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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 917 of 2011

(Arising out of Order-in-Appeal No. 44/JSR/2011 dated 12.07.2011 passed by the Commissioner (Appeals), Central Excise & Service Tax, Mahabir Tower, Main Road, Ranchi – 834 001)

M/s. Bharat Engineering & Body Building Co. P. Ltd. : Appellant
Santokh Mansion, 1st Floor,
R-Road, Bistupur, Jamshedpur – 831 001

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari,
Sakchi, Jamshedpur – 831 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76062 / 2024

DATE OF HEARING / DECISION: 07.06.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 44/JSR/2011 dated 12.07.2011 passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi wherein the Ld. Commissioner (Appeals) has upheld the demand confirmed in the Order-in-Original no. 12/Addl.Commr/2009 dated 16.07.2009 passed by the Ld. Additional Commissioner, Central Excise & Service Tax, Jamshedpur Commissionerate.

2. The facts of the case are that the appellant received chassis from M/s. Tata Motors Limited (TML) and M/s. Eicher Motors Limited (EML) and fabricated

bodies on the chassis in terms of the purchase orders / agreements. The appellant availed CENVAT Credit of the duty paid on the chassis. They removed the Body Built Vehicles to the suppliers of chassis on payment of duty. While determining the duty, the appellant has not included automobile cess, transportation cost and insurance of the chassis in the assessable value. Thus, the Department alleged that the appellant has undervalued the body built vehicles and thereby paid lesser duty.

3. Accordingly, a Show Cause Notice dated 06.02.2009 was issued to the appellant demanding Central Excise Duty of Rs.5,24,613/- for the period from July 2004 to February 2007.

3.1. On adjudication, the demand was confirmed along with interest and penalty by the Ld. Additional Commissioner vide Order-in-original dated 16.07.2009.

3.2. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the above Order-in-Original vide the impugned order.

4. Aggrieved against the confirmation of the demands, the appellant has filed the present appeal.

5. The appellant submits that they paid appropriate duty on the body built vehicles cleared by them; the automobile cess is a duty which is not includable in the assessable value; transportation charges and insurance charges are not includable beyond the place of removal. Accordingly, on merits, they submit that the demand confirmed in the impugned order is not sustainable.

5.1. The appellant further submits that the dispute in the appeal pertains to the period from July 2004 to February 2007 and the Show Cause Notice was issued on 06.02.2009. They have not suppressed any information from the Department regarding the method of valuation adopted by them for the purpose of payment of duty and hence, there is no suppression involved in this case. It is therefore contended that the demand confirmed by invoking the extended period of limitation is not sustainable.

5.2. In support of their contentions, the appellant has relied upon the following decisions: -

a. Pushpam Pharmaceuticals Co. Ltd. v. Collector of C.Ex., Bombay [1995 (78) E.L.T. 401 (S.C.)]

b. Collector of C.Ex. v. Chemphar Drugs & Liniments [1989 (40) E.L.T. 276 (S.C.)]

c. Cosmic Dye Chemical v. Collector of C.Ex., Bombay [1995 (75) E.L.T. 721 (S.C.)]

d. HMM Coaches Ltd. v. Commissioner of C.Ex., Panchkula [2008 (231) E.L.T. 506 (Tri. – Del.)]

6. The Ld. Departmental Representative for the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal documents.

8. We observe that the appellant has been receiving chassis from M/s. TML and M/s. EML and fabricating bodies on the chassis in terms of the agreement. They have been filing returns regularly and informing the Department about the method of valuation adopted by them for the purpose of

payment of duty. In view of the above, we find that there is no suppression of fact with intention to evade payment of duty exists in this case. We find that the present dispute pertains to the period from July 2004 to February 2007 and the Show Cause Notice was issued on 06.02.2009, by invoking extended period of limitation. Thus, we hold that the demand confirmed in the impugned order by invoking the extended period of limitation is not sustainable and accordingly, we set aside the same.

9. In view of the above discussions, we set aside the impugned order, on the ground of limitation, and allow the appeal filed by the appellant with consequential relief, if any, as per law.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd