CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 817-819 of 2012

(Arising out of Order-in-Original No. 53/COMMR/CEX/IND/2011 dated 22.12.2011 passed by the Commissioner of Central Excise, Indore)

DATE OF HEARING : 30.03.2017
DATE OF DECISION : 30.03.2017

M/s Audi Automobiles …. **Appellants**
Shri Ashok Kumar (Rep by Sh. Anurag Kapoor, Adv.)
M/s Tata Motors Ltd.

VERSUS

CC, Indore …. **Respondent**
(Rep. by Sh. R.K. Manjhi, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 52701-52703/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

All the present appeals are filed against the Order-in-Original No. 53/COMMR/CEX/IND/2011 dated 22.12.2011 passed by the Commissioner of Central Excise, Indore. The period in dispute is April 2008 to November 2008.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants, M/s Audi Automobiles, were engaged in the manufacture of building body at their factory on motor vehicle chassis

supplied by Tata Motors Limited (TML). TML manufactured the chassis and supplied the same to the assessee-Appellants for building body on the same. TML cleared the chassis on payment of Central Excise Duty to the assessee-Appellants and the Cenvat Credit of duty paid on such chassis was taken by them. During the period in dispute, the assessee-Appellants determined the assessable value of the vehicle as body building charge which is the price of the body plus cost of chassis in terms of Section 4(1)(a) read with Rule 6 of the Valuation Rules since the Chassis is supplied free of cost by TML to the assessee-Appellants. Therefore, the assessee-Appellants paid Central Excise Duty on the vehicles determined in the aforesaid manner.

Proceedings were initiated against the assessee-Appellants wherein it was alleged that they contravened the provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 introduced w.e.f. 01.04.2007. The assessee-Appellants submitted the reply to the show cause notice vide letter dated 24.08.2009 wherein it was submitted that in terms of Section 4(1)(a), the assessable value of the excisable goods for payment of excise duty shall be the transaction value, where excisable goods were sold by the assessee for delivery at the time and place of removal, where the assessee-Appellants and the buyer of the goods are not related and where the price is the sole consideration for sale. However, without appreciating the submissions of the assessee-Appellants, the Commissioner passed the order dated 23.09.2009 whereby the entire demand was confirmed against them.

Against the aforesaid order dated 23.09.2009, the assessee-Appellants filed an appeal before this Tribunal and the Tribunal vide Final

Order No. 397-399/2010-Ex(DB) dated 07.06.2010 remanded the matter back to the Adjudicating Authority.

In compliance with the orders passed by this Tribunal, the learned Commissioner has passed the impugned order sustaining the demand. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Shri Anurag Kapoor, learned counsel for the assessee-Appellants and Shri R.K. Manjhi, learned DR for the Department.

4. After hearing both sides and on perusal of the records, it appears that an identical issue in the assessee-Appellants' own case [**Audi Automobiles vs CCE, Indore]** has come up before this Tribunal reported as 2010 (249) ELT 124 (Tri.-Del), wherein it was observed that :

> **"22.** As regards the penalty, however, we find that the learned Advocate is justified in contending that matter being related to the interpretation of the provisions of law and the fact that the Apex Court in *Prestige Engineering (India) Ltd.,* case had taken a particular view on the aspect of expression 'job work', the appellant, taking shelter of the said decision, was seeking to claim benefit in terms of Rule 6. In the circumstances, we do not find any justification for imposition of penalty in the matter in hand. The impugned order does not disclose consideration of this aspect of the matter.
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> **23.** In the circumstances, the appeals partly succeed and they are allowed to the extent they make grievance regarding the imposition of penalty. However, as regards the challenge to the demand of duty and interest thereon, the same stands dismissed. All the appeals are accordingly disposed of in the above terms."

5. Regarding the penalties, it may be mentioned that the issue has come up again independently before this Tribunal in the assessee-Appellants' own case in Excise Appeal Nos. 1286-1288/2009-Ex(DB), wherein it was observed that :

> "2. The Ld. Advocate for the appellants pleads that Ld. DR acquiesces that the issue is covered by the judgment of this Tribunal in the case of Audi Automobiles vs CCE Indore, 2010 (249) ELT 124 (Trl.Del) wherein in the identical set of circumstances, the demand of duty and interest was upheld while penalty was set aside. Respectfully following the said judgment of the Tribunal, we partly allow the appeal of M/s Audi Automobiles only to the extent that the penalty is set aside. The appeals of Shri Ashok Sharma and M/s Eicher Motors Ltd. are allowed inasmuch as penalties imposed on them are set aside."

6. By following our earlier order (supra), we uphold the demand of duty along with interest but drop all the penalties.

7. In the result, the appeals filed by the assessee-Appellants are partly allowed.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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