CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 51773 & 51886 of 2017

(Arising out of order-in-original Nos. 23/Commr/CEX/JBP/2017 dated 21.07.2017 and 25/Commr/CEX/JBP/2017 dated 11.09.2017 passed by the Commissioner, Central GST, Excise & Customs, Jabalpur, respectively)

DATE OF HEARING : 21.02.2018
DATE OF DECISION : 28.02.2018

M/s Commercial Engineers & Body Builders Co. Pvt. Ltd. ….. **Appellants**
(Rep by Sh. Akshay Sapre, Adv.)

VERSUS

CCE, Jabalpur ….. **Respondent**
(Rep. by Sh. S.K. Bansal, DR)

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

FINAL ORDER NO. 50822-50823/2018

PER V.PADMANABHAN:

Both the present appeals are filed by the assessee-Appellants against order-in-original Nos. 23/Commr/CEX/JBP/2017 dated 21.07.2017 and 25/Commr/CEX/JBP/2017 dated 11.09.2017 passed by the Commissioner, Central GST, Excise & Customs, Jabalpur, respectively. Appeal no. E/51886/2017 pertains to Unit-I at Jabalpur and Appeal No. E/51773/2017 pertains to Unit-II at Mandala.

2. This is the second round of litigation before the Tribunal. Earlier, the Tribunal vide its Final Order Nos. A/52386/2016-Ex (DB) dated 30.06.2016 and A/54942/2016-Ex (DB) dated 07.11.2016 has remanded the matter to the adjudicating authority. In compliance with the remand order, the adjudicating authority has passed the impugned orders where the demand was sustained along with penalty and interest. Since the demand in respect of both the Units is interlinked, both the instant appeals are disposed of by this common order.

3. The brief facts of the case are that, both the Units of the assessee-Appellants (Unit-I and Unit-II) were engaged in fabricating body over the chassis of the motor vehicles supplied by various manufacturers of chassis, such as, M/s Tata Motors Ltd. Both the units were also availing benefit of Notification No. 06/2006-CE dated 01.03.2006. Serial no. 41 of the Notification provides for effective rate of duty payable on the value of the body part on the chassis where no Cenvat Credit is availed in respect of such duty paid chassis received for body building. In case Cenvat Credit of duty paid on such chassis is availed, the duty is required to be discharged on the complete value of the vehicle including chassis as well as body built thereon.

4. The duty paid chassis are received from M/s Tata Motors Ltd. in respect of appeal pertaining to the Unit-I at Jabalpur. Unit-I had received 160 duty paid chassis from M/s Tata Motors Ltd. and availed Cenvat Credit paid on such chassis. As Unit-I on account of certain internal exigencies was not able to fabricate the body on such chassis, forwarded the same to Unit-II at Mandala for fabrication. However, at the time of receiving the said chassis from Unit-I, Unit-II did not avail the Cenvat Credit. Unit-II fabricated the body on the chassis and transferred the motor vehicles to Unit-I after paying the requisite duty on the value added during body building. Since no credit was availed by Unit-II on the duty paid on the chassis, it claimed exemption to exclude the value of chassis from the value of motor vehicles. Unit-I cleared the final products to M/s Tata Motors Ltd. after paying the duty on the chassis including the value of the body built on it.

5. Another dispute relates to Unit-II in respect of 34 such chassis received from M/s Tata Motors Ltd. The Department was of the view that in respect of 160 duty paid chassis on which body was built by Unit-II, duty was required to be paid by Unit-II on the entire value of chassis + body built thereon at the time of returning the same to Unit-I. Likewise, duty was also liable to be paid by Unit-II in respect of 34 number of chassis. Differential duty was demanded from both the Units (Unit-I & Unit-II) as per the calculations given in the impugned orders. Being aggrieved, the assessee-Appellants have filed the present appeals.

6. With this background, we heard Shri Akshay Sapre, learned counsel for the assessee-Appellants and Shri S.K. Bansal, learned DR for the Department.

7. The submissions of the learned counsel for the assessee-Appellants are summarised below :

(i) He submits that from the point of view of Unit-I as well as Unit-II, the exercise of demand is revenue neutral as the chassis cleared by Unit-I and Unit-II have since been returned by Unit-I to Unit-II on payment of duty on the value of body built by Unit-II. From the perspective of Unit-II, he submits that since no Cenvat Credit was availed by Unit-II on the duty paid on the chassis was not required to include the same for payment of duty. Likewise, he argued that no demand can be made in respect of Unit-I as well as Unit-II;

(ii) He also submits that any differential duty demanded from Unit-I and Unit-II and paid will also be available as Cenvat Credit in respect of other unit. Ultimately, there is no loss of revenue inasmuch as the motor vehicles after body is built on them stand cleared on payment of duty on the full value back to M/s Tata Motors Ltd.; and

(iii) He further submits that both from Unit-I as well as Unit-II, the differential duty has already been paid as a consequence of the audit objection after transferring the Cenvat Credit available on the duty paid chassis. However, the Revenue has demanded the payment of interest on such duty already paid alleging delay in payment of such duty.

8. On the other hand, Sh. S. K. Bansal, learned DR for the Revenue, justified the impugned order. He submits that at the time of clearance of the body built chassis, the Unit-I as well as Unit-II was required to pay the duty in full. However, in the present case, even though Unit-I as well as Unit-II has paid the differential duty, still they are liable to pay the demand raised.

9. Heard both sides and perused the record.

10. Dispute pertains to the appellants' two units wherein they are engaged in the business of building body over the chassis manufactured and supplied by motor vehicle manufacturers such as M/s Tata Motors Ltd. The dispute involved in both the appeals is in respect of duty paid chassis received from M/s Tata Motors by one of

the two units. After availing the Cenvat Credit of the duty paid by M/s Tata Motors, chassis were diverted to the other unit for carrying out body building. The other unit returned the chassis after building the body on payment of duty without including the value of chassis. The original unit subsequently paid duty on the value of the vehicle including the chassis as well as the body while returning the same to M/s Tata Motors. Revenue is of the view that the second unit, where the body has been built is required to pay the duty by including the value of chassis. The differential duty involved has been demanded from both units in respect of chassis which has been returned to the other unit after body building.

11. The payment of Central Excise duty in respect of body built on chassis is covered by Serial No. 41 of the Notification No. 6/2006 dated 01/03/2006. The Notification provides for two options. In the first option where Cenvat Credit of duty paid on the chassis is taken, the manufacturer/ body builder is required to discharge Central Excise duty at the applicable rate on the value of the Motor Vehicle including chassis. In cases where no credit is taken of the duty paid on the chassis, the body builder is permitted to pay duty by excluding the value of chassis.

12. The unit which has received the duty paid chassis from M/s Tata Motors has availed the Cenvat Credit of such duty paid before sending the same to other unit for body building. After getting the body built by the other unit and return of the same, the

first unit has paid the duty on value including that of the chassis. The excise duty demand has been raised on the second unit where the body has been built. But from records it is seen that at the time of transfer of the chassis to the second unit for activity of body building, the Cenvat Credit of duty on the chassis has not been transferred. Since the second unit has not taken the credit of duty paid on the chassis, we are of the view that the second unit is allowed to discharge the duty without including the value of chassis. We find that such duty has already been paid. Consequently, the demand for differential duty raised against the two units cannot be sustained.

13. The appellant has also raised the argument that this is a case of revenue neutral situation and we are inclined to accept the plea. If the differential duty is paid by the body building unit, the same will be available as Cenvat Credit to the unit which has sent the chassis. Since both the units belong to ***M/s Commercial Engineers Body Building Company Pvt. Ltd***., this is a classic case of revenue neutrality. In the case of ***M/s Jay Yushin Ltd. vs. CCE, New Delhi [2000 (119) ELT (Tri. LB)]*** the larger Bench held that the case of clearance of goods from one unit to another of the same company is one of Revenue Neutrality.

Similar view has been expressed by the Hon'ble Supreme Court in the following cases:-

i. ***Commissioner of Central Excise & Customs (Appeals) vs. Narayan Polyplast [2005 (179) ELT (SC)]***
ii. ***CCE Vadodara vs. Narmada Chematur Pharmaceuticals Ltd. [2005 (179) ELT 276 (SC)]***

14. The differential duty raised in the course of audit objection has already been paid by both the units but Revenue has raised the issue that such duty has been paid after delay and hence interest is required to be paid. As discussed above we are of the view that there is no liability on the part of either unit to pay the differential duty. Consequently, the liability to payment of interest also does not arise.

15. In view of the above discussions, both the impugned orders are set aside and appeals allowed.

(Pronounced in the open court on 28.02.2018)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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