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

Ex.Appeal Nos.383/09 & 425/09

(Arising out of Order-in-Original No.23/Commr./2009 dated 30.04.2009 passed by Commr.of Central Excise, Jamshedpur)

M/s Tata Motors Ltd.
M/s Hyva (India) Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & S.Tax, Jamshedpur

Respondent (s)

Appearance:

Shri Ravi Raghavan & Shri Deepro Sen, both Advocates for the Appellant (s)
Shri A. Roy, Supdt. (AR) for the Revenue

CORAM:

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

Date of Hearing : 19.12.2018
Date of Pronouncement : 07.01.2019

ORDER NO.FO/77239-77240/2018

Per Bench :

The present two appeals are filed against the Order-in-Original No.23/Commr./2009 dated 30.04.2009.

2.1 The brief facts of the case are that M/s Tata Motors Ltd. (TML) supplied chassis of motor vehicles to M/s Hyva (India) Pvt. Ltd. (Hyva), for the purpose of fabrication of body thereon. Since the activity of body building has been specified as amounting to manufacture as per Chapter Note 3 to Chapter 87 of the Central Excise Tariff Act, 1985. Hyva were required to pay duty on the motor vehicles on which body is built. For discharging duty, Hyva availed cenvat credit of the duty paid by TML on the chassis. The dispute in this case is regarding valuation of the body built vehicles to be adopted for payment of duty by Hyva. Since Hyva were not selling the motor vehicles, but were dispatching to TML, the value for payment of duty was to be determined by taking recourse to Rule 11 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Hyva determined the value by following the decision of the Hon'ble Supreme Court in the case of Ujagar Prints ETC. ETC. Vs. Union of India & Others reported in 1989 (39) ELT 493 (S.C.).

2.2 The Departmental investigation, into the valuation, concluded that Hyva has failed to include the following elements in arriving at the value for payment of duty :

(i) Automobile cess at the rate of .125% adv. paid by TML on the chassis ;

(ii) Transportation cost of approximate Rs.335/- per chassis involved for modifying the chassis from TML to Hyva ;

(iii) Cost of transit insurance at the rate of approximate Rs.562/- &

(iv) An amount of Rs.10,000/- paid by TML by way of additional BED.

2.3 The differential duty payable was worked out by including the amount as above for the period October, 2003 to 28.02.2007 and demanded from Hyva by issue of show-cause notice dated 11.09.2008. The adjudicating authority finalized the dispute by issue of impugned order, in which he upheld the proposal for demand of differential duty of Rs.64,64,402/- along with applicable interest under Section 11AB. He also imposed penalty of Rs.10 lakhs on Hyva as well as TML. This order has been challenged by both the parties involved.

3. Heard Shri Ravi Raghavan and Shri Deepro Sen, Advocates for the Appellants as well as Shri A.Roy, ld.D.R. for the Revenue.

4. The demand for differential duty as well as imposition of penalty have been challenged on the following main grounds :

(i) Excise duty has been correctly discharged on the body built chassis. The valuation has been arrived on the basis of Section 4(1)(b) read with Rule 6 of the Valuation Rules. Hyva has followed the decision of the Hon'ble Apex Court in the case of Ujagar Prints (supra). The Apex Court held in that case, in the context of processing of fabrics of job work basis, that the assessable value of the processed fabric would be the value of the grey cloth in the hands of the processor plus the value of the job work done plus manufacturing profit and expenses. On these lines, Hyva has adopted the assessable value on the chassis cleared to TML in their invoices.

(ii) In terms of the decision of the Ujagar Prints case, Hyva was required to take the value of the chassis and there was no need to add the transport cost and transit insurance for payment of duty. The adjudicating authority has erred in concluding that Hyva should adopt the landed cost of the chassis by including transport cost and transit insurance.

(iii) He relied upon the decision in the case of Eicher Motors Ltd. Vs. Commissioner of Central Excise, Indore reported in 2008 (228) ELT 43 (Tri.-LB).

(iv) The ld.Advocate also submitted that there was no mandate to include the element of Central Excise duty paid on the chassis since this is availed as cenvat credit by job worker. He submitted that an amount of Rs.10,000/- proposed to be added by the adjudicating authority is nothing but additional BED, which is paid on the chassis by TML and availed by Hyva as cenvat credit along with 16% Adv. BED. The above proposition has been categorically decided by the Hon'ble Supreme Court in the case of Collector of Central Excise, Pune Vs. Dai Ichi Karkaria Ltd. reported in 1999 (112) ELT 353 (S.C.).

(v) Regarding penalty imposed on TML, he submitted that this has been imposed under Rule 26 of the Central Excise Rules, 2002, which empowers the adjudicating authority to impose penalty only on natural person and not a company, as has been held by the Larger Bench of the Tribunal in the case of Steel Tubes of India Ltd. Vs. Commissioner of Central Excise, Indore reported in 2007 (217) ELT 506 (Tri.-LB).

(vi) He also raised the ground of time bar.

5. The ld.D.R. justified the impugned order. His submissions are summarized below :

(i) The Apex Court in the case of Ujagar Prints (supra) has held that the value of the raw material in the hands of job worker needs to be taken. The value of the chassis in the hands of Hyva has to be arrived at on the basis of landed cost as held by the adjudicating authority. This includes addition of transport cost as well as transit insurance. This view also finds support in the Tribunal's decision in the case of Goel Ispat Ltd. Vs. Commissioner of Central Excise, Puducherry reported in 2017 (6) GSTL 210 (Tri.-Chennai). He added that even if the transport charges and transit insurance charges are borne by TML, the same is required to be added by Hyva.

(ii) Regarding the amount of Rs.10,000/- proposed to be added by the adjudicating authority, he submitted that the adjudicating authority has proposed such addition after taking note of the decision of the Hon'ble Supreme Court in the case of Dai Ichi Karkaria Ltd. (supra). He submitted that even though Rs.10,000/- has been availed as cenvat credit by Hyva, the amount is required to be added to the value because it is in the form of discount extended by Hyva to the body built price.

(iii) He also relied on the decision of the Tribunal in the case of Sri Sundaraganapathy Spinning Mills Pvt. Ltd. Vs. Commissioner of Central Excise, Salem reported in 2017 (357) ELT 989 (Tri.-Chennai).

6. Heard both sides and perused the records.

7. The dispute in the present case is regarding the value to be adopted by Hyva for payment of duty on the motor vehicles manufactured by them by body building on the duty paid chassis supplied by TML. Hyva has arrived at such value by following Ujagar Prints' case decided by the Hon'ble Supreme Court. The Hon'ble Supreme Court in the above case held that duty is required to be paid

by job worker on an assessable value, which would be the value of the grey cloth in the hands of the processor plus the value of job work done plus manufacturing profit and manufacturing expenses. Hyva has adopted the assessable value of chassis reckoned by TML for paying duty on the chassis. To this account, they have added the body building charges and paid the duty. The Department is of the view that the value of raw material i.e. chassis in the hands of Hyva, not only includes the assessable value of the chassis (in the hands of TML), but also transport cost and transit insurance (incurred by TML) to deliver such chassis in the premises of Hyva. The Department has proposed certain other additions, which will be discussed in the succeeding paragraphs.

8. Proposal for adding transport cost and transit insurance is strongly resisted by the appellant with the argument that the Apex Court has directed only the value of raw material to be taken, which is nothing but the assessable value of the chassis adopted by TML

9. After careful consideration the facts and the decision of the Apex Court, we are of the firm opinion that what has to be considered is the value of the raw material in the hands of the processor. This cannot be equated with the assessable value adopted by TML for paying duty on the chassis. It is well settled that for the purpose of arriving at the assessable value at the job worker's end, the cost of transportation and the transit insurance will need to be added so as to arrive at the value in the hands of the job worker.

10. We also note that this is one of the issue considered and decided by Chennai Bench of the Tribunal in the case of Goyal Ispat Ltd. (supra). The Tribunal has observed as under :

> *"**11.** Demand with respect to non-inclusion of cost of transportation of raw materials in the assessable value : It is not disputed that as per the "Conversion Agreement" entered into between KSL and GIL, it was agreed upon that appellants shall arrange for transport and bear all transport charges, loading charges and all other incidental charges in connection with lifting of raw material from principal factory". It is well settled that for the purpose of arriving at assessable value at the job worker's end, cost of transportation of raw material between the principal and the job worker shall form a component for the purpose of arriving at the cost of raw materials. This requirement was reiterated by the CBEC Circular No. 643/34/2002-CX., dated 1-7-2002 which inter alia clarified that cost of transporting raw materials/inputs to the premises of job work will also be added to determine the cost of raw material/input. The relevant portion of the circular is reproduced below :*

Sl. No.	***Points of doubt***	***Clarification***
11.	*How will valuation be done in cases of job work?*	*Please also refer to Board's Circular No. 619/10/2002-CX, dated 19-2-2002*

		Cost of transporting the raw materials/inputs to the premises of the job-worker will also be added to determine the cost of the raw material/input. *[1997 (071) ECR 381 (TRIB)]*

GIL have contended that upto 2003-04, they were incurring cost of transportation of ingots and that the conversion charges collected by them included the element of cost of transportation; that from 2003-04, cost of transportation was incurred by KSL and the same was included in the cost of raw material; therefore for both these periods, there was no need to show and include the cost of transportation again separately. However, no proof or evidence has been adduced by the appellants to support such a contention. On the other hand, during investigation, documents like lorry receipts, extracts of ledger accounts pertaining to freight amount in respect of transportation of MS ingots from KSL to the appellants were obtained by department and these documents revealed that an uniform amount of Rs. 120 per MT was being claimed by the transporters engaged by the principals, (KSL) for transport of ingots to appellants from 2003-04 onwards and the freight charges were all paid by KSL. Adjudicating

Authority has correctly observed that irrespective of the fact that whichever party incurred the cost of transportation, the said cost has to be taken into account for the purpose of arriving at the cost of raw materials. He has also pertinently highlighted the fact that cost of transportation has been dealt with separately in the agreement and that invoices issued by KSL contain only the assessable value and other taxes but do not show any transportation charges. In the event, we are of the considered *opinion that there is no cause for interfering with the demand of differential duty in respect of non-inclusion of transportation charges in the impugned order."*

By following the above decision, we conclude that the transport cost as well as transit insurance are required to be added for payment of duty by Hyva.

11. The further question for decision in this case is whether it is required to add cess at the rate of .125% as well as an amount of Rs.10,000/- as has been done by the adjudicating authority. The Hon'ble Supreme Court in the case of Dai Ichi Karkaria Ltd. (supra), has held that the cost of production of excisable product cannot include the element of duty paid on the raw material, but availed as modvat credit by the manufacturer. In this case, the automobile cess paid at the rate of .125% by TML is not availed as cenvat credit by Hyva and hence the same is required to be added to the value by Hyva.

12. Next we turn to question whether the amount of Rs.10,000/- paid by TML as additional BED on the chassis is required to be added. There is no dispute that the amount of Rs.10,000/- has been availed as cenvat credit by Hyva. However, the adjudicating authority has still included this amount in the value with the findings that Hyva has extended a discount of Rs.10,000/- on the body built price.

In the circumstances, since there is no dispute that Hyva has availed additional BED of Rs.10,000/- as cenvat credit, there is no justification for addition of the same in the light of the Apex Court's decision cited above.

13. Hyva has raised the question of time bar and submitted that the demand cannot be enforced by involving the extended period of time limit. The Adjudicating Authority has not given any specific reason for coming to such conclusion other than a blank observation that the assessee short paid duty by way of suppression of valuation as well as suppression of facts of non-receipt of amount equal to additional BED at specific rate. It was very much within the knowledge of the Department that Hyva has carried out body building for TML and the manufactured vehicles were being paid duty in terms of Valuation Rules. Consequently, we find that invoking the suppression clause is without basis. Consequently, the demand for differential duty is to be restricted to normal time limit.

14. In view of the above discussion, we uphold the portion of the impugned order loading the assessable value with transport cost, transit insurance as well as automobile cess. However, we set aside the portion of the order for loading the assessable value with Rs.10,000/- . The demand will be restricted to normal time limit.

15. In the circumstances of the present case, we find no justification for imposition of penalty either on TML or on Hyva.

16. In the result, the appeal is partly allowed.

(Pronounced in the open court on 07.01.2019)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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