



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.
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DIN-20211164SW000000FF6E

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- क फाइल संख्या : File No : GAPPL/COM/CEXP/402/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-38/2021-22**
दिनांक Date : **22.11.2021** जारी करने की तारीख Date of Issue : **25.11.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **16/ADC/2020-21/MSC dated 18.09.2020**, passed by the
Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Appellant- M/s. Valeo India Pvt. Ltd., Plot No. AV.15, Sanand Industrial Estate, GIDC,
Sanand, Ahmedabad.

Respondent- Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

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 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 :

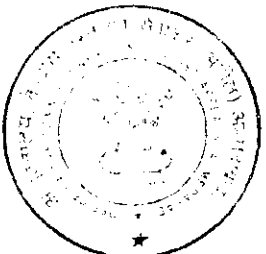
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 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.

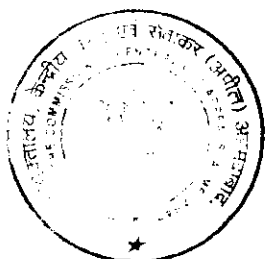
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 पढी 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 Appellate 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 रु.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।

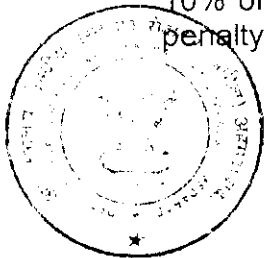
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Valeo India Pvt Ltd, Plot No. AV.15, Sanand Industrial Estate, GIDC, Sanand, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the instant appeal against the OIO No.16/ADC/2020-21/MSD dated 18.09.2020 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

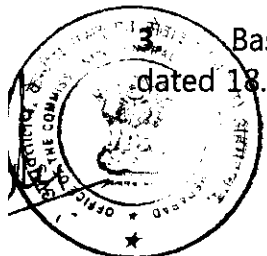
2. The facts of the case, in brief, are that the appellant having Central Excise Registration No.AACCV1939NEM008 are engaged in the business of manufacturing motor vehicle parts viz., radiator assembly, charge air coolers and fan system assembly. During the course of audit of records of the appellant, conducted by the officers of Central GST Audit, Ahmedabad, it was noticed that as per the financial records, for the period F.Y. 2015-16, the appellant had cleared scrap valued at Rs.19,87,844/- charging Central Excise duty of Rs.2,32,309/-, however in their ER-1 returns, they showed duty payment of Rs.74,324/- on scrap clearance valued at Rs.5,94,591/-. It appeared that the appellant had suppressed the scrap clearance of Rs.13,93,253/- in their ER-1 returns, as compared to the clearance shown in their financial statements, thereby short paying central excise duty to the tune of Rs.1,57,985/-.

2.1 Further, it was also observed that the appellant manufactured motor vehicle parts (charge air cooler, fan system assembly, radiator assembly) and cleared them exclusively to M/s. FORD India Pvt. Ltd (*in short M/S. FORD*), Sanand. As per the financial records of the appellant, they cleared and sold tools valued at Rs.8,07,54,076/- [*Rs.4,05,98,173/- in F.Y. 2015-16 & Rs.4,01,55,9013/- in F.Y. 2016-17*] and incurred expenses towards tool development cost amounting to Rs.1,61,59,052/- for the F.Y. 2015-16.

2.2 The appellant procured parts of tools and tools in semi-assembled condition either from the local manufacturers, or by way of import, on payment of duty and availed CENVAT credit on the same. These semi assembled tools and tool parts were also sent to M/s Radiant Complast Pvt Ltd (*in short M/s.RCPL*), Sanand under job work challans, who then carried necessary assembling and modification and returned the fully finished tools to the appellant under job work challans. Similarly, necessary assembling/modification were also carried out in their own factory premises before removal of tools/moulds to the job worker or for sale. The appellant, after quality checking, cleared the tools to M/s. FORD under commercial invoices charging VAT. These tools were then again sent back by M/s. FORD to the appellant for carrying out the manufacturing of motor vehicle parts on behalf of M/s. FORD.

2.3 It appeared that the tools/moulds were either manufactured by the appellant or were got manufactured by their job worker and subsequently sold to M/s. FORD on commercial invoices, without payment of central excise duty. The commercial invoices showed destination, date and time of removal implying that the ownership of the said goods stood transferred to M/s. FORD and the cost of the tools recovered from M/s. FORD. M/s. FORD on receipt of the said tools, sent them back to the appellant for further use in the manufacture of motor vehicle parts, on their behalf. It appeared that the activity of manufacture, removal and sale of tools/moulds by the appellant attracted central excise duty as they are excisable goods, distinct from the motor vehicles parts manufactured by the appellant and subsequently used in the manufacture of the final products i.e motor vehicle parts.

Based on the audit observation, a Show Cause Notice (SCN for brevity) SCN dated 18.01.2019 was issued vide F.No.VI/1(b)/CTA/Tech-19/SCN/Valeo India/2018-

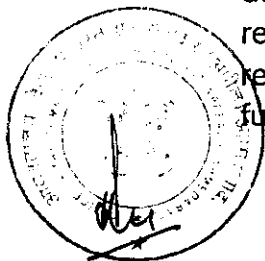


19, to the appellant invoking extended period of limitation and proposing; demand and recovery of central excise duty amount of **Rs.1,57,985/-** [short paid on scrap] and **Rs.1,00,94,260/-** [not paid on clearance of tools/moulds] under Section 11A (4) of the CEA, 1944; recovery of interest on aforesaid demand under Section 11AA and imposition of penalty under Section 11AC of the Act ibid. The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he confirmed and ordered recovery of central excise duty demand of Rs.1,57,985/- & Rs.1,00,94,260/- alongwith interest and also imposed equivalent penalty of Rs.1,02,52,245/- under Section 11AC(1)(c).

4. Aggrieved by the impugned order, the appellant preferred the present appeal, mainly on following grounds:-

- a) They claim that they do not have a facility to manufacture tools / moulds on their factory, therefore, these items are bought from market or imported, hence question of manufacturing these goods does not arise. They submitted invoices /purchase orders in support of their claim and argued that the only purpose of clearing these tools /moulds is to send it to job worker Radiant under job work challan u/r 4(5) of the CCR.
- b) Invoices are system generated and capture all details like date and time of removal, which cannot be relied as evidence to allege removal of goods from the factory or delivery of goods to M/s. FORD.
- c) Commercial invoice was raised to transfer of title of the goods and that they were not physically removed from the factory as these tools and moulds continue to be used by the appellant or their job worker for manufacture of their final goods motor vehicle parts. Central excise duty therefore cannot be demanded as appropriate duty has been paid on removal of final goods including amortized value of tools/moulds.
- d) The flow chart submitted vide letter dated 23.07.2018, pertained to pre-GST and post GST period. As per pre-GST flow chart, tools/moulds were moved to job-worker M/s. Radiant Complast Pvt. Ltd under job work challan and payment for tools / moulds were received from M/s. FORD (referred as customer) on the basis of commercial invoices.
- e) Demand is revenue neutral as excise duty has been discharged on the amortized value of tools/moulds at the time of raising invoice with respect to the final goods sold to M/s. FORD. Even otherwise CENVAT credit of excise duty paid on such sales would have been available to M/s. FORD hence the entire exercise is revenue neutral. They placed reliance on various citations: 2010 (254) ELT 628 (Guj); 2007 (214) ELT 321; 2003 (153) ELT 7 (SC).
- f) Interest not chargeable when demand is not sustainable. Reliance placed on citation 1996 (88) ELT 12 (SC).
- g) Extended period of limitation is not invocable as the details of actual quantity of scrap sold, manufacturing and clearance of tools/moulds was not suppressed deliberately with intent to evade payment of duty.
- h) After enactment of CGST Act, 2017 and omission of entry 92C from List -I of the 7th Schedule of the Constitution, the J.C does not have jurisdiction to decide the notice.

5. Additional submissions were also made vide letter dated 11.03.2021, wherein they informed that considering the amount involved, they do not want to litigate the issue involving short payment of central excise duty on scrap clearance hence duty payment of Rs.1,57,985/- alongwith interest was made voluntarily and requested to adjust the same towards their duty & interest liabilities. They however requested to set-aside the penalty as there is no willful suppression of facts. They further claimed that the moulds/tools were not manufactured as is evident from the



purchase and sale invoices, which shows that the goods sold in fact were in the same form as they were purchased and that there was no alteration/assembly carried out, hence cannot be considered a manufacturing activity. Some of these tools/moulds were shipped to the appellant by the supplier and some tools were shipped directly to the child part manufacturer i.e. the sub-contractor for manufacturing child parts, therefore the question of manufacturing activity does not arise. They also relied on catena of decisions like 2007(213) ELT 487, 2000 (124) ELT 1122 (Tri.), 2001 (129) ELT 188 (Tri), 2003 (157) ELT 105 (Tri) etc.

6. Personal hearing in the matter was held on 13.10.2021 through virtual mode. Shri Tapas Ruparelia, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

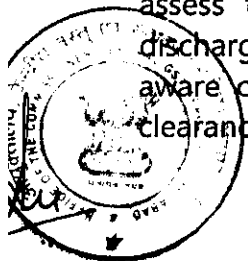
7. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the additional submissions made and the evidences available on records. The issues to be decided under the present appeal are;

- a) Whether the differential duty demanded on scrap cleared during F.Y. 2015-16 but not shown in the ER-1 return, is recoverable?
- b) Whether the tools / moulds cleared by the appellant to M/s. FORD on commercial invoices during the F.Y. 2015-16 and F.Y. 2016-17 is liable to excise duty?

8. It is observed that the appellant, in their ER-1 return filed for the F.Y.2015-16, showed the clearance value of scrap as Rs.5,94,591/- and duty payment of Rs.73,324/-. This clearance value of scrap shown in ER-1 return was less compared to the clearance value of scrap shown in their book of accounts, therefore, demand for short payment of excise duty to the tune of Rs.1,57,985/- was raised alongwith interest and penalty. The appellant, however, accepted the short payment and therefore the differential duty demanded on such scrap clearances was confirmed by the adjudicating authority. In appeal, the appellant considering the amount involved, preferred not to litigate the issue and requested to adjust the payment of Rs.1,57,985/- & Rs.1,39,654/- made towards duty and interest vide DRC-03 dated 09.12.2020 and DRC-03 dated 23.12.2020 respectively, against the said demand liability. They also requested to set-aside the penalty as there was no willful suppression of facts with intent to evade duty.

8.1 Considering that the appellant has admitted the duty and interest liability on the scrap clearances, both before the adjudicating authority as well as in appeal, I, therefore, uphold the demand of Rs.1,57,985/- alongwith interest on the differential value of scrap which the appellant failed to properly assess and order adjustment of Rs.1,57,985/- & Rs.1,39,654/- paid, towards their duty and interest liability, respectively.

8.2 The appellant, though, have requested for waiver of penalty taking the plea that there was no willful suppression of facts with intent to evade duty. As the demand was raised based on detection during scrutiny of documents by audit, I find that such plea cannot be entertained. In the era of self assessment, the assessment will be made on the basis of information furnished in the return and no financial records, invoices or bills were required to be submitted along with return. The principle of self assessment shows that it is the responsibility of the appellant to assess the goods correctly and pay appropriate taxes. The appellant did not discharge their duty liabilities for the period F.Y. 2015-16 though they were fully aware of the same. Further, in the monthly ER-1 returns, they mis-declared the clearance value of scrap. This conduct on the part of the appellant is a willful



misstatement of facts with intent to evade payment of duty therefore provisions of Section 11AC are clearly attracted. Merely because the appellant discharged the duty liability along with interest, the misconduct on the part of the appellant cannot be obliterated. I find that the appellant had discharged the duty and interest liability after the adjudication of notice i.e. at the appeal stage and have not paid any penalty as stipulated in law. Therefore, the question of waiving the penalty would not arise at all.

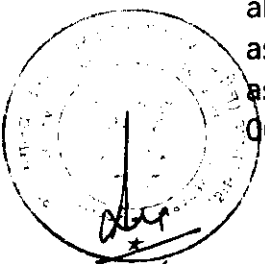
8.3 Further, the issue of mandatory penalty is also settled by Hon'ble Supreme Court in the case of UOI vs Dharmendra Textile Processors **[2008(231) ELT3 (SC)]** and in the case of UOI Vs Rajasthan Spinning & Weaving Mills **[2009 (238) E.L.T. 3 (S.C.)]** wherein it is held that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with an intent to evade duty by adopting any of the means mentioned in the section. I therefore, uphold the penalty imposed under Section 11AC, on the above issue.

9. On the second issue as to whether the tools / moulds cleared by the appellant to M/s. FORD on commercial invoices would attract central excise duty or not, it is observed that the entire demand is raised on the argument that the assembling of semi-assembled tools/moulds by the appellant is a manufacturing activity and subsequent clearance of these assembled tools/moulds to M/s. FORD attracts central excise duty.

9.1 The adjudicating authority confirmed the demand mainly on the grounds that the flow chart submitted by the appellant vide letter dated 12.07.2018 mentions that the tools/moulds procured in semi assembled condition from local manufacturers or through imports were assembled in their factory. The commercial invoices mentions date & time of removal and also destination of tools which clearly establish that the tools were removed by appellant, to M/s. FORD.

9.2 The appellant on the other hand have strongly contended that the commercial invoices were raised merely to transfer title of the goods to M/s. FORD, however, the goods were never removed as they were to be returned back by M/s. FORD for further use in the manufacture of their final goods i.e. motor vehicle parts; that appropriate duty has been paid on removal of motor vehicle parts including amortized value of tools/moulds. The invoices were system generated hence automatically captured the details of date/time and destination of removal. Even if it is assumed that excise duty was payable on such sales, CENVAT credit of such duty was admissible to M/s. FORD making the demand as revenue neutral.

9.3 It is observed that the Central Excise duty levied under the Central Excise Act, 1944 is on manufacture of goods. However, the payment of duty is required to be made only at the time of removal of goods from the factory. To levy central excise duty, it would be essential to establish that the appellant manufactured tools/moulds and duty shall be paid when goods are removed from the place of manufacture. The appellants have claimed that the tools/moulds were never manufactured but were purchased from the market and subsequently billed to M/s. FORD. In support of their argument, they have submitted full cost tooling order placed by M/s. FORD and the commercial tax invoices cum delivery challans raised by the appellant to M/s. FORD. To establish their claim that the tools/moulds sold by them in fact were in the same form as they were purchased, the appellant should have submitted their purchase invoices, but the same were not produced. In the absence of such corroborative evidence, the claim that the tools / moulds were not assembled in their factory appears unacceptable. The fact that the appellant were assembling semi-assembled tools/moulds is evident from their letter dated 06.10.2017, wherein in reply to the query raised by audit as to why the description

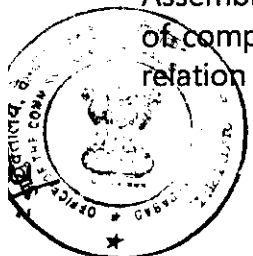


of tools and part numbers mentioned in the purchase invoice did not tally with the description mentioned in the sale invoice, they clarified that the tools and parts of tools are procured in semi-assembled condition from the vendors and on completion of the processing and assembly of the tools or parts thereof, invoice are raised to the M/s. FORD to recover the cost. In view of the above discussion, I hold that the assembling of tools / moulds has been carried out in appellant's factory and even otherwise mere buying tools/moulds by appellant from the market and subsequently selling it to M/s. FORD and then receiving back for manufacture makes no sense whatsoever.

9.4 Coming to the aspect of removal of tools/moulds, I find that the adjudicating authority has not given any specific finding to corroborate the argument that the goods were actually removed from appellant's factory, instead he relied on the detail of date, time and destination of removal reflected in the commercial invoices. The appellant have strongly contended that commercial invoices were raised only to transfer title of the goods to M/s. FORD without actual removal of goods. As discussed above, liability to pay central excise duty on manufactured goods arises on the instance when the goods are removed. In the present case, other than the commercial invoices, I find there is no evidence on record, to prove that the goods in question were physically removed from the appellant's factory premises. Issuing commercial invoice for transferring the title of goods without actually removing them from factory is an understanding between the appellant and M/s. FORD. This arrangement appears to have been made to avoid unnecessary transit of goods. Removal cannot be established merely based on the commercial invoices wherein date, time and place of removal are mentioned but all other relevant details are missing. Even otherwise, the appellant is discharging the excise duty on the amortized value of the tools/moulds at the time of raising invoice for final goods sold to M/s. FORD. Since it is also not disputed that these tools/moulds were not intended for utilization in the further production of final excisable goods, as these assembled tools / moulds even if removed by the appellant will be sent back by M/s. FORD to the appellant to be used in further manufacture of motor vehicle parts on behalf of M/s. FORD. Hence the argument that the goods have not been removed or cleared from the factory appears convincing.

9.5 The adjudicating authority relied on the flow chart submitted by the appellant via e-mail dated 25.04.2018 wherein the movement of tools was provided. The appellant however vide letter dated 12.07.2018 & 23.07.2018, clarified that the flow chart submitted earlier showing physical removal of tools to M/s. FORD pertains to post GST period and the assembled tool parts shown as removed were actually to M/s. RCPL under job work challan for manufacture of plastic parts. They then raised commercial invoice to M/s. FORD to recover the tool cost. This clarification by the appellant is also mentioned in Revenue Para-2 of the FAR No.2297/2017-18 dated 30.7.2018. Another clarification by the appellant was that central excise duty on tools/moulds cleared to M/s. FORD was not paid as they were exempted vide Notification No.67/1995-CE dated 16.03.1995. I find it is settled law that, under Notification No. 67/95-C.E., inputs/capital goods could be captively consumed in a given factory and, therefore, such an arrangement strengthen appellant's contention that there was no need to remove tools or moulds to M/s. FORD, when the same were to be received back for further manufacturing by the appellant.

9.6 Hon'ble Tribunal, Ahmedabad in the case of Automative Stampings & Assemblies Ltd [2013 (298) ELT 591] held that mere fact of raising invoice in favour of company does not create a liability for charging duty. Levy of excise duty is in relation to manufacture and has nothing to do with sale. Further, on similar issue of



M/s. Supreme Treon Pvy Ltd, it was noticed that the assessee without physically clearing tools & moulds from their factory transferred the ownership of the goods to M/s. FORD by issuing commercial invoices after paying applicable VAT. The values of moulds and dies have been amortized in the motor vehicle parts and components manufactured for M/s. FORD India. Thus, by applying the ratio of hon'ble Ahmedabad Tribunal's decision in the case of Automative Stampings & Assemblies Ltd, I, vide OIA No:AHM-EXCUS-002-APP-012/2021-22 dated 24.06.2021, upheld appeal filed by M/s. Supreme Treon Pvy Ltd by holding that removal of goods from the inventory would not tantamount to clearance from the factory when the goods in question were not physically cleared from the factory, hence excise duty is not payable in such circumstances.

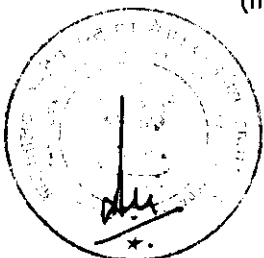
9.7 I find that the issue covered in the above case of M/s. Supreme Treon Pvy Ltd is identical to the present appeal. In the present case, the appellant vide their letter dated 05.09.2017 clearly stated that the tool/moulds procured from various vendors were never physically cleared to M/s. FORD, as they were to be used in the manufacture of dutiable goods (motor parts), which were subsequently cleared to M/s. FORD, so these tools were retained in their factory. The value of such tools was recovered from M/s. FORD by raising commercial invoice, on which appropriate VAT has been paid and the amortized value of these tools were included in the dutiable value of finished product (i.e. motor vehicle parts) on which appropriate Central Excise duty has been discharged at the time of clearance to M/s. FORD.

Similarly, vide letter dated 23.07.2018, the appellant further clarified that the tools / moulds shown as physically cleared were to their job worker M/s. RCPL under job work challan, to manufacture plastic parts namely fan assembly parts, radiator assembly parts and charge air cooler parts etc. These plastic parts were subsequently received back by the appellant on payment of Central Excise duty on the value of the plastic parts (including amortized cost of tools for manufacture of fan system assembly, radiator assembly and charge air cooler). These finished motor parts are subsequently sold to M/s. FORD on payment of excise duty, which includes duty on amortized tools/moulds cost. So in the entire valuation, I find that the amortized costs of tools are included on which appropriate central duty is discharged. Central Excise duty demand cannot be raised merely because commercial invoices were raised to M/s. FORD. Even if commercial invoices were raised, as long as the payment of VAT on such commercial invoice is not disputed by the department, liability to pay Central Excise duty does not arise unless these goods are physically removed from their factory. Therefore, by following the precedent of stand taken by me in my earlier decision, I hold that the appellant is not required to pay excise duty on tools / moulds when the same were not actually removed to M/s. FORD.

10. In view of the above discussion, I find that the demand of Rs.1,00,94,260/- is not sustainable. When the demand is not legally sustainable, question of interest and penalty does not arise.

11. I therefore, pass the following order:

- (i) I uphold the impugned Order-in-Original to the extent of confirming the demand of **Rs.1,57,985/-** alongwith interest and penalty, as duty short paid on clearance of scrap during the disputed period.
- (ii) I also order adjustment of Rs.1,57,985/- & Rs.1,39,654/- paid by the appellant towards their duty and interest liability, respectively.



- (ii) I set-aside the impugned Order-in-Original to the extent that it relates to demand of central excise duty of **Rs.1,00,94,260/-** not paid on tools/moulds during the disputed period.

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

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

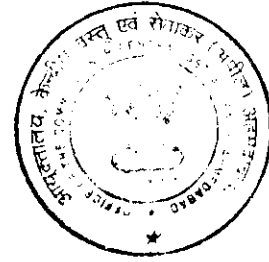
Arun
 (अखिलेश कुमार)
 आयुक्त(अपील्स)
 22nd November 2021

Date: .11.2021

Attested

Rekha Nair

(Rekha A. Nair)
 Superintendent (Appeals)
 CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Valeo India Pvt Ltd,
 Plot No. AV.15, Sanand Industrial Estate,
 GIDC, Sanand,
 Ahmedabad

- (Appellant)

The Additional Commissioner,
 CGST, Ahmedabad North
 Ahmedabad-380009

- (Respondent)

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
 (For uploading the OIA)
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