CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 1047 of 2012

(Arising out of Order-in-Original No. 13-14/CEX/2012 dated 30.03.2012 passed by Commissioner of Central Excise, Pune-I)

Mahindra Navistar Automotives Ltd. .....**Appellant**
128/A, Sanghavi Compound, Mumbai Pune Road,
Chinchwad, Pune – 411 019.

VERSUS

Commissioner of Central Excise and Service Tax, Pune-I .....**Respondent**
ICE House, 41-A, Sasson Road,
Opposite Wadia College, Pune -411001.

Appearance:

Shri M.H. Patil, Advocate for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87038/2021

Date of Hearing : 02.11.2021
Date of Decision : 02.11.2021

PER : RAMESH NAIR

The fact of the case is that the appellant have manufactured prototype vehicles and cleared from the factory on payment of duty under self invoice on the comparable value of the similar vehicle applying Section 4(1)(b) of Central Excise Act, 1944 and Rule 4 of Central Excise Valuation Rules, 2000. The case of the department is that in the transaction of prototype since it is not sale value should be determined in terms of Rule 8 of the Central Excise Valuation Rules,2000 i.e cost of manufacture + 10% notional profit. Accordingly the demand of differential duty was confirmed; therefore the appellant is before us.

2. Shri M.H. Patil, learned Counsel appearing on behalf of the appellant submits that Rule 8 of Valuation Rules,2000 is applicable only in case the goods in question is consumed by the appellant or on his behalf in the manufacture of other articles. In the present case, the prototype vehicles manufactured by the appellant were not consumed for the manufacture of any other articles as prototype of vehicle itself is final products and not intermediate product. He submits that on the similar issue in the appellant's own case the Commissioner vide Order No.18/CEX/2010 dated 28.10.2010 dropped the demand and the said order was accepted by the Revenue as no appeal was filed. He further submits that in the identical issue in their own group companies case *Commissioner of GST & C. Ex., Chennai Vs. Mahindra & Mahindra Ltd.* reported in 2019 (365) ELT 455 (Tri.-Chennai) it was held that in case of clearance of prototype motor vehicles, the value of similar motor vehicles sold should be adopted by applying Rule 4 of Central Excise Valuation Rules, 2000. Therefore, in the present case Rule 8 of Central Excise Valuation Rules,2000 is not applicable and the value determined under Rule 4 of Central Excise Valuation Rules,2000 is correct.

3. Shri Sanjay Hasija, learned Superintendent AR appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that in terms of Rule 11, Rule 8 is applicable. He also referred to the judgment of *Eicher Motors Ltd. Vs. Commissioner of C. Ex.* 2008 (228) ELT 43 (Tri. LB).

4. We have carefully considered the submissions made by both sides and perused the records. The fact which is not under dispute is

that the appellant have manufactured prototype vehicle and cleared for various testing on self consumption basis, the said motor vehicle was not used for consumption by the appellant or on his behalf for manufacture of any other article which is prime condition to invoke Rule 8. Therefore Rule 8 clearly not applicable to the facts of the present case this Tribunal considering the same issue in the case of *Mahindra & Mahindra Ltd. (supra)* held that the value of comparable vehicle shall apply in terms of Rule 4 of Central Excise Valuation Rules,2000. The said judgment is reproduced below:

> *6. As pointed out by Ld. AR, since there is no appeal filed by the respondents, the issue with regard to excisability and marketability of the prototypes does not require any further analysis. The issue that has to be looked into is only with regard to the valuation of the prototypes. The department contends that the valuation under Section 4(1)(b) r/w Rule 11 and Rule 8 should be applied. It is pertinent to note that when the respondent was asked to submit CAS-4 statement, the assessable value has been arrived to be Rs. 71,14,198/- for one motor vehicle. At no stretch of imagination, the assessable value of similar model vehicle can be Rs. 71,14,198/-. It is to be noted that under Rule 126 of Central Motor Vehicle Rules, 1989, a prototype of every motor vehicle shall be subject to testing by designated Government Departments or Research Associations or Testing Institutes to ascertain the compliance of provisions of the Act and Rules. The said Act itself uses the word 'prototypes'. Only after certification by such authorities can the manufacturer of motor vehicles manufacture and market the motor vehicles. The similar model vehicles which are commercially manufactured can be said to be copies of the prototypes. It cannot be then said that these prototypes are consumed in further manufacture of motor vehicles. Thus Rule 8 of Central Excise Valuation Rules, 2000 will not apply to such a situation. We find that the Commissioner has gone deeply into the analysis of what is prototype and the valuation to be adopted for such prototypes. He has also relied upon the Order-in-Original No. 18/2010, dated 28-10-2010 passed by the Commissioner of Central Excise, Pune in the appellant's own case, wherein the proceedings were dropped. We find that the department having accepted the decision passed by the Commissioner in the said Order-in-Original as well as the decision passed in Order-in-Appeal dated 21-2-2015, they cannot insist that Rule 11 r/w Rule 8 has to be applied in the present proceedings.*

From the above judgment, it can be seen that the facts are identical accordingly, the value determined under Rule 4 of the Central Excise Valuation Rules, i.e. price of comparable goods shall apply, accordingly, the valuation arrived by the appellant in the facts of the present case is correct and legal and hence, the impugned order is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sm