



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, Central Excise Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(87)25/Ahd-II/Appeals-II/ 2017-18 / 5/7-21  
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 275 -17-18  
दिनांक (Date): 18/01/2018 जारी करने की तारीख (Date of issue): 24/01/18  
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी  
मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
Arising out of Order-In-Original No. 61-62/JC/2016/GCJ Dated: 28/03/2017  
issued by: Joint Commissioner Central Excise (Div-III), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s JBM Auto Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

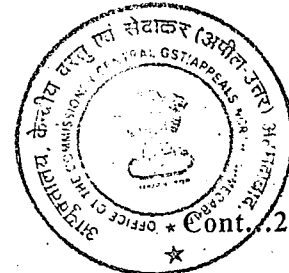
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

*No file*



- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 6 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

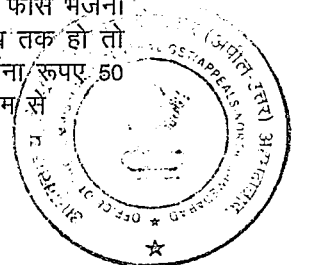
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380013.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पड़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

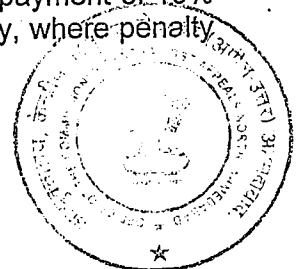
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

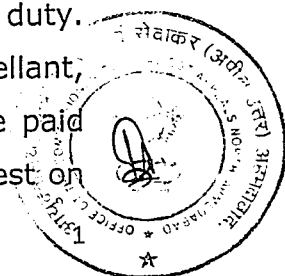
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty, or duty and penalty are in dispute, where penalty alone is in dispute."



**ORDER IN APPEAL**

M/s. JBM Auto Ltd., Plot No. B-2, (Survey No.1), Tata Motors Vendors Park, Sanand, Ahmedabad – 382170 (*hereinafter referred to as the 'appellant'*) holding Central Excise Registration No. AAACJ9630MEM008 is engaged in the manufacture of parts of motor vehicles falling under Chapter Heading No.8708 of the Central Excise Tariff Act, 1985. The appellant had enhanced the price of the goods subsequently and issued supplementary invoices for the price difference and for payment of differential duty and also paid the differential duty accordingly. The appellant however, did not pay the interest payable on the differential duty paid at the time of issuance of supplementary invoices. Therefore two demand notices were served to them in this regard. The Adjudicating Authority, vide OIO No. 61-62/JC/2016/GCJ dt.20.03.2017 (herein after referred as the impugned order), ordered to recover interest on the differential duty paid by the appellant under Section 11AB and Section 11AA of the Central Excise Act, 1944. The Appellant aggrieved by the said OIO, filed an appeal against the same, before me.

2. The facts of the case, in brief, are that during the course of Audit, it was noticed that the appellant was selling their entire production of final products to M/s. Tata Motors Ltd., Sanand, on the value as shown under various Purchase Orders/Price Lists. M/s. Tata Motors Ltd. enhanced the purchase price of the goods subsequently, giving effect to supplies made during the past period also. Accordingly, the appellant issued supplementary invoices for the price difference and for payment of the differential duty in respect of clearances made during the past period. Accordingly, the appellant also paid the duty in respect of clearances made during the past period i.e. from 2010 to 2013 amounting to Rs.5,69,405/-, Rs.34,89,543/-, Rs.25,74,176/-, and Rs.3,10,761/-, in subsequent period during 2011 to 2013. As per Rule 4(1) and Rule 8(1) of Central Excise Rules, 2002, the duty has to be paid on the goods removed from the factory by the 6<sup>th</sup> day of the following month, if the duty is paid electronically through internet banking and by the 5<sup>th</sup> day of the following month in any other case, and for the month of March by the 31<sup>st</sup> day of March, failing which the outstanding duty along with applicable interest under section 11AB or Section 11AA is liable to be paid. As the appellant had made delayed payment of duty in respect of the amount mentioned in their supplementary invoices, the appellant was liable to pay interest for such delayed payment of Central Excise duty. However, it appeared that the interest had not been paid by the appellant, claiming that in case of price revision, differential duty is liable to be paid when the supplementary invoice is raised. But, as the liability of interest on



price revision by raising supplementary invoices has been upheld by the Hon'ble Supreme Court in the case of CCE, Pune v/s. SKF India Ltd., reported at 2009(239) ELT 385 (SC), the appellant was required to pay interest on the late payment of duty alongwith the differential duty payment made by them. Accordingly, two Show Cause Notices were issued to the appellant in this regard. The Adjudicating authority, deciding both the Show Cause notices, found that the appellant's cases were squarely covered by the judgement of Hon'ble Supreme Court in the case of CCE, Pune v/s. SKF India Ltd.. Also relying on the judgement of Hon'ble Rajasthan High Court in the case of CCE, Jaipur v/s. Man Structural Pvt. Ltd. and CBEC's Instruction issued from F.No. 208/27/2003-CX-6 dt.18.12.2006, the Adjudicating authority ordered to recover the interest on differential duty from the appellant vide the impugned order.

4. Being aggrieved by the impugned order dt. 20.03.2017, the appellant has filed this appeal before me on the grounds that (i) Department did not consider the judicial decorum by not relying on the judgement of the apex court in the case of Steel Authority of India as reported in 2015(326) ELT 450(SC), which disagreed with the judgement of CCE, Pune v/s. SKF India Ltd. and referred the matter to a larger bench; (ii) the show cause notice is time barred; and (iii) no penalty was warranted in this case.

5. During the personal hearing, Shri Alpesh Kothari, C.A. of the appellant appeared before me and reiterated the grounds of appeal and also submitted that the SAIL case is pending with the Hon'ble Supreme Court.

6. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of personal hearing.

7. The question to be decided is as to whether (i) the Hon'ble Supreme Court's judgement in CCE, Pune v/s. SKF India Ltd. and the Hon'ble Rajasthan High Court in the case of CCE, Jaipur v/s. Man Structural Pvt. Ltd. has been correctly relied upon by the Adjudicating Authority; (ii) whether the SAIL judgement prevailed over the above-mentioned judgements; and (iii) whether the notices were time barred in this case.

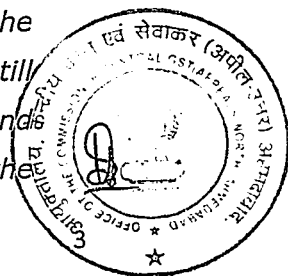
8. The matter involved in the appellant's case is squarely covered by the judgement of Hon'ble Supreme Court in the case of CCE, Pune v/s. SKF India Ltd.. The Hon'ble Supreme Court in another case of CCE v/s. International Auto Ltd. in 2010 also relied on the SKF judgement. The Hon'ble Supreme Court then vide a judgement in the case of M/s. Steel Authority of India Ltd. v/s. CCE, Raipur, [cited at 2015-TIOL-292-SC-CX], in a similar matter



decided that the decision in SKF and Auto International require a re-look, and therefore directed the Court Registry to place the matter before the Hon'ble Chief Justice of India for constituting a Larger Bench to go into the issue involved in the case. The appellant relying on this decision of the Hon'ble Supreme Court in the Steel Authority of India's case, contended that when an issue is referred to a larger bench, both the contrary views lose their strength and the lower formation is not supposed to proceed with the adjudication and matter is required to be kept pending till the issue is resolved by the larger bench. The fact is that the matter has been referred to the Larger Bench, but till the outcome of the Larger Bench of the Hon'ble Supreme Court arrives in the case of Steel Authority of India, the decision of the Hon'ble Supreme Court in the case of SKF and Auto International will hold its rein. The said orders have not been set aside and such will prevail till any contrary decision arrives. This point has been asserted by the Hon'ble High Court of Rajasthan in the case of CCE, Jaipur v/s. Man Structural [cited at 2016(338) ELT 36 (Raj.)], which had been relied upon by the Adjudicating Authority in his order. The Hon'ble High Court of Rajasthan in their order at Para 9 to 11, concluded that –

*"9. The issue aforesaid was earlier considered and decided by the Apex Court in the case of SKF India Ltd. (supra). Therein, it was held that Explanation (2) to sub-section (2B) of Section 11A makes it clear that payment by the assessee in default by own ascertainment or as ascertained by C.E., the assessee is not exempted from interest chargeable under Section 11AB of Central Excise Act, 1944 (for short "Act of 1944"). The interest would be leviable on the loss of the revenue. The differential price signifies the value on date on removal and thereby, the payment of enhanced duty would attract the interest from the date of removal of goods. The interest was held leviable as per Section 11AB of the Act of 1944. It was further made clear that value, which is function of the price on the date of removal/clearance of the goods and the price indicated by the supplementary invoices is directly relatable to the value of goods on the date of clearance, interest would be chargeable accordingly.*

*10. We find that issue determined by the Apex Court in two cases, referred to above, have been taken into consideration again by the Apex Court in the case of M/s. Steel Authority of India Ltd. (supra), and the question has been referred to the Larger Bench. It is admitted by the learned counsel that issue has not been answered by the Larger Bench on the reference in the case of M/s. Steel Authority of India Ltd. (supra). In view of the above, till date, the judgments of Apex Court in the cases of SKF India Ltd. and International Auto Ltd. (supra), hold field and accordingly, we are of the*



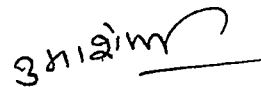
opinion that the order passed by the Tribunal deserves to be set aside in reference to the judgments of the Apex Court in the cases of SKF India Ltd. and International Auto Ltd. (supra), and accordingly, the appeal deserves to be allowed.

**11.** Accordingly, while accepting the appeal in reference to the judgments in the cases of SKF India Ltd. and International Auto Ltd. (supra), the impugned order is set aside. The issue is ordered to be governed by the judgment in the case of International Auto Ltd. (supra). We make it clear that if the reference is answered in favour of the assessee in the case of M/s. Steel Authority of India Ltd. (supra), it would apply to the present case also and in that case, right of the assessee and the revenue would be governed by the outcome of the judgments of the Apex Court in the case of M/s. Steel Authority of India Ltd. (supra)."

Thus, in the light of the above it is amply clear that the decisions of the Hon'ble Supreme Court in the cases of SKF India Ltd. and International Auto Ltd. hold its ground till date. I therefore, dismiss the appeal filed by the appellant and uphold the impugned order.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the appellant, stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED

  
(R.R. NATHAN)  
SUPERINTENDENT,  
CENTRAL TAX APPEALS, AHMEDABAD.

To,

M/s. JBM Auto Ltd. ,  
Plot No. B-2,  
(Survey No.1) Tata Motors Vendors Park,  
Sanand,  
Ahmedabad-382170.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Division-III, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

