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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/3921/2010 - EX[DB], E/S/3773/2010-EX Date **16/02/2012**

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

To :
M/S PERFECT MECHANICAL INDUSTRIES
14/1, MATHURA ROAD, FARIDABAD.

M/S PERFECT MECHANICAL INDUSTRIES Appellant

Vs

C.C.E. DELHI IV **STAY ORDER NO. 260/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/169/ 2012 EX[DB]** dated 02-2-12 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult MR. D. K. TYAGI, ADV.,
C-605, CHAWLA COLONY,
BALLABGARH (FARIDABAD)

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

E/Stay No.3773/2010 in E/Appeal No.3921/2010

(Arising out of order in appeal No.141/CE/Appl/DLH.IV/2010 dated 12.8.10 passed by the Commissioner of Central Excise (Appeals), Faridabad)

Date of Hearing: 15.12.2011

M/s Perfect Mechanical Industries Appellants

Vs

CCE, Faridabad Respondent

Appeared for the Appellant: Shri D.K. Tyagi, Advocate
Appeared for the Respondent: Shri S.R. Meena, DR

Coram: **Hon'ble Ms. S.S. Kang, Vice President**
Hon'ble Mr. Mathew John, Member (Technical)

STAY ORDER No 260/2012-EX (BR)
FINAL ORDER No. A/169/2012-EX (BR)

Per Mathew John:

Heard both sides.

2. The appellants state the facts of the case as under:-

"That the customer of the appellant namely M/s Ashok Leyland had procured an order No. A/12013/Watter bowser/5KL/Ex-Ashok Leyland/2007 dated 31.10.07 for supply of 336 Nos water bowser from Government of India in which the value of chassis and fabrication charges were separately declared. M/s Ashok Leyland placed order dated 5.12.07 on the appellant for fabrication of 120 Nos of water bowser body on chassis to be supplied by it on fabrication charges of Rs. 8,92,000/- per vehicle. The Government paid to M/s Ashok Leyland sum of Rs. 14,00,000/- for chassis and Rs. 8,01,000/- for fabrication of structures (excluding duties and taxes) and therefore, the total price of the vehicle paid by the Government of India to M/s

Ashok Leyland was Rs. 26,75,075/- (including all duties and taxes) and Rs. 22,01,000/- as the basic price. If this price is taken to be the value of the vehicle, the assessable value chargeable to duty in terms of Entry No. 41 of Notification No. 6/2006 at the end of the appellant comes to Rs. 8,01,000/- after deducting value of chassis from the value of vehicle in terms of explanation of the said entry, whereas the appellant has paid duty on Rs.8,92,000/-. As such, the appellant has paid duty on more value than that charged by customer of the appellant on sale to Govt of India, As such, if at all, Rule 10A(ii) is held to be applicable even then duty stands paid correctly on value determinable under the said Rule. The lower authorities have not appreciated and applied their mind to these submissions of the appellant."

3. The impugned order records facts as under:

"Brief facts of the case are that the appellant holding Central Excise registration, is engaged in the fabrication of Motor Vehicles for the transport of Passengers/Goods and Special Purpose Motor Vehicles falling under Chapter Headings 8702.90, 8704.30 and 8705 respectively of the First Schedule to Central Excise Tariff Act, 1985. The appellant is engaged in the fabrication of Bus Body/Water Browser/Trailor for M/s Ashok Leyland Ltd, 480, Anna Salai, Nand Nam, Chennai and M/s Vehicle Factory, Jabalpur (hereinafter referred to as the principal manufacturers). During the material period of demand, the appellant was receiving chassis for manufacture of Bus Body/Water Browser/Tailor on job work basis from the above said principal manufacturers and dispatching the complete vehicles to the above principal manufacturers. Further the said principal manufacturers were selling the said vehicles at higher price than that of the value at which these were cleared from the premises of the appellant plus value and duty on chassis."

4. From Annexure-A to the SCN it appears that valuation of 133 vehicles is under dispute. Out of these in 33 cases, chassis were

supplied by M/s Vehicle Factory, Jabalpur ("VFJ" for short) and in 100 cases, chassis was supplied by M/s Ashok Leyland Ltd("ALL" for short).

5. The issue in dispute is the valuation of the body built vehicles. Revenue's case is that the value should be arrived at 110% of the total cost of chassis and material used by the appellants as per provisions of Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2001. Revenue relies on the decision in the case of Audi Automobiles Vs. CCE -2010 (249) ELT 124 (Tri).

6. The consideration paid for building body is known and there is no case that this is not a transaction at arms' length. Such price is expected to include a profit margin of the appellants and would be more or less equal to 110% of the cost of their manufacturing activity. The crux of the case is that what is manufactured is not body separately but body-built vehicle. So 110% of the cost including that of chassis should be taken. That is to say the dispute is roughly whether 10% of the cost of chassis is to be added to the cost of the manufacturing activity of the appellants. For arriving at the calculation Revenue's stand is that no price of the goods at the factory or depot of the appellant is available and hence Rule 8 of the Valuation Rules should be applied.

7. The contention of the appellants is that they were eligible for exemption under notification No. 6/2006-CE at S. No. 41. As per this notification duty is to be paid on the value as determined in the explanation in the said entry in the notification. Said explanation reads as under:

> "*Explanation.* - For the purposes of entries (1) and (2), the value of vehicle shall be the value of the vehicle excluding the value of the chassis used in such vehicle."

8. They submit that the value of vehicle is known as it is supplied at arms' length to the government. They submit that the value of the

chassis also is known because the chassis manufacturer is quoting the value separately for chassis. So the value of vehicle should be taken from the contract and from that value the value of chassis should be deducted and on the resultant value only they had to pay excise duty. According to the appellant the duty to be paid on such value was lower than the duty already paid by them and the demand is not sustainable.

9. We have gone through the impugned order. The order does not deal with the issue why exemption under notification 6/2006-CE (S. No. 41) cannot be extended to them. The order also does not deal with the issue why the transaction value as per the order placed on Ashok Leyland Ltd by the government is not acceptable for the purpose of arriving at the value as prescribed in the notification. The order simply proceeds on the basis that the decision in the case of Audi Automobiles Ltd (Supra) is applicable. But we find that there was no claim for exemption under Notification 6/2006-CE (S. No.41) in that case. There was also no claim that the goods involved were supplied at separately known prices for vehicles and chassis. Thus the facts of this case are different from that in the case of Audi Automobiles Ltd (supra).

10. Since we find that the submissions made before the adjudicating authority have been not examined properly we find that the impugned order is not sustainable in the present form. So we decided to waive the requirement of pre-deposit of dues arising from the impugned order for hearing the appeal and we proceeded to dispose of the appeal itself by setting aside the order and remanding the matter to the adjudicating authority for a fresh decision.

11. While deciding the matter afresh the adjudicating authority may keep in mind that the notification prescribes calculation of duty liability on a value different from the value prescribed under section 4 of the Central Excise Act. The adjudicating authority has to record specific reason why the value at which vehicles are sold to government by ALL is not acceptable under 10A (ii) of the Valuation Rules 2000 for the

purpose of the explanation in the notification. Adjudicating authority has to also record why the value of chassis as declared by assessee is not acceptable if there is any such argument.

12. In the case of 33 vehicles supplied to VFJ, there may be an issue that the prices of chassis and vehicle are not known through such a contract. If that be the case the adjudicating authority has to take note of the fact that this is not a situation exactly covered by Rule 8 of the Valuation Rules because the goods are not consumed by the appellant or on his behalf. That being the case, the question whether the consideration received by the Appellant can be considered as the "value of the vehicle excluding the value of the chassis used in such vehicle" as prescribed in the notification 6/2006-CE (S. No.41) read with provisions of Rule 11 of the Valuation Rules also needs to be examined. We are remanding the matter keeping all arguments open.

13. The adjudicating authority is also advised to record the facts in respect of sales to M/s Vehicle Factory, Jabalpur and M/s Ashok Leyland separately unless entire facts are identical.

14. Thus the stay petition and appeal are disposed of.

(Order dictated and pronounced in the open Court.)

(S.S. KANG)
Vice President

(MATHEW JOHN)
Technical Member

MPS*