# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## WEST ZONAL BENCH AT MUMBAI
## COURT No. I

**APPEAL No. E/669/2008**

(Arising out of Order-in-Original No. 40/01/V/2008/COMMR/PD dated 27.3.2008 passed by Commissioner of Central Excise, Mumbai-V)

**Mahindra & Mahindra Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise, Mumbai-V** **Respondent**

Appearance:

Shri Rajesh Ostwal, Advocate, for appellant
Shri S.V. Nair, Assistant Commissioner (AR), for respondent

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**
**Hon'ble Mr. Raju, Member (Technical)**

Date of Hearing: 22.1.2018
Date of Decision: 11.5.2018

ORDER NO. **A/86354/2018**

Per: Ramesh Nair

The brief facts of the case are that the Appellant were clearing goods i.e crank cases on payment of duty to their own factory during the period 2003 – 04 for use in manufacture of finished products. The Appellant determined the assessable value of the crank cases in terms of Rule 8 of the Central Excise Valuation Rules, 2000 i.e 115 % of cost of production prior to 5.08.2003 and on the basis of 100% cost of production after said period. After finalization and audit of the period pertaining to the financial year 2002 – 03, the revised cost certificate was prepared and the revised cost was determined. The Appellant also paid differential duty. Later the revenue found that the valuation of the goods has not been determined in conformity with the guidelines and the provisions of the CAS – 4 standards issued by the Institute of the Costs & Work Accountants of India (ICWA) and adopted by the Central Board of Excise & Customs, Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and CBEC's instructions vide Circular No. 6/66/84 – CX-1 dt. 23.07.1985 readwith Circular No. 258/92/96 DT. 30.10.1996 and No. 692/08/2003 – CX dt. 13.02.2003. The revenue issued various letters and reminders to the Appellant asking to submit details about methods of costing along with Cost Certificate as per CAS – 4 standards. The Appellant later submitted cost certificate to the revenue. On comparison of cost certificate dt. 22.09.2006 for year 2003 - 04 with the cost certificate dt. 01.08.2003 previously furnished by the Appellant on 11.08.2003 and which was basis for determining the assessable value and payment of duty thereon during the year 2003 – 04, it was observed that the assessable value previously declared was not proper and the central excise duty was paid on lesser assessable value. It was also found that the certificate dt. 01.08.2003 and certificate dt. 22.09.2006 provided the material for the year

2003 – 04 and the certificate dt. 25.04.2005 and dt. 22.09.2006 provided the other percentage cost factors from the audited balance sheet of year 2003 – 04, however the respective material cost and the other percentage cost factors did not tally even though they pertained to same financial year. The Appellants on demand of differential duty by the revenue refused to pay the same on the grounds of revenue neutrality contending that the goods were dispatched to their own sister concern. They were issued show cause notice alleging that the department was led to believe that the assessable value computed by the Appellant on the basis of cost certificates verified by the Cost Accountant were true and correct. However the scrutiny conducted revealed that the assessable value disclosed by the Appellant was wrong. The Appellant has deliberately suppressed the fact of correct material costs as well as other factors of cost and further misdeclared the values of cost with intention to evade duty. It was proposed to demand differential duty alongwith interest and to impose penalty upon the Appellant. The adjudicating authority confirmed the demands and imposed penalty against the Appellant vide impugned order. Hence the present appeal by Appellant.

2. Shri Rajesh Ostwal, ld. Counsel appearing for the Appellant submits that whatever duty is paid on crank cases by the Appellant is available as credit to their another division

i.e FES Division of Appellant company. Thus the whole demand of differential duty is revenue neutral. He also relies upon Final Order No. A/85373 – 74/17/EB dt. 20.09.2016 and Final Order No. A/86741 - 42/17/EB dt. 21.03.2017 in their own case wherein the demand was dropped by the Tribunal. He submits that the fact about the method of determination of cost of production was in knowledge of Revenue as may be observed from their letter dt. 11.08.2003 to the revenue and hence the demand is time barred also. He also submits that for the same reason, no penalty can be imposed upon them.

3. Shri S.V. Nair, ld. AC (AR) appearing for the revenue supports the impugned order and reiterates the findings of the impugned order.

4. We have heard both sides and perused the records. We find that in the present case the Appellant themselves in 2003 disclosed the department the costing of the goods and paid duty thereupon. However it was only after the persistence enquiry by the department in 2006 that the Appellant submitted the revised cost certificate from which the department found that the Appellant has paid less duty. In these circumstances it is absolutely clear that it was only after the enquiry by the revenue that the correct basis of valuation of goods came to the light. Had it not been the

enquiry of the revenue, the actual assessable value of the goods would have remained unnoticed. The Appellant had once declared the value of the goods to the revenue and paid some differential duty on the value so arrived. However the facts remains that even after such duty so paid, the Appellant were required to compute the duty in terms of Valuation Rules. The Appellant were also aware of the Valuation method. It was only after enquiry by the department that they submitted the cost certificate and on that basis the revenue found that the Appellant had paid less duty. The Appellant has pleaded that they are not liable to pay duty as the whatever duty is payable is available to their sister concern as credit. We find that the issue of revenue neutrality is to be decided on the basis of facts of the each case and the judgments cited by the Appellant cannot be made applicable automatically. In the present case when the Appellant were very well aware of the fact that they are liable to pay duty, they should have voluntarily come forward to pay duty. There is no instance which can point out that the Appellant were not aware of duty to be paid and the method of valuation of goods. However having aware of the same and then too non payment of duty cannot lead to dropping of demands on ground of revenue neutrality. In such case we find that as far as demands are concerned the Appellant is liable to pay duty and we do not find any justifiable reason to drop the same. Further the revenue itself carried out the investigation which brought out the facts of less duty. We thus find that the demands cannot be set aside on grounds of revenue neutrality or time bar. Further there is no reason to waive the penalty as it is not the case of non payment of duty due to lack of knowledge on the part of Appellant. Thus looking to the facts of the case, we do not find any reason to interfere with the impugned order. We thus uphold the impugned order and reject the appeals filed by the Appellant.

(Pronounced in court on 11.5.2018)

**(Raju)**
**Member (Technical)**

**(Ramesh Nair)**
**Member (Judicial)**

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