after one year from the date of filing of Monthly return in spite of instructions in Board Circular No.887/7/2009-CX dated 11-05-2009. Payment of interest and imposition of penalty also may not arise. The appellant also placed reliance on the Supreme Court’s judgement in **General Engineering Works Vs CCE, Jaipur** [2007(212) ELT 295 (SC)], (although a copy of the same was not made available), and **Collector of Central Excise Pune vs Dai Ichi Karkaria Ltd** [1999 (112) ELT 353 (SC)], in support of their claim. The learned AR has reiterated the points given in the impugned order.

8. The issue to be decided in this appeal is whether the element of VAT that was not paid on the catalyst received from HMIL, is includible by the appellant for arriving at the transaction value of the finished goods for payment of Central Excise Duty at the time of its clearance, from their premises.

9. The liability to pay tax for the intermediate goods (catalyst) supplied by HMIL to the appellant, is on HMIL. The demand of VAT if any which was short paid by HMIL has to be realized from them by the concerned authorities, irrespective of their not passing the liability to their customer. We find that there is no provision to include notional duties which have not been paid on the value of intermediate goods cleared by the supplier, onto the transaction value of the buyer who uses the goods in the further manufacture and clearance of finished goods.

10. Secondly **section 4(3)(d) of the Central Excise Act, 1944** at the relevant time clearly stated that 'transaction value' does not include the amount of duty of excise, sales tax, and other taxes, if any, actually paid or actually payable on such goods. The impugned order does not explain why the exclusion of taxes from transaction value as stated in **section 4(3)(d) of the Central Excise Act, 1944,** is not relevant to this case. The order also does not refer to the specific CAS standard (CAS-4 etc) of ICAI but refers to the Cost Accounting Standard on cost of production for captive consumption without

explaining why it is applicable to transaction between independent persons.

11. The Commissioner (Appeals) in the Appellants own case vide Order-in-Appeal No 28/2017(CXA-II) dated 30/01/2017 has cited the CBEC's **Manual of Supplementary Instructions 2005**, Under Part III, regarding 'Valuation' to the effect that, the definition of transaction value mentions that whatever amount is actually paid or actually payable to the Government or the relevant statutory authority by way of excise, sales tax and other taxes, shall be excluded from the transaction value. Further it noted that the Hon'ble Apex Court in **Collector of Central Excise Pune versus Dai Ichi Karkaria Ltd** [1999 (112) ELT 353 (SC)] has stated that, in determining the cost of an excisable product covered by the MODVAT scheme under Section 4(1)(b) of the Central Excise Act read with Rule 6 of the Valuation Rules the excise duty paid on raw material also covered by the MODVAT scheme is not to be included. He went on to set aside the order appealed against. Revenue has not placed before us anything to show that the said order has been set aside or reversed in appeal.

12. In the light of the clarification by the Board, referred to above, the Apex Courts judgment in **Dai Ichi Karkaria Ltd** (supra) would apply in the case of sales tax also as also with other statutory taxes. Hence the transaction value of the goods cleared by the appellant to HMIL need not need incorporate the notional sales tax element.

13. Further it has not been shown that there was any role of the appellant in HMIL having not paid sales tax. Neither was any blame worthy act brought out indicating the intention of the appellant to

evade duty. They hence cannot be held liable for any omission on the part of the seller. Thereby the question of invoking the extended time period, imposing penalty etc does not arise. In any case the appeal is allowed on merits and hence all other issues involved loose significance.

14. For the reasons discussed the appeal is decided in favour of the appellant and against the department. The impugned order is hence set aside. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Pronounced in open court on 20.06.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA)**
Member (Judicial)

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