सत्यमेव जयते

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
☎: 079-26305065 **टेलेफैक्स** : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

5453 to 5457

क फाइल संख्या (File No.) : V2(87)11 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-31-18-19**
दिनांक (Date): **27-Jun-18** जारी करने की तारीख (Date of issue): 8/8/2018
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/JC/2018/GCJ** **Dated**: **31/01/2018**
issued by: Joint 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 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 |

Cont...2

(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 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 अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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–बी/35–इ के अंतर्गतः–

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 हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(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 न्यायाधिकरणें की गई अपील के विरूद्व 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 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

रेखाकिंत 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. 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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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, or penalty, where penalty alone is in dispute."

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/JC/2018/GC dated 06.02.2018 (henceforth, "*impugned order*") passed by the Joint Commissioner, Central GST & C. Ex., Ahmedabad - North (henceforth, "*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 logistic 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'. The show cause notices raising demand of duty on differential value were issued at different times covering different periods by LTU, Mumbai as the appellant had opted for LTU from May 2013. On closure of LTU option in 2017, the case files and records were transferred to Ahmedabad North Commissionerate and the periodic show cause notice issued on 21.06.2017 covering the period from **Nov-2015 to Mar-2017** was decided by the adjudicating authority in the impugned order wherein duty demand of **Rs.91,97,088/-** was confirmed alongwith applicable interest and penalty of Rs.9,19,709/-. Feeling aggrieved with the decision of adjudicating authority, appellant has preferred this appeal.

3. The following are the main grounds of appeal, in very brief-

3.1 Appellant states that the value of greatest aggregate quantity at which goods have been sold by TMLDC to un-related buyers 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.

3.2 Appellant states that demand has been made by chasing the very same goods to its point of sale to an un-related buyer and it is based on actual price at which very goods sold to un-related buyers; that such a computation will make the provisions of rule 2(b) and rule 9 of the Valuation Rules redundant; that such assessment of goods at its actual sale price is bad in law.

3.3 Appellant states that the finding in the impugned order that the method adopted by the appellant for computation of greatest aggregate quantity (GAQ) is

questionable and that the appellant has 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 un-related buyers, is contrary to facts and not sustainable.

3.4 Appellant submits that 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'.

3.5 Appellant states that the finding in the impugned order that rule 7 covers cases wherein goods are sold at the time and place of removal but are transferred to depot whereas in this case 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 very purpose of rule 2(b) of Valuation Rules.

3.6 Appellant states that finding in the impugned order that Circular dated 01.07.2012 is only clarificatory in nature and is for cases where transaction value is not ascertainable and one of the ways suggested is GAQ – in the instant case the assessee should have resorted to provisional assessment, is unsustainable.

3.7 Appellant states that the reliance placed by the adjudicating authority on the decision of Hon'ble Supreme Court in the case of UOI v. Bombay Tyre International Ltd & Ors [1983(14) ELT 1896] and in CCE, Mumbai v. Fiat India Pvt Ltd [2012(283) ELT 161] is misplaced since both these decisions no way support the case of department.

3.8 As per appellant, the impugned order is non-speaking as there is no mention of case laws cited by them. According to appellant, quantum of duty demanded is also incorrect as the department cannot pick and choose only those transactions where duty paid is less than the duty payable.

3.9 Appellant states that penalty imposed is not justified as there is no contravention of rule 4, 6 and 8 of the Central Excise Rules; that none of the clauses of rule 25 is applicable.

3.10 Appellant states that when original demand is not sustainable, interest cannot be imposed.

4. In the personal hearing held on 12.06.2018, Rajesh B Shukla, Head (Indirect Tax) and others represented the appellant company and reiterated the grounds of

appeal. The representatives explained rule 2(b) and rule 7 & 9 of Valuation Rules, Circular No.643 of 01.07.2012 and various case laws. The representatives also submitted compilation of rules, citations, etc.

4.1 On 14.06.2018, appellant also submitted a copy of Order-in-Original passed by the Commissioner, LTU, Mumbai in the matter of show cause notices issued for the previous period (Feb-2009 to Oct-2015)

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.

5.1 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.

5.2 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 17.11 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.

5.3 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.

5.4 The confirmation of duty demand, therefore, is justified alongwith interest in terms of section 11AA of the Central Excise Act, 1944.

5.5 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

of collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Act or rules framed thereunder with intent to evade payment of duty. In view of this position, and considering the period involved in the case (Nov-2015 to Mar-2017), penalty under section 11AC(1)(a) has been rightly imposed.

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

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested

S. Hudda

(Sanwarmal Hudda)
Superintendent
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,
M/s. Tata Motors Ltd,
Survey No.1, Village – North Kotpura,
Taluka - Sanand, , Dist.-Ahmedabad (Gujarat) 382 170

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Joint/Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Asstt./Dy. Commissioner, CGST Div-III, Ahmedabad- North
5. Guard File.
6. P.A.