IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI
COURT-I

Date of Hearing/ Decision : **28.02.2017**

Appeal No. E/1241,1563,1564/2012 - (DB)

[Arising out of the Order in Original No. 09-12/COMMR/CEX/ADJ/JBP/2012 dated 12.03.2012 passed by Commissioner, Central Excise, Indore]

M/s. Tata Motors Limited … Appellants
M/s. Commercial Engineers & Body Builders Pvt. Limited

vs.

Commissioner of Central Excise, Indore … Respondent

Appearance:

Rep. by Shri B.L. Narsimhan, Advocate for the Appellants
Rep. by Shri Yogesh Agarwal, DR for the respondent

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52044-52046/2017 –EX (DB)

Per Mr. M.V. Ravindran

These appeals are directed against OIO No. 09-12/COMMR/CEX/ADJ/ JBP/2012 dated 12.03.2012. Since all these appeals are directed against the very same Order-in-Original, they are being disposed of by common order.

2. Heard both sides and perused the record.

3. The issue that falls for consideration is whether duty liability arises in respect of those job works undertaken by body built supplied by Tata Motors and whether penalties imposable on Tata Motors. It is the findings of the adjudicating authority that Commercial Engineer and Body Builders Pvt. Limited is liable to

discharge duty liability and Tata Motors is also required to pay penalty under Rule 26 of the Central Excise Rules. The adjudicating authority has confirmed the demand raised under Section 11A (1) of the Central Excise Act, 1944 along with interest under Section 11AB of the Central Excise Act, read with Rule 25 of the Central Excise Rules, 2002.

4. Both sides agree that identical issue in respect of the very same appellant was decided by this bench in final order No. 52503-52504/2016 dated 04.07.2016, wherein the bench remanded the matter back to the adjudicating authority for reconsideration of the issue. The said order has categorically stated that no penalty warrant in this case. The findings of the Tribunal in identical issue of the very same appellant are in Para 4 and 5, which are reproduced:-

> **"4.** We do find force in the appellants submission that their contention regarding non-includability of taxes in the assessable value for determining the quantum of duty has not been adverted to by the primary adjudicating authority though the contention was raised before him.
>
> **5.** In the light of forgoing, we allow the appeal by way of remand to the primary adjudicating authority with the following direction:-
>
> > (1) No penalty is warranted in these cases.
> >
> > (2) The demand should be recomputed, if necessary, after considering the contention of the appellant regarding non-includability of taxes in the assessable value**."**

5. In view of the above, we remand the matter back to the adjudicating authority. The adjudicating authority shall follow the directions given in the final order dated 04.07.2016 while computing the duty demand and follow the directions as indicated in our final order dated 04.07.2016.

6. Appeals disposed of as indicated hereinabove.

[Order dictated and pronounced in the open court]

(**V. Padmanabhan**)
Member (Technical)

(**M.V. Ravindran**)
Member (Judicial)

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