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

Excise Appeal No. 50 of2009

Arising out of Order-in-Original No. 02/Commissioner/09 dated 05/01/2009 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur.

M/s.H.V.Axles Limited
(C/o Tata Motors,
Jamshedpur-831010)

….Appellant (s)

Vs.

Commissioner of Central Excise, Jamshedpur
(143, New Baradwari Sakchi,
Jamshedpur-831001.)

….Respondent (s)

Appearance:
Shri Ravi Raghavan, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI C.J.MATHEWS, MEMBER (TECHNICAL)

Date of Hearing:-26 September 2019
Date of Decision:- 26 September 2019

FINAL ORDER No. 76467/2019

P.K.Choudhary :

The present appeal has been filed against the Order-in-Original No. 02/Commissioner/09 dated 05.01.2009 of the Commissioner of Central Excise, Jamshedpur wherein the learned Commissioner has confirmed the demand of Rs.8,01,81,838/- under Section 11A(2) of the Central Excise Act, 1944 along with interest for the period from April 2003 to March 2008. Equivalent penalty of Rs.8,01,81,838/- was also imposed under Section 11AC of the Central Excise Act, 1944 along with penalty of Rs.1 crore under Rule 25 of the Central Excise Rules, 2002.

2. Initially this Tribunal vide order dated 15.06.2009 had directed for pre-deposit of 50% of the duty. Aggrieved, the respondent preferred a writ petition before the Hon'ble Calcutta High Court vide WP 1105 of 2009. The Hon'ble High Court vide order dated 06.01.2014 set aside the order of the Tribunal and remanded the matter with a direction to decide the question of pre-deposit afresh. The department preferred an appeal before the Hon'ble Division Bench of the High Court against the Order dated 06.01.2014 vide APOT 349 of 2014.

3. The division bench of the Hon'ble High Court vide order dated 16.11.2018 affirmed the order of the single bench.

4. We find that in the previous stay order of the Tribunal, the only factor which was examined was whether there was any undue hardship which has subsequently been set aside by the Hon'ble High Court. In this background and considering that the appeal has been pending for a considerable period of time, we dispose the Stay Application being No. 59 of 2009 dispensing with the requirement of pre-deposit and proceed to take up the appeal with the consent of both the sides.

5. Tata Motors Ltd. (TML) supplies the various raw materials to the Appellants which are used by the Appellants for manufacture of axles which are supplied back to TML. The factory of the Appellants is situated within the factory premises of TML, Jamshedpur.

6. The appellants are discharging excise duty on the axles on the basis of cost of raw materials plus processing charges. In addition,

15% of this amount was also added as provided in Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods), Rules, 2000.

7. The excise duty paid by the Appellants on the axles was availed as credit by TML and adjusted by TML towards the excise duty on the motor vehicles since the axles were used by them in or in relation to the manufacture of the motor vehicles. The vehicles were cleared by TML on payment of excise duty including the value of the axles supplied by the appellants which is many times more than excise duty on axles.

8. 1.9% of the invoice amount is paid as finance charges/bill discounting charges to its bank by TML when it purchases the raw material. Thus, vendors of TML are able to obtain immediate payment for supplies made to TML, due to bill discounting facility extended by banks to TML. Therefore, vendors of TML give discount to TML in their sale price to TML to the extent of 1.9%. The transaction value of the inputs were determined by reducing 1.9% from the price of the inputs which was payable by the said assessee to the bank.

9. The department proceeded to issue a Show Cause Notice on the premise that while considering the value of raw material supplied by TML to the Appellants, for computing the value of axles manufactured by the appellants, this amount of 1.9% paid by TML to its bank was not added to the cost f the material in the cost of production. The Show Cause Notice proposed to raise a demand of Rs. 8,01,81,838/- along with interest and equivalent penalty for the period from April 2003 to March 2008. The Ld. Commissioner of Central Excise,

Jamshedpur, confirmed the demand proposed in the Show Cause Notice.

10. Shri Ravi Raghavan, Ld. Advocate for the Appellants submitted that for various assessees, such bill discounting has been held to be in the nature of interest payable by M/s Tata Motors to their bankers. Reliance in this regard was placed on the following decisions.

(i) India Pistons Ltd. Vs. Commissioner 2007 (218) ELT 451 (Tri)
(ii) Commissioner of Central Excise, Chennai Vs. wheels India Ltd. 2009 (244) ELT 602 (Tri)

It was submitted that when such an amount is held to be in the nature of interest/finance charges the same is not includible in the cost of the raw material used and assessable value of goods supplied by the appellant. It was submitted that as per CAS-4, "interest being a financial charge shall not be considered to be a part of the cost of production".

11. Reliance was also placed on the decision of the Tribunal in the case of Nirma Ltd. Vs. CCE-2006 (200) ELT 213. In the above case, it has been expressly held that the financial charges are not to form part of the cost of production.

12. It was further submitted that the said charges of 1.9% paid by TML to their bankers as interest was not includible in the assessable value of the goods (raw material) supplied by the suppliers to TML. On the same reasoning, the value of the raw material supplied by TML for job work in the hands of the appellant will also not include discount of this 1.9%. Hence, it was contended that the case made out by the department to include this amount of 1.9% in the value of the axles cleared by reworking the cost of production is erroneous.

13. The learned Advocate drew the attention of the bench to an order passed by the same Commissioner wherein he had dropped the demand for a similarly placed assessee namely, M/s JMT Auto.

14. It was also submitted that the demand is time barred in as much as the figures were extracted from the balance sheet of the appellant which was otherwise available to the department.

15. The learned Authorized Representative reiterated the findings in the impugned order and argued at length.

16. Heard both sides and perused the appeal records.

17. We find that in the case of India Pistons Ltd. Vs. Commissioner of Central Excise, Chennai (supra) the Tribunal while considering a similar issue in the context of inclusion of 1.9% discount in the value of the raw material supplied to TML held as under:-

> *"2. After examining the records and hearing both sides, we have found that, under the BMS arrangement, the assessees supplied their products to M/s TELCO Ltd. at discounted price to be paid by the latter immediately upon receipt of the goods. This discount [1.9%] was separately mentioned in the relevant invoices, under cover of which the goods were supplied Upon receipt of the goods being acknowledged by the buyer, the appellants would present the invoices to the bankers of the buyers and receive payments for the goods. This normally happens within 48 hours of receipt o the goods by M/s TELCO Ltd. the financial arrangement between M/s TELCO Ltd. and their bankers (HDFC) Ltd.) was that the former would pay interest to the bank for any delay of remittances of money by them to the bank. The arrangement was for payment of such interest @ 1.9%. The assessees were not privy to the agreement between their buyer and the bank. What they received from their buyer was only the discounted price of the goods. The question which*

arises for consideration is whether the interest paid by the buyer to their bankers under the financial arrangement between them, which the assessees had nothing to do with, requires to be included in the assessable value of the goods. We have noticed two Circulars of the Board being No. 354/81/2000-TRU, dated 30.06.2000 and No. 643/34/2002-CX, dated 01.07.2002, which clarified the point. Accordingly, the net price of the goods, after cash discount allowed by the seller to the buyer in a case of immediate of reasonably prompt payment of sale price by the latter, must be accepted as the assessable value of the goods inasmuch as such price is covered under the definition of 'normal/transaction value'.

3. Learned SDR submitted that the so-called BMS arrangement was nothing but "bill discounting" i.e., deduction made by the bank for premature encashment of assessee's bills. It was submitted that such amounts were not deductible from the assessable value as held by the Tribunal in the case of Zenith Ltd. Vs. Commissioner of Central Excise, Aurangabad Order Nos. 397 & 398/93A dated 20.08.1993. It was also pointed out that the above decision of the Tribunal had been upheld by the Supreme Court vide 1997 (93) ELT. A71 (S.C.). We wanted to see the full text of the Tribunal's Order Nos. 397 & 398/93A ibid. and accordingly directed the SDR to produce the same within 7 days [from the date of hearing]. The DR has not produced any copy of the order. What appears from the brief report on the Supreme Court's decision is that there was an arrangement between the assessee [M/s zenith Ltd.] and their bankers, which had nothing to do with the transaction between the former and their buyer. The facts of the present case are altogether different inasmuch as the assessees had nothing to do with the financial arrangement between their buyer and HDFC Bank. They were only concerned with prompt payment of the sale price of the goods supplied by them to M/s TELCO Ltd. They did not mind who paid it. The buyer's bankers paid the money within 48 hours *from the time of delivery of the goods to them by the assessees. There ends the transaction between the assessees and their buyer. If the buyer delays remittance to their bankers under the above scheme, it was for them to pay interest on the moneys. This was precisely what was done by M/s TELCO Ltd. and their bankers did not confer any monetary benefit on the assessees. Presumably, it was in similar circumstances that the Board clarified the point in the respective circulars.*

4. Shri Ravi Raghavan, Counsel for some of the appellants also referred to Order-in-Appeal No. 56/2005 (M-II), dated 25.10.2005 passed by the Commissioner of Central Excise (Appeals), Chennai, wherein the appellate authority, on a similar set of facts, took the view that the interest received from the buyer of the goods by their bankers was not to be included in the assessable value of the goods purchased by them from the assessee. We note, with appreciation, that the Learned Commissioner (Appeals)'s view point on the contentions issue is prominent. The DR has not claimed that the above order-in-appeal did not attain finality.

5. For the reasons already recorded, we set aside the impugned orders and allow these appeals."

18. It is also brought to our notice that vide Order No. 12-45/Commissioner/08 dated 30.09.2008 the same Commissioner of Central Excise, Jamshedpur in the case of JMT Auto Ltd. took the same view as taken by the Tribunal in the case of India Piston (Supra). In the present case, para 3 of the Show Cause Notice issued to the Appellants proceeds on the basis that the transaction value of the raw materials/inputs should be inclusive of 1.9% discount and therefore, the assessable value of the Axles should be re-determined. When the Commissioner dropped the proceedings initiated against the

manufacturer of raw material received by the petitioners, on the very same issue of determination of assessable value of such raw material, the present proceedings initiated against the Appellants on the basis that the value of raw material should be enhanced by the very same discount of 1.9% cannot be confirmed. On specific enquiry from the bench the Ld. D. R. failed to substantiate why the said charges would be added to the assessable value of the Appellant when no such additions could be made at the supplier's end.

19. We further find that the demand is barred by limitation inasmuch as the figures were extracted from the balance sheet of the Appellant which was publicly available. It is also to be noted that the entire exercise was revenue neutral inasmuch the differential duty if any, payable, was available as CENVAT Credit to TML. Therefore, there is no question of any suppression with an intent to evade payment of duty. Consequently, the extended period of limitation has been erroneously invoked.

We set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court.)

Sd/-
(C.J.Mathews)
Member (Technical)

sd/-
(P. K. Choudhary)
Member (Judicial))

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