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

Appeal No. E/104/2009

Arising out of Order-in-Original No. 48-49/Commissioner/08 dated 26.12.2008 passed by the Commissioner of Central Excise, Jamshedpur.

M/s Tata Motors Ltd.

….Appellant(s)

Vs.

Commissioner of Central Excise, Jamshedpur

….Respondent(s)

Appearance:
Shri Ravi Raghavan, Advocate & Shri D. Sen, Advocate for the Appellant (s)
Shri K. Choudhari, Suptd. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 19.07.2018

ORDER No. FO/A/77256/2018

Per Bench:

The present appeal has been filed by the appellant against Order-in-Original No. 48-49/Commissioner/08 dated 26.12.2008. The Commissioner by the impugned order has confirmed duty demand of Rs.9,22,69,893/- alongwith interest and imposed equal amount of penalty under Section 11AC and a further penalty of Rs.2 crore under rule 25. The demand has been confirmed for the period from November 2003 to March 2008.

2. The issue relates to the valuation of chassis of commercial vehicles cleared by the appellant to body builders. The Commissioner by the impugned order has confirmed the demand on the ground that

the deduction of the discount from the Ex-Factory Dealer Net Price is not admissible for arriving at the value of the chassis cleared to the body builder. The Commissioner has further held that since the discount is not passed on to the body builders, the valuation of the goods cannot be on the basis of comparable price.

3. The Ld. Counsel for the appellant submits that in the present case, apart from sale of the chassis to independent buyers, the Appellant was also dispatching some quantity of the chassis to its body builders after payment of excise duty. It is submitted that since the sale price of the chassis to independent buyers (net of discount) was available and satisfied all the requirements of Section 4(1)(a) of the Central Excise Act, 1944, the same price was adopted for valuing the chassis cleared to the body builders. In support of the above contention reliance was placed on the following judgments.

(i) Ispat Industries Vs. Commissioner of Central Excsie, 2007 (209) ELT 185 (Tri-LB.).
(ii) Bhushan Power & Steel Ltd. Vs. Commissioner of Central Excise, Kolkata-IV 2018 (359) ELT 598 (Tri.-Kolkata).
(iii)Commissioner of Central Excise Vs. Sterlite Optical Technologies Ltd. 2018 (359) ELT 723 (Tri.-Mumbai)
(iV) Ferro Alloys Corporation Ltd. Vs. Commissioner of Central Excise, Bhubaneswar-I 2013 (294) ELT 440 (Tri.-Kolkata).
(v) Commissioner of Central Excise, Chandigarh Vs. Bharti Telecom Ltd. 2008 (226) ELT 3 (S. C.)
(vi) Indian Oxygen Ltd. Vs. Collector of Central Excise 1988 (36) ELT 723 (S.C.).

It was further submitted that the case of the department was that the Appellant was liable to pay Excuse duty in terms of Section 4(1)(b) read with Rule 7 or Rule 8 of the Central Excise Valuation Rules, 2000. However, the Show Cause Notices which have been adjudicated by the impugned order has demanded duty on the amount of discounts claimed as deduction in the price charged to the independent buyers. It was therefore, the submission of the appellant, that the demand is legally untenable and was liable to be set aside. It was further submitted that the valuation under Section 4(1)(b) read with rule 7 of Rule 8 cannot be adopted in the instant case.

The Ld. Counsel further submits that the contention of the department that since the discount was not passed on to the body builder, the deduction of the same will not be allowed, cannot be accepted in view of the judgment in the case of Havells India Limited Vs. Commissioner of Central Excise, LTU, Delhi 2017 (357) ELT 407 (Tri.-Del.) wherein it has been held that any discounts which are part of the agreement of sale will need to be granted even if such discounts are not passed on.

The appellant further submits that the substantial part of the demand in the 1st Show Cause Notice is time barred as all the relevant facts were known to the department.

4. The Ld. Authorized Representative for the department reiterated the findings given in the impugned order and submitted that the case laws relied by the appellant are not applicable to the facts of the present case.

5. We have considered the submissions made by both sides and perused the appeal records.

6. The dispute in the present case relates to the valuation of chassis of commercial vehicles cleared by the appellant to body builders. The appellant has adopted the comparable price of the same goods sold to independent customers which is net of discount. The department however contends that the deduction of the discount from the Ex-Factory Dealer Net Price is not admissible for arriving at the value of the chassis cleared to the body builder as there is no sale of the chassis to the body builder. In the present case there is no dispute regarding the value adopted by the appellant for the sale of the chassis to independent customers. It is noticed that for such sales, the appellant has adopted the value net of discount. The price so adopted and on which duty was paid, satisfied all the requirements of Section 4(1)(a). The appellant has adopted the same price for clearances of the chassis to the body builders.

7. In our considered view, once the sale price of the chassis to independent buyers (net of discount) was available and satisfied all the requirements of Section 4(1)(a) of the Central Excise Act, 1944, the

same price can be adopted for valuing the chassis cleared to the body builders. The Larger bench of this Tribunal in the case of Ispat Industries Vs. Commissioner of Central Excise 2007 (209) ELT 185 (Tri.-LB) has held that when sale price to independent customer is available, the same price can be adopted for valuation of the goods stock transferred.

8. We also note that the Hon'ble Supreme Court in the following decisions has held that once comparable price of the similar goods to unrelated buyer is available the same can be adopted for valuation of the goods cleared for captive use.

> (i) Commissioner of Central Excise, Chandigarh Vs. Bharti Telecom Ltd. 2008 (226) ELT 3 (S.C.).
> (ii) Commissioner of Central Excise, Thane Vs. Essel Propack Ltd. 2016 (338) ELT 162 (SC.)

A similar view has also been taken in the following decisions.

> Bhusan Power & Steel Ltd. Vs. Commissioner of Central Excise, Kolkata-IV 2018 (359) ELT 598 (Tri.-Kolkata).
> Commissioner of Central Excise, Vs. Sterlite Optical Technologies Ltd. 2018 (359) ELT 723) (Tri.-Mumbai).
> Ferro Alloys Corporation Ltd. Vs. Commissioner of Central Excise, Bhubaneswar-I 2013 (294) ELT 440 (Tri.-Kolkata).

9. In view of the above decisions and also the fact that there is no dispute in the price charged to independent buyers, the adoption of the comparable price for clearance to the body builders was in accordance with law.

10. the finding of the Commissioner that since the discount has not been passed on to the body builder hence deduction thereof cannot be claimed is also contrary to the decisions of this Tribunal in the case of Havells India Limited Vs. Commissioner of Central Excise, LTU, Delhi 2017 (357) E.L.T. 407 (Tri.-Del) wherein it has been held that any discounts which are part of the agreement of sale will have to be granted even if such discounts are not passed on. The relevant paragraph of the decision the Tribunal is extracted below:-

> "***8.*** *transaction value has The normal been defined as the transaction value at which the greatest aggregate quantity of goods are sold. The learned Commissioner in the impugned order has interpreted these provisions to mean that the appellants were*

> *required to pay duty on the goods cleared from their factory to their depot on normal transaction value referred above. Since at the time of initial clearance of goods from their depot, the appellants had not given any discount to their buyers, the deduction on account of various discounts is not applicable. The stand taken by the 1st appellate authority is clearly erroneous. The benefit of deduction of all types of discounts from the value will be available as long as the price and the discounts are known before clearance of goods from the factory. In the present case there is no dispute that the fact that various types of discounts are being allowed is very well-known. The fact that the discounts are being given is known but the quantum is not determinable at the time of clearance of goods from the factory. This is the main reason why provisional assessments have been resorted to. We also see that this issue is fairly well settled through various decisions of the Tribunal, Hon'ble High Courts and even the Apex Court. The Apex Court in the Purolator case (supra) has held that duty needs to be charged at the transaction value which was the agreed contractual price. Any discounts which are part of the agreement of sale will need to be granted even if such discounts are not passed on. The various other decisions cited by the appellant in their favour have clearly held that the discounts are allowable on the normal transaction value from the place of removal. In the present case the place of removal is not the factory gate but the depot of the appellant. Under such circumstances the discounts allowed in the price contracted for sale from the depot would be allowable as a deduction from such price.*

11. In view of the above decision of the Tribunal the finding of the Commissioner that the benefit of discount is not to be allowed is legally unsustainable.

12. We also observe that on perusal of the Show Cause Notices, the department itself is not clear on which provision to apply. The Show Cause Notices propose to demand duty by applying the provisions of Rule 7 or 8 of the Valuation Rules. However, the demand proposed in

the notice and confirmed by the impugned order is on totally different grounds i. e. by taking into account the amounts of discounts and demanding duty thereon. The provision of Rule 7 or 8 of the Central Excise Valuation Rules does not empower the department to determine duty liability in this manner. Thus, the entire case made out by the department, in our view, is totally erroneous and does not have the support of any provisions of law.

13. In view of the foregoing findings and the decisions relied on by the appellant, we find merit in the appeal filed by the appellant. The impugned order is therefore set aside and the appeal filed by the appellant is allowed with consequential relief, if any. Since we are allowing the appeal on merits we are not going into the issue of limitation raised by the appellant.

(Dictated and pronounced in the open court.)

(Bijay Kumar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.