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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 77365 of 2018

(Arising out of Order-in-Original No. 05-07/Commr/2018 dated 21.02.2018 passed by the Commissioner of C.G.S.T. & C.X., Jamshedpur, Outer Circle Road, Bistupur, Jamshedpur – 831 001)

M/s. Auto Profiles Limited (Unit-III) **: Appellant**
Plot No. M-7 & 11, Phase-VII, Industrial Area,
Adityapur, Jamshedpur – 832 109 (Jharkhand)

VERSUS

Commissioner of C.G.S.T. and C.X. **: Respondent**
Central Revenue Building, Outer Circle Road,
Bistupur, Jamshedpur – 831 001 (Jharkhand)

WITH

Excise Appeal No. 77366 of 2018

(Arising out of Order-in-Original No. 05-07/Commr/2018 dated 21.02.2018 passed by the Commissioner of C.G.S.T. & C.X., Jamshedpur, Outer Circle Road, Bistupur, Jamshedpur – 831 001)

M/s. Auto Profiles Limited (Unit-III) **: Appellant**
Plot No. M-7 & 11, Phase-VII, Industrial Area,
Adityapur, Jamshedpur – 832 109 (Jharkhand)

VERSUS

Commissioner of C.G.S.T. and C.X. **: Respondent**
Central Revenue Building, Outer Circle Road,
Bistupur, Jamshedpur – 831 001 (Jharkhand)

AND

Excise Appeal No. 77367 of 2018

(Arising out of Order-in-Original No. 05-07/Commr/2018 dated 21.02.2018 passed by the Commissioner of C.G.S.T. & C.X., Jamshedpur, Outer Circle Road, Bistupur, Jamshedpur – 831 001)

M/s. Auto Profiles Limited (Unit-III) **: Appellant**
Plot No. M-7 & 11, Phase-VII, Industrial Area,
Adityapur, Jamshedpur – 832 109 (Jharkhand)

VERSUS

Commissioner of C.G.S.T. and C.X. **: Respondent**
Central Revenue Building, Outer Circle Road,
Bistupur, Jamshedpur – 831 001 (Jharkhand)

APPEARANCE:

Shri Arnab Chakraborty, Advocate,
Shri S.N. Gupta, Advocate,
For the Appellant

Shri Pabitra Halder, Authorized Representative,
Shri S.K. Jha, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NOs. 76114-76116 / 2026

DATE OF HEARING / DECISION: 05.08.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order.

2. All these appeals are having a common issue and therefore, all are disposed of by way of a common order.

3. The facts of the case are that the appellant is a manufacturer of motor vehicle parts and accessories in their factory located at Tata-Kandra, Main Road, M 7811, NS-53(P), M-23A(P), B-(F), Adityapur Industrial Area, 7th phase, Adityapur, Jamshedpur-832109, being the Unit-III of the appellant.

3.1. The appellant is also having two more manufacturing Units I & II in the same name, at Jamshedpur.

3.2. In addition, they have one more Unit-IV in the same name at style at Lucknow in the same name and style.

4. Although all units are having the same Central Excise registration, they are controlled by one common set of Board of Directors with common

accounting and balance sheet from their Head office at Unit I at Jamshedpur.

5. An audit of the books of accounts of Unit-III / appellant herein was conducted by the departmental Auditors(Team-VIII) for the period 2009-10 to 2012-13 pursuant to which an Audit Memo was issued. The audit pointed out that the appellant had not complied with the provisions of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (in short "the Valuation Rules") with regard to transfer of goods from their Unit-III (Jamshedpur) to their Unit-IV (Lucknow) during the period from April 2011 to March, 2015 resulting in short payment of central excise duty of Rs.9,16,74,055/-.

5.1. It was further alleged that the appellant / Unit-III had availed CENVAT Credit on the strength of ineligible documents like invoices, bills, etc., issued in the name of their Unit-I to the tune of Rs.1,70,78,101/- during the period from 2011-12 to 2013-14 which as per the Audit Team was liable to be reversed by the appellant as the appellant

5.2. It was also pointed out by the Audit Team that the appellant had not discharged their Service Tax liability on the services of manpower recruit or supply services for the period from July, 2012 to March, 2013 to the extent of Rs.17,98,796/- in terms of Notification No. 30/2012-S.T. dated 20.06.2012 under reverse charge mechanism.

6. On the basis of the above audit observations, three Show Cause Notices were issued to the appellant, proposing to demand central excise duty, to deny CENVAT Credit availed and to demand Service Tax from the appellant for the period under dispute.

6.1. The appellant contested the said Show Cause Notices.

6.2. Thereafter, the impugned order has been passed demanding central excise duty, along with interest and imposition of an equivalent amount of penalty; CENVAT Credit availed by the appellant during was also denied, ordering recovery thereof, along with interest and imposition of an equivalent amount of penalty under; demand of Service Tax amounting under reverse charge mechanism was also confirmed, along with interest and imposition of an equivalent amount as penalty.

6.3. Aggrieved by the said order, the appellant is before us.

7. The Ld. Counsel appearing on behalf of the appellants submits that the Revenue has alleged that the appellant has undervalued the clearances made to their sister concern by failing to determine the assessable value in accordance with Rule 8 of the Valuation Rules, 2000 and, on the basis of CAS-4 prepared by the Deputy Director (Cost), has demanded differential duty. It is submitted that during the course of adjudication, the appellant had produced an independent CAS-4 Certificates prepared by a Chartered Cost Accountant, in support of their contention that if Rule 8 is correctly applied on basis of such certificates, the assessable value worked out would be less than the value on which duty has

actually been discharged by the appellant. Consequently, the appellant contends that no differential duty is payable by them. In this regard, the Ld. Counsel for the appellant pointed out that the Ld. Commissioner accepted this contention in the substantial major and relied upon the said independent CAS-4 Certificates, to drop the entire demand of Rs.9,16,74,055 for the period April 2011 to March 2015, the entire demand of Rs.1,59,51,880 for the period April 2015 to September 2015, and a further amount of Rs.2,14,64,432 out of the demand pertaining to the period October 2015 to June 2017, aggregating to 12,90,90,367. However, he submits that in the absence of an independent CAS-4 certificate for the balance period, the learned Commissioner sustained the remaining demand of Rs.5,73,85,955 pertaining to the period October 2015 to June 2017, together with interest and an equivalent penalty under section 11AC of the Central Excise Act, 1944. It is the submission of the appellant before us that subsequent to the passing of the impugned order, the appellant has obtained the requisite independent CAS-4 Certificate dated 06.04.2018 for the remaining period and accordingly, prayed that the matter be remanded for reconsideration of the independent CAS-4 Certificate dated 06.04.2018 in respect of the remaining period for which the demand has been confirmed against them.

7.1. With regard to the issue of denial of CENVAT Credit, it is the submission of the Ld. Counsel for the appellant that all the manufacturing units considered as the same legal entity under a common Board of Directors with a common accounting system and balance sheet, and that the imported capital goods had in fact been received, installed and utilised in

Unit-III. It is pointed out that the learned Commissioner accepted this defence in substantial measure and, being satisfied regarding the receipt and installation of several of the imported capital goods in Unit-III, dropped the demand to the extent of Rs.77,49,690. However, he submits that in respect of the remaining capital goods, the learned Commissioner held that satisfactory evidence of receipt and installation had not been produced and accordingly confirmed recovery of Rs.93,28,411, together with applicable interest and an equivalent penalty under section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004. It is presently submitted that subsequent to the passing of the impugned order, the appellant obtained a further Chartered Engineer's Installation Certificate dated 01.06.2018, certifying the installation of the remaining imported capital goods in Unit-III, which forms part of the present appeal, which needs to be considered by the ld. adjudicating authority.

7.2. With regard to the demand of Service Tax under 'manpower recruitment or supply agency service' under reverse charge, it is the contention of the appellant that the default was confined to the initial transitional period and arose solely on account of a bona fide misunderstanding of the newly introduced statutory regime. It is his submission that the discrepancy being pointed out during audit, the appellant voluntarily discharged the entire service tax of 17,98,796 by GAR-7/e-payment Challan No. 00235 dated 30.06.2014, and the applicable interest of Rs.5,18,263 by e-payment Challan No. 00199 dated July 1, 2014, and duly intimated the Department thereof by letter dated November 12, 2014. As the said demand has already been paid, it is submitted that no further demand is sustainable on this count.

8. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us submitted that, admittedly, the appellant had not provided the complete set of documents at the time of adjudication. In these circumstances, he contends that the demands have been rightly confirmed against the appellant by the ld. adjudicating authority.

9. Heard the parties.

10. We take note of the fact that the relevant CAS-4 Certificate issued by the chartered Cost Accountant and the Installation Certificate issued by the Chartered Engineer for installation of capital goods in the Unit-III of the appellant were not before the adjudicating authority during the adjudication proceedings. In these circumstances, we are of the view that it would be in the interests of justice to remand the matter back to the adjudicating authority, to consider the independent CAS-4 Certificate issued by the Chartered Accountant and the Certificate issued by the Chartered Engineer for installation of capital goods in the Unit-III of the appellant, by granting sufficient opportunity of being heard to the appellant, and thereafter, to pass an appropriate order, in accordance with law.

10.1. Moreover, with regard to the CAS-4 Certificate dated 06.04.2018 furnished by the appellant, we note that the demand in this regard was raised pursuant to an audit conducted for the period 2009-10 to 2012-13. During the initial adjudication, the adjudicating authority had already accepted the appellant's valuation methodology and dropped a major portion of the demand by relying upon the CAS-4 certificates submitted by the appellant and the remaining portion of the demand was confirmed on the ground that the corresponding CAS-4 certificate for that specific segment/period was not available on record at the time of adjudication. The appellant has now placed on record the above CAS-4 certificate dated 06.04.2018 and submits that the corresponding duty liability stands entirely discharged based on these certified figures. Therefore, while remanding the matter for de novo adjudication, we also direct that the adjudicating authority shall verify the CAS-4 certificate dated 06.04.2018 and if the figures are found to be correct and the duty liability is found to be fully discharged in terms of the said certificate, the remaining demand shall stand dropped without any further recovery.

10.2. With regard to the demand of Service Tax confirmed under the category of 'manpower recruitment or supply agency service' under the Reverse Charge Mechanism (RCM), we take note of the appellant's submission that they have already voluntarily discharged the entire Service Tax liability in this regard, along with interest, which fact was also intimated to the Department. Therefore, we remand this issue to the adjudicating authority with a direction to verify the above claim made by the appellant towards the discharge of the said Service Tax and interest liability and if, upon verification, the above claim is found to be correct, then the payments so made shall stand adjusted against the confirmed demand, and no further shall be demand be made in this regard.

11. Consequently, we set aside the impugned order and remand the matter back to the adjudicating authority, for de novo adjudication of the case, in terms of the directions recorded by us hereinabove.

12. In these terms, the appeals are disposed of by way of remand.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd