

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

Excise Appeal No. 120 of 2010

(Arising out of Order-in-Original No. 45/COMMISSIONER/09 dated 30.11.2009 passed by Commissioner of Central Excise, Jamshedpur.)

M/s Tata Motors Limited,

Mr. Dhanu Kumar DM (Finance)
Finance Division Tata Motors Limited
Jamshedpur-831010

...Appellant (s)

VERSUS

Commissioner of Central Excise, Jamshedpur.

143, New Baradwari Sakchi, Jamshedpur-

..Respondent(s)

APPEARANCE :

Shri Shovit Betal, Advocates for the Appellant
Shri M. Ranjan, Spl. Counsel, for the Respondent

CORAM:

**HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

FINAL ORDER No...77313/2023

DATE OF HEARING : 18.09.2023

DATE OF PRONOUNCEMENT: 16.10.2023

PER K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Original dated 30.11.2009, passed by Commissioner of Central Excise Jamshedpur, wherein he has confirmed Central Excise duty amounting to Rs. Rs. 21,27,34,334/- along with interest and equivalent penalty. Aggrieved against the impugned order, the Appellant, M/s Tata Motors Ltd. has filed this appeal.

2. Briefly stated facts of the case are that engaged in manufacturing chassis of commercial motor vehicles in their Jamshedpur factory. Such chassis, apart from being sold to independent customers from the factory gate, is also supplied to independent body builders for building body thereon, in the premises of the job-worker. The body-built vehicle

Excise Appeal No. 120 of 2010

is thereafter supplied by the body builder to the Regional Sales Offices(RSOs) of the Appellant for sale to customers .

3. During the period September 2003 to February 2007, the Appellant followed the following procedure in respect of chassis dispatched to independent body builders:

- a. They paid excise duty on the chassis cleared to the body builders under Rule 4 of the Valuation Rules, applying the sale price of such chassis cleared to unrelated customers at factory gate.
- b. Body builders build the body on the chassis provided by the Appellant and cleared the body-built vehicles to the designated RSOs on payment of excise duty on the composite value (cost of chassis + job-work charges for body building activity) after availing CENVAT credit on all inputs and input services (including the excise duty paid on chassis by the Appellant).
- c. The designated RSOs sell the body-built vehicles to the final customers of the Appellant.

4. The purchase order issued by the Appellant on the body builders comprised of the following relevant terms & conditions:

- a. The body builder will hold the chassis in trust for the Appellant and will use it only to manufacture body-built vehicles. The property in chassis would always vest in the Appellant.
- b. The body will be built on the chassis based on the Appellant's specifications and Appellant has the right to inspect the quality of the body-built vehicle prior to taking delivery.
- c. The body-built vehicle would be dispatched to the Appellant's RSO as per the intimation of the Appellant.
- d. The Appellant has paid excise duty on the chassis and the body builder ought to avail CENVAT Credit thereof for payment of excise duty.
- e. In the absence of any sale, chassis will be provided on non-billable basis, and hence, no sales tax would be payable.

5. A SCN dated 01.10.2008 was issued on the Appellant, proposing to demand differential excise duty Rs. 21,27,34,334/- along with interest and equivalent penalty, by adopting the final price at which the body-built vehicle is sold by the Appellant from RSOs as assessable value, on the following basis:

Excise Appeal No. 120 of 2010

- a. Excise duty was not discharged in a correct manner because chassis were merely removed for undertaking processing thereon and were not sold to the body builders.
- b. The price charged by body builders was job work charges and not the price of the body-built vehicle.
- c. In the case of supply of body-built vehicles, transaction value should be the price charged by RSO from the buyers.

6. The Commissioner Jamshedpur decided the issue vide the impugned OIO dated 30.11.2009, wherein he confirmed the demand of excise duty along with interest and equal amount of duty as penalty on the Appellant, on the following grounds:

- a. RSOs qualify as place of removal for chassis as well as body-built vehicles.
- b. Body builders are merely job-workers fabricating the body and the Appellant does not sell the chassis to the body builders. Further, even the body builders do not sell the body-built vehicle to the RSOs.
- c. Excise duty has direct nexus with sale. As per Section 4(1)(a) of the Central Excise Act, 1944 ('**CEA, 1944**') duty is levied on the price of goods when sold to independent buyers at the place of removal.
- d. As per Section 4(3)(c)(iii) of the CEA, 1944, RSO is the place of removal of the body-built vehicles since such vehicles are sold from the RSO for the first time. Hence, the price charged at such a depot is the transaction value for the purpose of excise duty.

7. Aggrieved against the impugned order, the Appellant filed the instant appeal wherein they have made the following submissions:

- (i) They have supplied chassis to various body builders/ job-workers (without transfer of property therein) on payment of duty on the basis of sale price on chassis to independent customer (Rule 4 of the Valuation Rules)
- (ii) The body-builders built the body of the vehicles over the chassis and supply the fully built vehicle to the RSOs on payment of duty on landed cost of chassis plus body-building charges as per Rule 6 of the Valuation Rules and in line with the Hon'ble Supreme Court judgment in the case of **Ujagar Prints Ltd., 1989 (39) E.L.T. 493 (S.C.)**
- (iii) The vehicles were sold to the customers from the RSOs.
- (iv) The activity of building body on the chassis amounts to the manufacture of motor vehicles, in terms of the Chapter Note 5 of

Chapter 87 of the Central Excise Tariff Act. On this reason only the body builder was paying excise duty at the time of clearance of body-built vehicle to the RSO.

(v) The Show Cause Notice does not dispute the fact that the activity of body-building has been carried out by the body builder. It is an admitted fact that the body builders were carrying out the body building process in their own premises out of their own materials for the purpose of mounting the body on the chassis supplied by the Appellant. The built-up vehicle is only subjected to the post-manufacturing inspection for determination of quality thereof, prior to accepting delivery *as evident from the terms of Purchase Order*.

(vi) The only basis for raising the demand on the Appellant in the present proceeding is that the ownership of the chassis was never transferred by the Appellant to the body builder and the body builder could never sell the built-up vehicle to the Appellant. Accordingly, the impugned order held that the Appellant continued to be the owner of the goods throughout till it was sold from RSO, and the excise duty is to be paid only on the sale price of vehicle by the RSO, which is the transaction value. In the absence of sale of chassis to body builder and body-built vehicle by the body builder, the excise duty can only be levied at the point when the fully built vehicle is finally sold from Appellant's RSOs, since excise duty has direct nexus with sale.

(vii) The above observations in the impugned order are in direct conflict with the provisions:

- of Section 3 of the Excise Act, read with Rule 4 of the Excise Rules - which provides that the duty is payable on removal of goods from factory and not sale.
- of Section 4(1)(b) of the Excise Act - which provide for valuation of goods cleared from the factory other than by way of sales.

(viii) it is a settled law that in the case of job-work transaction, the job-worker is the manufacturer and not the raw-material supplier. In the Appellant own case, viz. **Tata Engineering and Locomotive Company Ltd. v. UOI, reported at 1988 (35) ELT 617 (Pat.)**, the Hon'ble Patna High Court held that the Appellant who merely supplies the chassis to body-builder and receives the body-built vehicle from the

body-builder, is not the manufacturer of the body-built vehicle, even though the Appellant supervises the quality of such body-built vehicles before clearance by body-builder. The Hon'ble High Court held the body builders only to be the actual manufacturers. This judgment has been affirmed by the Hon'ble Apex Court and reported at **1997 (94) E.L.T. A128 (S.C)** and has been followed in other cases of the Appellant's job-workers to hold the same, viz.:

- **Swaraj Mazda Ltd. v. CCE, Chandigarh, 2000 (125) ELT 959 (Tribunal); and**
- **Automobile Corporation of Goa Ltd. v. CCE, Goa, 2013 (31) S.T.R. 496 (Tri. – Mumbai)**

(ix) It has been held in the aforesaid judgments that the ownership of raw material or finished goods and non-sale thereof at the time of clearance from factory, are not relevant to determine the excise duty liability. The taxable event is 'manufacture' and the liability to pay excise duty is on the person, who has actually carried out that process, viz. manufacturer.

(x) Thus, the Appellant cannot be said to be the manufacturer in the instant case and no excise duty on the body-built vehicle can be fastened on it.

(xi) In this regard, the Appellant placed their reliance in the case of the Hon'ble Supreme Court in **CCE, Baroda v. M.M. Khambatwala, 1996 (84) E.L.T. 161 (S.C.)** wherein the house-hold ladies preparing agarbatti, amlapodi and dhup etc. in their own premises from the raw-material supplied by the assessee, who paid them wages for such activity, were held to be manufacturer and not the assessee therein. Relying on the same, the CESTAT, Mumbai in the case of **AFL Pvt. Ltd. v. CCE, Mumbai, II, 2013 (295) E.L.T. 211 (Tri. – Mumbai)**, wherein the job-workers were manufacturing the goods (barges and tugs) at the premises hired by the raw-material supplier from its own equipment, held that the raw-material supplier did supervisory quality checks only. Accordingly, it was held that it was the job-worker who was the manufacturer and not the raw-material supplier and the demand of duty on the raw-material supplier. The facts of the present

case are on better footing from this case and thus, the ratio thereof, is fully applicable.

(xii) Similar proposition has been upheld in the following cases:

- **Ispat Profiles India Ltd. v. CCE, Pune, 2018 (363) E.L.T. 900 (Tri. - Mumbai)**
- **CCE, Indore v. Gwalior Chemicals Ind. Ltd., 2004 (172) E.L.T. 186 (Tri. - Del.)**
- **C.M. Deshpande v. CCE, Mumbai-V, 2017 (346) E.L.T. 283 (Tri. - Mumbai)**

(xiii) Further, they submitted that the very same adjudicating authority who passed the present order, vide another order passed on the very same day for the proceedings pertaining to the period w.e.f. April 2007, recognized the body-builders only as manufacturers for the purpose of demanding excise duty as per Rule 10A of the Central Excise Valuation (Determination of Prices of Excisable Goods) Rules, 2000 vide *Order-in-Original No. 46-48/Commissioner/09 dated 27.11.2009*. Thus, the present proceedings reflect contradiction of stands adopted by the adjudicating authority in different periods and since it has been conclusively proved that the body-builder/ job-worker is the actual manufacturer and not the Appellant, who merely supplies the chassis, the impugned order confirming demand of excise duty on the Appellant in relation to the built-up vehicle manufactured by the body-builder is legally untenable.

(xiv) They also submitted that the entire demand is barred by limitation as there is no suppression of fact involved in this case. For that reason, no penalty imposable.

(xv) Accordingly, they submitted that the impugned order is liable to be set aside.

8. The Ld. A.R. reiterated the findings of the adjudicating authority in the impugned order.

9. Heard both sides and perused the appeal records.

10. We observe that the issue involved in the present appeal is valuation of motor vehicles manufactured by the job worker on the duty paid chassis supplied by the Appellant. The issue to be decided is

whether in relation to the body-built vehicles manufactured and cleared on payment of duty, on landed cost of chassis plus job-work charges, by the body-builder on the chassis supplied by the Appellant, differential excise duty can be demanded from the Appellant by adopting the final price at which the body-built vehicle is sold by the Appellant from RSOs as assessable value for the period prior to 01.04.2007?

11. We observe that the issue is no more *res integra* as in the Appellant own case, viz. **Tata Engineering and Locomotive Company Ltd. v. UOI, reported at 1988 (35) ELT 617 (Pat.)**, the Hon'ble Patna High Court has held that the Appellant who merely supplies the chassis to body-builder and receives the body-built vehicle from the body-builder, is not the manufacturer of the body-built vehicle, even though the Appellant supervises the quality of such body-built vehicles before clearance by body-builder. The Hon'ble High Court held the body builders only to be the actual manufacturers. This judgment has been affirmed by the Hon'ble Apex Court and reported at **1997 (94) E.L.T. A128 (S.C.)**. The relevant part of the said decision is reproduced below:

12. Following the decision cited above, we hold that the job-worker is the actual manufacturer and not the raw-material supplier. In the present case, the activity of building body on the chassis amounts to the manufacture of motor vehicles, in terms of the Chapter Note 5 of Chapter 87 of the Central Excise Tariff Act. Accordingly, the body builder has rightly paid excise duty at the time of clearance of body-built vehicle to the RSO. Thus, we hold that the demand of duty from

Excise Appeal No. 120 of 2010

the Appellant is not sustainable and therefore, we set aside the duty confirmed in the impugned order.

13. We set aside the impugned order and allow the appeal filed by the Appellant.

(Pronounced in the open court on...16.10.2023...)

Sd/-

(Ashok Jindal)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

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