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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1181/2007 - EX[DB] Date 19/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SWARAJ MAZDA LTD.
POST BAG NO. 38, VILLAGE ASRON, ROPAR
(PUNJAB)-140001

M/S SWARAJ MAZDA LTD. Appellant

Vs

C.C.E. CHANDIGARH (JALLANDHAR) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 944/2008- **EX[DB]** dated 08-12-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. CHANDIGARH (JALLANDHAR)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R
4. ~~I.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 1181 OF 2007

[Arising out Order-in-Appeal No. 31/CE/Appl/Jal/07 dated 31.1.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Swaraj Mazda Ltd., Appellant

Vs.

CCE, Chandigarh Respondent

Appearance:

Shri B.L. Narasimhan, Advocate, for the appellant;
Shri Surendra Shah, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of hearing/decision: 08.12 2008

FINAL ORDER NO. 944/2008 **dated** ________

Per M. VEERAIYAN:

This is an appeal against the order of the Commissioner (Appeals) No. 31/CE/Appl/Jal/07 dated 31.1.2007.

2. Heard both sides.

3. The relevant facts, in brief are as follows:

a) The appellant is a manufacturer of parts and components of motor vehicles. They transferred some quantity of such manufactured parts and components to spare parts division situated away from the factory on paid duty at the time of transfer. They also transferred some quantity of inputs on which they have taken credit, as such, to the said spare parts division after reversing the amount equal to the credit taken by them.

b) While selling the above items from spare parts division they have collected amounts as handling charges, either @ 1% or 4% depending upon distances involved between spare parts division and the dealer concerned.

c) The original authority held that in respect of inputs removed as such they ought to have paid duty/reversed credit at the price at spare parts division i.e. by adopting the value which is inclusive of 1% or 4% . Similarly, in respect of sale of manufactured items also, he held that the said amount of 1% or 4% which are collected as handling charges should be included in the assessable value and the differential duty should be paid.

d) The order of the original authority has been upheld by the Commissioner (Appeals).

4.1 Learned advocate submits that the issue as to the amount of credit required to be reversed while clearing the inputs, is settled by the decision of the Larger Bench of the Tribunal in the case of M/s. Eicher Tractors vs. CCE, Jaipur, reported in 2005 (189) ELT 131 (Tri.-LB). He also submits that following the said decision, in their own case, relating to the earlier period, a favorable decision has been given by the Tribunal vide Final Order No. 635 of 2006-Excise dated 4.8.2006 in central excise appeal No. 2376/2006.

4.2 As regards the valuation of manufactured items, he submits that addition sought to be made is not warranted. Though they have described the amounts collected as handling charges, they are only transportation charges from the spare parts division to the dealers premises. The same have been collected on an equalized basis at 1% for shorter distance and 4% for longer distance. They have actually incurred a sum of Rs. 19,98,050/= towards the freight during the relevant period where as they have collected only a sum of Rs. 17,87,878/- as handling charges.

4.3. Learned Advocate also submits that invocation of extended period is not warranted in the facts and circumstances of the present case.

5. Learned D.R. submits that the appellant, in some invoices raised from spare parts division, has not collected any handling charges. In some cases they have collected at 1% and in other cases at 4%. The Commissioner (Appeals) has held that in certain cases they have collected both the handling charges as well as the transportation charges. If transportation charges are separately collected, the question of treating such handling charges as transportation charges will not arise. They have not furnished these details in the declaration filed under Rule 173C and, therefore, extended period also could be invoked.

6.1 We have carefully considered the submissions from both sides. The issue of valuation of CENVATed inputs cleared as such stands resolved by the decision of the Larger Bench in the case of Eicher Tractor (supra). Accordingly, demand of additional duty in respect of such items is not warranted and accordingly set aside.

6.2 As regards other issue, while both sides agree that any transportation charges incurred from spare parts division to the dealer's premises shall not be part of the assessable value, there are disputes about the factual position. Learned advocate claims that what has been collected in the name of handling charges is only transportation charges from spare parts division to the dealer's premises and no separate charges for transportation has been collected. All the invoices shown to us indicate that they cleared the goods at F.O.R. destination basis. However, there is a clear finding by the Commissioner (Appeals) that in certain instances both, handling charges and transportation charges have been incurred. If this be so, the situation will undergo a change. It requires to be considered afresh by the Commissioner (Appeals).

7. We, therefore, set aside the order of the Commissioner (Appeals) and remand the matter to the Commissioner (Appeals) to consider the submissions afresh and give finding on the aspect referred to in Para 6.2 above and decide the duty liability, if any, and consequent penal action after granting a reasonable opportunity of hearing.

8. Appeal is allowed by way of remand on the above terms.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK