CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 01.08.2017

Appeal No. C/3391/2012-CU[DB]

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/229/12 dated 08.08.2012, passed by the Commissioner of Central Excise, Indore]

C.C.E. Indore … Appellant

Vs.

M/s. Hindustan Motors Ltd. ... Respondent

Appearance:

Present Shri R.K. Manjhi, DR for the appellant
Present Shri Manish Saharan, Advocate for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 55734/2017

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 229/12 dated 08.08.2012. The disputed period is 2000-01.

2. The brief facts of the case are that the assessee was engaged in the manufacturing of the motor vehicles for which they were importing sets of engine. In the earlier year 1999-2000 the matter has reached the Hon'ble Supreme Court, where it was observed that all the components imported by the appellant namely Cylinders / Piston / connecting rods / crank

shaft / exhaust valves constitutes the complete engine. So the Hon'ble Apex Court held that the duty is leviable which is applicable to the engine. During the period under consideration i.e. 2000-01 the appellant imported a few consignment claimed the same as parts.

3. The Department has demanded duty which is applicable to the engine which was deposited in protest. Later the appellant claimed that only a few parts were imported and not all the parts which cannot constitute the complete engine. The matter reached to the Tribunal pertaining to the refund which the Tribunal, vide Final Order dated 384/2008 dated 08.10.2008, remanded the matter back to the Commissioner to determine whether the engine was imported or only a few parts were imported. The adjudicating authority has reiterated its earlier order that the imported goods constitute complete engine. However the Commissioner (A) has requested jurisdictional AC (ICD) to verify and confirm whether imported goods contained all six vital parts to make complete engine. In his reply he has mentioned as follows:

> *"In the subject matter, in the outset it is to submit that as the matter is very old and pertains to the year 2000-01 all efforts were made to trace the desired bill of entries from the old records and some has been forwarded to you. The packing list ofconcern bill of entries are not readily traceable in this office."*

4. Finally the Commissioner (A) has observed that:

"In absence of any specific confirmation from Customs authority about importation of all assembly components or otherwise, I am left with no choice but to go by the details (packing list) submitted by the appellant, which shows that goods imported were not complete sets of assembly essential components which gives essential charter of engine. This being so the disputed goods can be assessed as parts / components only. The view is consistent with the view taken by Commissioner Customs, Central Excise and Service Tax, Indore in his adjudication order no. 10-14/Comm/CEX/IND/2007 dated 27.04.2007 and which has been accepted by the Department in the case of the appellant itself. Therefore, the order passed by the lower authority is liable to be set aside and the Appellant is correctly entitled for the refund which as per the existing instructions and the Rules framed under the statute has to be sanctioned within the three months from the date of passing of this order."

5. In the instant case old record is not available but inspiration can be drawn with another order passed by the Commissioner in the subsequent assessment year 10.01.2002 to July 2003 in the assessee's own case where it was observed as follows:

"Now coming to another aspect whether in the event of not importing six items the items imported can constitute character to qualify as Engine in this connection, it may be

mentioned that in earlier order the certificates submitted were not given much credence since the pattern of import was similar to earlier one and earlier it was not contested that they have not imported all six items. Now, this plea has been raised before the Tribunal. Therefore, in the light of new plea as well as verification report of the Deputy Commissioner (C), ICD, Pithampur, it became necessary at this gesture to look into the certificates issued by Shri G.S. Institute of Technology and Science to examine whether the parts imported can constitute character of an Engine. It is observed from these certificates that for petrol engine (IC Engine) Model No. 4G15, there are 24 essential items and for Diesel Engine (IC Engine) Model No. 4D-68, there are 16 essential items, which include six items, mentioned in the Tribunal's order, to make complete internal combustion Engine. It has been categorically mentioned in these certificates that without these components as listed, the internal combustion engine cannot function or have any of the essential features of an IC engine and give the required performance. Since it is verified and reported by the Deputy Commissioner (C) ICD Pithampur that the noticee had not imported all six items. There is no option left but to accept these certificates and hold that in absence of any of the items specified in the list (as well as six items mentioned in Tribunals order) it cannot constitute character of Engine and

Classification of items imported vide impugned bill of entries is to be done accordingly."

6. In the light of the above discussion, we are of the view that the Commissioner (A) has rightly granted the relief to the appellant. Hence, we uphold the impugned order along with reasons mentioned therein.

7. In the result, appeal filed by the Department is dismissed.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu