IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/06/2008

(Arising out of Order-in-Appeal No.31-34/JSR/2007 dated 04/10/2007, passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi.)

C.C.E., Jamshedpur. Appellant (s)
Vs.
M/s. Tata Motors Ltd
Respondent (S)

Appearance:
Shri K. Chaudhari, Suptd. (A. R.) for the Revenue
Shri Ravi Raghavan, Advocate for the Respondent (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing: -11.10.2018
Order No. FO/76813/2018

PER BENCH

The present appeal is filed by Revenue against the Order-in-Appeal No. 31-34/JSR/2007 dated 4/10/2007.

2. The respondent is engaged in the manufacture of Automobile Chassis and parts thereof. A part of goods manufactured is cleared in CKD (Completely Knocked Down) condition to Government Vehicle Factory, Jabalpur on payment of duty. The dispute involved in the present case is regarding the classification and rates of duty of the goods cleared applicable during the relevant period on such goods. The respondent claimed that goods cleared to Vehicle Factory, Jabalpur were classifiable under CETH 8708 which was liable to payment of Excise Duty @ 16%. But the Revenue took the view that such goods are to be classified under CETH 8706, as chassis of Motor vehicles, and

will be liable to payment of higher rate of Excise Duty @ 16% plus Rs.10,000 per Chassis. Automobile cess would also be liable to be paid @ 1/8% ad valorem in terms of Ministry of Industry, Department of Industrial development Standing Order No. 852 (E) dated 26/05/1994.

2. A show cause Notice issued proposing demand of differential duty but the impugned order set aside such demands. Revenue is in appeal against the impugned order.

3. The Ld. DR perusing the appeal filed by Revenue justifies the order passed by the Original Authority, ordering payment of differential duty. He reiterated the grounds of appeal.

4. Shri. Ravi Raghvan, Ld. Advocate for the Respondent submitted that the identical issue for an earlier period was the subject matter of the appeal before the Tribunal which was decided in favour of the assessee in the following two cases:-

(i) Tata Motors Ltd. Vs. CCE, 2008 (222) ELT 289 (Tri.)

(ii) CCE, Vs. Tata Motors Ltd. 2017 (352) ELT 101 (Tri.)

He also submitted that Revenue has challenged the order at serial no. 1 before the Hon'ble Supreme Court but the Revenue's appeal was dismissed. Accordingly, he submitted that the impugned order no merit.

5. The decision of the Tribunal in the case reported at serial no. 2 is reproduced below:-

"5.1 In the case of CCE, Baroda v. Cotspun Ltd. (supra) Apex Court has held as follows in Paragraph 13 :-

"13. The levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. It is only when the correctness of the approval is challenged that an approved classification list ceases to be such."

5.2 It is now a well-accepted legal proposition that department can raise a demand within the prescribed time limit under Section 11A of the Central Excise Act, 1944 even if the order for original assessment or erroneously sanctioned refund is not challenged. On the same analogy and principles of equity appellant can seek refund of duty within the time period specified in Section 11B of the Central Excise Act, 1944. There is no time limit prescribed under the Central Excise Act, 1944 to seek change in classification once approved by the department or accepted by an assessee. The issue of classification of the parts manufactured/cleared by the respondent for the period 15-9-2005 to 30-11-2005 in show cause notice dated 31-1-2006, was alive before the case was adjudicated under OIO dated 28-12-2006 by the Adjudicating Authority. The issue was finally decided in favour of the respondent as a result of Final Order No. A-1547/Kol/07, dated 9-8-2007 for the period 15-9-2005 to 30-11-2005. We are of the considered opinion that a correct classification of appellant's goods for the period 15-9-2005 to 30-11-2005 will be the correct classification for the period prior to 15-9-2005 or after 30-11-2005 so long as there is no change in the relevant CET headings. Before the issue of present show cause notice dated 1-3-2004 respondent was seeking change in the classification of the impugned goods by writing letters to the department. Once department has chosen to demand duty in show cause notice dated 1-3-2004, then respondent had every right to contest that differential duty demand is not payable due to incorrect classification even if duty was paid with interest. We do not find anything wrong in OIA dated 26-9-2007 of the First Appellate Authority to hold the classification of parts cleared by the respondent under CETH 8708 by relying upon Final Order No. A-1547/Kol/2007, dated 9-8-2007 passed by this Bench.

6. It is further observed that ground (iv), taken in the grounds of appeal by the Revenue, is not valid now as order rejecting Revenue's ROM has been finally upheld by Apex Court by dismissing Revenue's appeal. The apprehension of the Revenue in ground - (vi) of the grounds of appeal, that change in classification for the earlier period will tantamount to making re-assessment, is not the correct appreciation of law. As per Rule 2(b) of the Central Excise Rules, 2002 'assessment' includes self-assessment of duty made by the assessee and provisional assessment under Rule 7. At the same time it will also include 'self-assessment'. 'Assessment' or re-assessment is not restricted to only deciding classification of the goods manufactured by an assessee, but will also include deciding the valuation of goods and the rate of duty applicable. It will also include demands/refunds under Section 11A and Section 11B of the Central Excise Act, 1944 arising as a result of scrutiny and finalization of provisional

assessments. The issue of deciding the classification of the respondent's products does not mean that all the procedural requirements of assessment/re-assessment/self-assessments have been changed. The provisions of Section 11B of the Central Excise Act, 1944 will have to be followed and satisfied if re-assessment has to be completed."

6. Inasmuchas, the issue stands decided in favour of assessee by the Apex Court, we find no reason to interfere with the impugned Order which is sustained. The appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open Court.)

Sd/-	Sd/-
(V. PADMANABHAN)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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