आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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क फाइल संख्या (File No.) : **V2(87)138 /North/Appeals/ 2018-19** / 9950 to 9954

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-140-18-19**
दिनांक (Date): **28-Dec-18** जारी करने की तारीख (Date of issue): 02/04/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker , Commissioner (Appeals)**

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **05/AC/D/BJM/2017** Dated: **25/06/2018**
issued by: **Assistant Commissioner**-Central Excise (Div-III), Ahmedabad North,

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

M/s Tata Motors 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 पूवोक्त 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।

Cont...2

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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 9 के अतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनॉक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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

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 **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात** 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियॉ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां 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 वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 अनुसूचि–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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

M/s. Tata Motors Ltd, Survey No.1, Village - North Kotpura, Taluka - Sanand,, Dist.-Ahmedabad (Gujarat) 382 170 (henceforth, *"appellant")* has filed the present appeal against the Order-in-original No. 05/AC/D/BJM/2018-19 dated 25.06.2018 (henceforth, *"impugned order")* passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. The facts of the case, in very brief, are that the appellant, a manufacturer of motor vehicles at the aforesaid mentioned address, had a distribution and logistics agreement with the wholly owned subsidiary company namely TML Distribution Company Limited **(TMLDC)** for sale, distribution and logistic support, who in turn sell the motor vehicles to dealers/ customers. The departmental authorities in an audit conducted in February 2012 raised an objection with regard to valuation of goods (motor vehicles) that instead of discharging duty on sale price of TMLDC to un-related buyers, appellant was discharging duty on 'normal transaction value'. Therefore, show cause notices dated 28.02.2018 was issued to the appellant for demanding short payment of central excise duty amounting to Rs. 46,44,164/- for the period during April, 2017 to June, 2017 with interest and proposed imposition of penalty. The show cause notice was adjudicated, vide the impugned order, by confirming the demand with interest and also imposed penalty of Rs. 4,64,416/-.

3. Being aggrieved, the appellant has filed the present appeal on the following grounds:

a) The value of greatest aggregate quantity at which goods have been sold by TMLDC to unrelated buyer alone is relevant for determining the assessable value in the present case and they have correctly discharged the duty liability in terms of Rule 9 of the Valuation Rules and no differential duty is payable by them;

b) The show cause notice itself conceded that the valuation needs to be ascertained under the provisions of Rule 9 of the valuation rules and the adjudicating authority has also come to the same conclusion;

c) The method of de4termining the greatest aggregate quantity has been explained by the Board's Circular No. 643/34/2002-CX dated 1st July, 2002 wherein it has been clarified that the gr5eatest aggregate quantity for the purpose of Rule 9 has to be selected out of a time period of whole day and in case where the value of the greatest aggregate quantity on a particular day is not ascertainable at the time of removal, then value of the clearances effected on the nearest day should be considered. In the present case, since at the time of removal of goods from the factory of the appellants, the greatest aggregate quantity sold by TMLDC for that particular day is not ascertainable on the same day. Accordingly they appellants have adopted the value which is nearest to the time of

removal i.e. the value of the greatest aggregate quantity sold by TMLDC on the previous day;

d) The demand has been raised by tracing or chasing the very same goods to its point of sale to an unrelated buyer and the demand is based on actual price at which very goods sold to unrelated buyers and such a computation of demand will make the provisions of Rule 2 (b) and Rule 9 redundant;

e) The CBEC has also issued a clarification vide Circular No. 251/85/96-CX dtd. 14.10.1996 wherein it was clarified that assessment need not be carried out based on the price prevailing at such other place of removal on the date of clearance of goods from factory gate;

f) They seek support from the case laws of Steel Authority of India Ltd. vs. CCE – 2006 (199) ELT-112 (T) wherein it was held that the valuation of a consignment is to be made on the basis of sale price prevailing on the date of removal at the depot, CCE vs. Carborandum Universal Ltd. – 2008 (224) ELT-290 (T) wherein it was held that once goods are cleared from factory to depot on payment of duty on basis of a price prevailing at the depot at the time of removal from factory, there is no need to chase the goods and to see at what price the same are actually sold from the depot. They also sought support from the case laws of Nahar Spg. & Wvg. Mills Ltd. vs. CCE – 2009 (247) ELT-708 (T), Lipi Data System Ltd. vs. CCE – 2001 (130) ELT-91 (T) and Brakes India Ltd. vs. CCE – 2007 (212) ELT-504 (T);

g) The finding in the impugned order that the method adopted by appellants for computation of GAQ is questionable and that the appellants have not adduced enough evidence to show that the value adopted by them truly reflects the transaction value at which GAQ of identical goods were sold by TMLDC to unrelated buyers is contrary to the facts and is not sustainable;

h) The finding in the impugned order that on any particular day for clearances of any particular model of Nano cars from TMLDC to unrelated buyers, multiple rate prevailed and therefore value adopted by GAQ method does not reflect correct transaction value, is contrary to definition of 'normal transaction value';

i) The finding in the impugned order that Rule 7 covers cases wherein goods are not sold at the time and place of removal but are transferred to depot whereas in this case the goods are sold to TMLDC and the actual transaction value would be known only at the time of sale from TMLDC to unrelated buyers, defeats the value purpose of rule 2 (b) of Valuation Rules;

j) The finding that Circular dated 01.07.2002 is only clarificatory in nature and is for cases where transaction value is not ascertainable, is not tenable;

k) The reliance placed by the adjudicating authority on the case law of Union of India vs. Bombay Tyre International Ltd. & Ors. – 1983 (14) ELT-1996 and CCE, Mumbai vs. Fiat India Pvt. Ltd. – 2012 (283) ELT-161 is misplaced;

In this case, penalty under Section 11AC of the Act is not justifiable and none of the clauses of Rule 25 is applicable hence imposition of penalty under Rule 25 is not at all justified.

4. A personal hearing in the matter was held on 20.11.2018. Shri Rajesh B Shukla and Shri Bhairav Vaishnav, Authorised representatives appeared on behalf of the appellant and reiterated the grounds of appeal and further submitted additional written submissions with copies of case laws relied upon by them.

5. I have carefully gone through the appeal. The valuation of goods namely motor vehicles manufactured by the appellant and sold to its wholly owned subsidiary company, a related person in terms of section 4(3)(b) of the Central Excise Act, 1944 is in dispute. Both appellant and revenue are in agreement that valuation of the goods is to be done in the manner prescribed in rule 9 read of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 (henceforth, *'Valuation Rules'),* still there is dispute with regard to values adopted by the appellant. As per appellant, they are paying duty on the greatest aggregate quantity (GAQ) sold on previous day by the related person (TMLDC) to unrelated buyers, whereas, adjudicating authority's interpretation is that actual price charged by TMLDC to unrelated buyers is the price to be adopted for discharging duty by the appellant.

6. Since rule 9 is at the core of dispute, it would be useful to reproduce the same for quick reference:

> ***Rule 9.***
>
> *Where whole or part of the excisable goods are sold by the assessee to or through a person who is related in the manner specified in any of the sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of such goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:*
>
> *Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles,*
>
> *the value shall be determined in the manner specified in rule 8.*

Further, as per rule 2(b) of Valuation Rules, "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold.

7. As stated earlier, the price at which GAQ is sold by TMLDC on previous day is the price adopted by the appellant. However, in my opinion, this method is deficient in reflecting the true transaction value of goods sold by

the related person as observed in the impugned order. As discussed by the adjudicating authority in para 18 of the impugned order, same model of car is being sold on a particular day to different buyers at different prices and using one such price for valuation, in the name of price at which GAQ is sold, will not reflect truly the transaction value at which relating person is selling the goods to unrelated persons. There is a purpose behind each valuation rule and the primary purpose of the valuation of goods sold to a related person is that, since price charged to related person may suffer from price influences on account of buyer's and seller's mutual interest in each other's business, the duty ought to be paid on a value charged by the related buyer to an unrelated or independent buyer so that the Govt. does not suffer a loss of revenue. The appellant's method of considering a particular price charged on largest quantity sold to some buyers is creating a situation where a motor vehicle sold at a higher price by the TMLDC to an independent buyer is being valued at a lower price for the purpose of duty payment. In each case where a particular vehicle is being sold by TMLDC at a price higher than the price charged in case of largest aggregate quantity sold to unrelated buyers, the amount of duty payment is getting reduced thereby reaping duty benefit for the appellant but causing a revenue loss to the Govt. I, therefore, find myself in agreement with the adjudicating authority's view that actual price charged by the TMLDC should be the price for paying duty on such transactions and in case appellant is finding it difficult to do so, provisional assessment seems the way out.

8. With regard to appellant's disagreement on quantum of duty demand wherein appellant states that department cannot pick and choose only those transactions where duty paid is less than the duty payable, I find that duty demand arises when there is short payment or non-payment of central excise duty. As regards the set off of excess payment of duty in some cases, since there is no such provision allowing such a set off, the demand of duty in the instances of short payment cannot be found fault with. Also, it is a fact that if the actual price charged by TMLDC to unrelated buyers had been adopted by the appellant, there would not be any instance of excess payment. The confirmation of duty demand, therefore, is justified along with interest in terms of section 11AA of the Central Excise Act, 1944.

9 Appellant has also objected to imposition of penalty equal to 10% of duty amount under section 11AC(1)(a) of the Central Excise Act, 1944 read with rule 25 of the Central Excise Rules, 2002 on the ground that the extended period of limitation has not been invoked in this case. In this

regard also, I agree with the adjudicating authority's view that from 14.05.2015, penalty provisions under section 11AC have been revised and according to section 11AC(1)(a) penalty is attracted where duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded for any reason other than the reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Act or rules framed there under with intent to evade payment of duty. In view of this position, and considering the period involved in the case (April-2017 to June-2017), penalty under section 11AC(1)(a) has been rightly imposed.

10. In view of foregoing discussion and findings, the impugned order is upheld and appeal is rejected.

11. The appeal filed by the appellant stands disposed of in above terms.

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

(उमा शंकर)
केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद
दिनांक:

सत्यापित

(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s Tata Motors Ltd.,

Survey No. 1,

Village North Kotpura,

Taluka Sanand,

Ahmedabad-382170

Copy to:

(1) The Chief Commissioner, CGST, Ahmedabad Zone,
(2) The Commissioner, CGST, Ahmedabad (North),
(3) The Dy./Astt. Commissioner, CGST, Div.-I, Ahmedabad (North),
(4) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (North),
(5) Guard File,
(6) P.A.File.