



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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स्पीड पोस्ट

2982-2986

- क फाइल संख्या : File No : GAPPL/COM/CEXP/619/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-23/2022-23**
दिनांक Date : **12.08.2022** जारी करने की तारीख Date of Issue : **12.08.2022**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **04/ADC/MLM/2021-22** dated **27.05.2021**, 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. Yanfeng India Automotive Interior Systems Pvt. Ltd., Plot No. AV-21, Sanand, GIDC-2, Village- Bol, Taluka-Sanand, Dis:-Ahmedabad-382110.

Respondent- The Additional Commissioner, Central GST & Central Excise, Ahmedabad-Norh.

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 हों।

(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, बहमाली 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 .

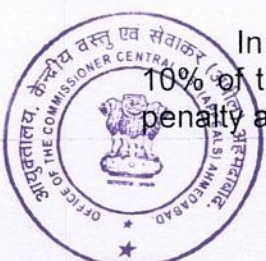
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Yanfeng India Automative Interior Systems Pvt Ltd, Plot No. AV-21, Sanand GIDC-2, Village Bol, Taluka- Sanand, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the instant appeal against the OIO No.04/ADC/MLM/2021-22 dated 27.05.2021 (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.AAACY5078PEM002, are engaged in manufacture of automotive parts for M/s. Ford India Pvt Ltd. (hereinafter referred as 'Ford' for brevity). During the audit of the financial records maintained by the appellant, the officers of Central GST Audit, Ahmedabad, noticed following discrepancies.

- a) The appellant had purchased tools on behalf of Ford for which they received advances from Ford amounting to Rs.5,09,95,913/- each on 05.06.2015, 24.08.2015 & 06.08.2016. Ford indirectly supplied tools free of cost or at reduced cost to the appellant for manufacture of motor vehicle parts for them. These tools were not capitalized and instead the appellant showed them in the inventory of moulds & tools. It was noticed that the amortized value of these tools received for a certain period was not included in their assessable value of the final products (motor vehicle parts) cleared to Ford. The value of tools received from Ford appeared to be an additional consideration flowing from the buyers end to the appellant and would form part of the transaction value in terms of clause (ii) to Explanation 1 of Rule 6 of the Valuation Rules, 2000. Such non-inclusion of the value of tools in the transaction value resulted in difference in the assessable value to the tune of Rs.4,22,75,474/- on which short payment of excise duty of **Rs.52,84,434/-** was noticed for the period from April, 2016 to June, 2017.
- b) For the same period, it was also noticed that the appellant, in some cases, did not consider full amortized value of the tools received from Ford, which resulted in short payment of excise duty to the tune of **Rs.40,63,213/-** on the differential value of Rs.3,25,05,702.

3. Based on the audit observation, a Show Cause Notice (SCN for brevity) SCN dated 24.07.2020, was issued vide F.No.VI/1(b)/Tech-9/SCN/Yanfeng/2020-21, proposing central excise duty demand of Rs.52,84,434/- and Rs.40,63,213/- alongwith interest under Section 11A(4) & 11AA of the CEA, 1944, respectively. Penalty u/s 11AC (1)(c) and Penalty under Rule 25 of the CER was also proposed. The said SCN was adjudicated vide the impugned order wherein the demand alongwith interest was confirmed and penalty u/s 11AC read with Rule 25 was also imposed.

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

- a) The project started in 2016 for which they received purchase order from Ford in 2015 and started manufacture of finished goods in 2016. They purchased certain tools during the F.Y. 2015-16. The ownership for some tools/moulds were transferred to Ford on 01st October, 2016 and for balance tools /moulds the



ownership was transferred on 21.02.2017, by issuing commercial invoice without any actual movement of goods. Sales tax was paid when such ownership was transferred but Central Excise duty was discharged only at the time of physical removal of all tools/moulds to Ford on 9th June, 2017 only. At the time of discharging central excise duty on finished goods, the amortization cost of tools/moulds was also included, on the basis of expected number of outputs of finished goods. Therefore department's contention that amortization cost should be included from April, 2016 is unlawful.

- b) The appellant and Ford are un-related persons and price is the sole consideration hence there is no need to refer to Section 4(1)(b) as excise duty is correctly discharged on the assessable value determined by the appellant. Clause (ii) of Explanation 1 to Rule 6 of the Valuation Rules, 2000, is also not applicable as Ford did not have the ownership of the tools and therefore question of Ford giving tools free of cost to the appellant before September, 2016, does not arise. Receipt of purchase order for tools or advance payment received neither demonstrates free supply of tools nor does it demonstrate transfer of ownership to Ford. Showing the tools in inventory and non-claiming of depreciation is not a factor to determine ownership of goods as property of goods should be transferred from seller to buyer to consider it as a sale. As and when the ownership of tools was transferred to Ford, the appellant started including amortized cost in the finished goods removed thereafter. They placed reliance on Section 4 of the Sale of Goods Act, 1930.
- c) On the second issue they contended that on the basis of the expected number of output of finished goods computed, the amortization cost of tools/moulds has been included in the assessable value of the finished goods from 01st October, 2016 for discharging sale taxes and central excise duty. Amortization cost is to be included such that total cost of tools is amortized over the total number of finished goods. Central Excise duty is to be discharged on total cost of tools and not on an amount which is in excess of the total cost of tools. Any additional amortization will result in amortizing excessive total value of tools, which the company cannot recover from Ford or pay. The higher amortization amount from July, 2017 was on account of reduction in expected number of finished goods and such revised amortization cost was included in the assessable value w.e.f. July, 2017. Thus, there cannot be additional central excise duty demand when central excise duty is paid on the entire cost of tools. They placed reliance on Exotech Plastics Pvt. Ltd.- 2018(364) ELT 658 (Tri-Mum); Multimedia Frontiers Ltd-2003(159)ELT 993 (tri-Mum) ; Shardlow India Pvt. Ltd-1999(110) ELT 772(Tri).
- d) Extended period is not invocable as they have included the cost of amortization in the assessable value from 1st Oct, 2016 on which applicable sales tax and central excise duty on finished goods discharged and from July, 2017 they re-computed the balance number of outputs of finished goods and accordingly re-computed the amortized value and included the same in assessable value of the finished goods hence fraud, collusion, willful mis-statement or suppression of facts. They placed reliance on Pushpam Pahraceuticals-1995(78) ELT 401 (SC); Uniworth Textiles Ltd- 2013 (1) TMI 616-SC.

Interest is not leviable when the demand itself is not sustainable. Penalty also cannot be imposed as the appellant has acted on bonafide belief and has rightly discharged the duty without any malafide intention to evade duty.



- f) They claim that they made the payment of Rs.93,47,647/- on 20.07.2021 under protest and therefore reserve their right to seek refund of the same.

5. Personal hearing in the matter was held on 07.06.2022 through virtual mode. Ms. Khushboo Kundalia and Shri Gauran Kodrani, both Authorized Representatives, appeared on behalf of the appellant. Ms. Khushboo Kundalia reiterated the submissions made in the appeal memorandum.

6. 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 and the evidences available on records. The issues to be decided under the present appeal are;

- Whether amortization cost of tools supplied by Ford, should be included in the assessable value from April, 2016 onwards or otherwise?
- Whether higher amortization cost of tools should be included in the assessable value, from April, 2016 onwards or otherwise?

The period of dispute in both the issues is from April, 2016 to June, 2017.

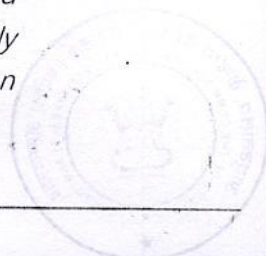
7. On the first issue, it is observed that the adjudicating authority held that the tools received by the appellant indirectly from Ford either free of cost or at reduced cost, for production and sale of motor vehicle parts to Ford, would be an additional consideration flowing from Ford to the appellant. Therefore, in terms of clause (ii) to Explanation 1 to Rule 6 of the Valuation Rules, 2000, such value would be added to the transaction value for the purpose of paying excise duty on motor vehicle parts sold to Ford. The appellant on other hand are contending that from April, 2016 to September, 2016, the ownership of these tools remained with them as these tools were not physically removed to Ford. In fact from October, 2016, on removal of finished goods, they discharged central excise duty considering the amortization cost on the basis of expected number of outputs of finished goods.

7.1 To examine the issue in proper perspective, the relevant Rule 6 of Central Excise Valuation Rules, 2000, is reproduced below:

“RULE 6 Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

[Provided that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.]

[Explanation 1] - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production



and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely: -

- (i) value of materials, components, parts and similar items relatable to such goods;
- (ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;
- (iii) value of material consumed, including packaging materials, in the production of such goods;
- (iv) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

[Explanation 2. - Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit.

Illustration 1. - X, an assessee, sells his goods to Y against full advance payment at Rs. 100 per piece. However, X also sells such goods to Z without any advance payment at the same price of Rs. 100 per piece. No notional interest on the advance received by X is includible in the transaction value.

Illustration 2. - A, an assessee, manufactures and supplies certain goods as per design and specification furnished by B at a price of Rs. 10 lakhs A takes 50% of the price as advance against these goods and there is no sale of such goods to any other buyer. There is no evidence available with the Central Excise Officer that the notional interest on such advance has resulted in lowering of the prices. Thus, no notional interest on the advance received shall be added to the transaction value."

7.2 As per the above Rule 6, the consideration equal to the value of the goods supplied free of cost has to be included in the assessable value. In the instant case, the appellant had received advances from Ford against which they had purchased tools/moulds for Ford and used the same for manufacturing the finished products i.e. automotive parts and sold them to Ford. Thus, it is apparent that the tools were indirectly supplied by the buyer i.e. Ford to the appellant as these tools/mould were neither capitalized nor any depreciation was claimed by the appellant, a fact which the appellant has not refuted. Though the ownership of the tools remained with the appellant from April, 2016 to September, 2016, and the ownership got transferred only when the commercial invoice was issued on 1st October, 2016 and 21st February, 2017, it does not disprove the fact that these tools were procured from the advances paid by Ford and were subsequently used for manufacture of finished goods cleared to Ford since April, 2016. Though appropriate central excise duty was discharged on the assessable value of the finished goods but the fact remains that this value did not



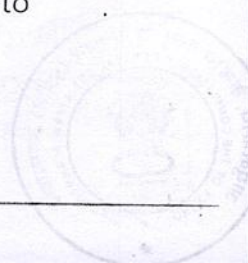
include the element of tool amortized cost. As per the provisions of transaction value, an additional amount which the buyer is paying and which is affecting the price of the goods is includible in the assessable value of the goods. The duty demanded is on the differential value of tool value which the appellant were using in the manufacture of finished goods since April 2016 onwards. Therefore, as per the explicit provisions of Rule 6, I find that the amortization cost of tools was rightly included by the adjudicating authority in the assessable value of final product and, thus, the demand on merit is clearly sustainable.

7.3 It is observed that Hon'ble Tribunal, WZB, Ahmedabad in the case of *Bhagwati Spherocast Pvt. Ltd - 2019 (369) E.L.T. 1338 (Tri. - Ahmd.)* held that there is no dispute in the fact that the appellant have used the pattern which belongs to the buyer of the goods, which means the appellant have manufactured final product by the use of patterns, supplied free of cost by the buyer to the appellant. In such a case, Rule 6 of Central Excise Valuation Rules, 2000, comes into play and amortization cost of the pattern used by the appellant has to be included in the transaction value. Similarly, in an appeal filed by *Lear Automotive India Pvt. Ltd., Hon'ble Tribunal in its impugned order Nos. A/339-341/2012-WZB/C-II(EB), dated 11-5-2012 as reported in 2012 (286) E.L.T. 558 (Tri.-Mumbai)* had held that the advance given by buyer to assessee for tools/moulds, value of inputs received by assessee free of cost from buyers, as well as, any additional amount paid by buyer over and above price charged, is to be included in assessable value of finished goods. Relevant para is reproduced below;

" 29.3 Rule 6 of the Central Excise Valuation Rules deals with a situation where the price is not the sole consideration for sale and there is additional consideration flowing directly or indirectly from the buyer to the assessee. The Explanation to the rule clarifies and enumerates 4 situations where the additional consideration flows directly and indirectly. A reading of the rule read with the explanation thereto clearly indicates that the additional consideration is received either by way of supply of goods or by way of supply of services. In such a situation, the money value of additional consideration has to be quantified and added to the price to arrive at the transaction value. When the consideration itself is received in money as advance, the question of quantification of money value does not arise. The definition of transaction value under Section 4(3)(d) includes all amounts charged by reason of or in connection with the sale, whether payable at the time of sale or at any other point of time. In the instant case, there is no doubt that the tool advance was received in money for the supply and sale of goods by the appellant to the buyer. Therefore, such advance/consideration received, irrespective of the purpose for which it has been used, will be includible in the transaction value on which excise duty liability has to be discharged."

7.4 In view of the foregoing discussion, I hold that in terms of Section 4(1)(b) read with definition of 'transaction value' defined under Section 4(3)(d) of the Central Excise Act, 1944, the amount of tooling advance/additional consideration received by the appellant towards the supply of tools from the end of Ford, is includible in the assessable value of the finished goods manufactured and supplied to Ford since April, 2016. Therefore, the demand of **Rs.52,84,434/-** for the period from April, 2016 to June, 2017, is legally sustainable on merits.

7.5 When the demand sustains, there is no escape from interest, hence, the same is therefore also recoverable under Section 11AA of the CEA, 1944. Appellant by failing to



include the tool amortization cost in the assessable value has rendered themselves liable to pay central excise duty alongwith applicable rate of interest.

7.6 I find that the demand was raised based on the audit paras raised during scrutiny of their financial records. It is appellant's responsibility to correctly assess and discharge the duty liability. Suppression of assessable value by not including the amortized cost of tools has resulted in short payment of duty which clearly point towards the fraudulent practice followed with intent to evade payment of central excise duty. Thus, I find that extended period of limitation has been rightly invoked. If any of the circumstances referred in Section 11A(4) are established, the person liable to pay duty would also be liable to pay a penalty equal to the duty so determined. I also find that the judgment relied by the appellant passed in the case of Pushpam Pahraceuticals-1995 (78) ELT 401 (SC) and Uniworth Textiles Ltd- 2013 (288) E.L.T. 161 (S.C.) are not squarely applicable as the issues are distinguishable on facts. In the case of Pushpam Pahraceuticals Hon'ble Apex Court held that in demand relating to period prior to Wallace Flour Mills' case - Extended period of limitation of 5 years inapplicable because non-declaration of value of clearances of exempted goods does not amount to 'suppression of facts' in view of conflicting decisions and in the absence of any rule under which the manufacturer is required to disclose the turn-over of the exempted goods - Section 11A of the Central Excises and Salt Act, 1944. In the case of Uniworth Textiles, Hon'ble Apex Court held that EOU addressing to Development Commissioner their doubt about availability of exemption, thus, in a sense offering its activities to assessment - Even if Development Commissioner was not the most suitable repository of answers sought by EOU, it could not take away from bona fide conduct of EOU - It still showed that EOU made efforts to adhere to law rather than its breach - There was no wilful mis-statement, and extended period of limitation could not be invoked on ground that EOU had misutilized exemption - Section 28 of Customs Act, 1962. In the present case, the appellant despite being aware of the fact that the amortized cost of tools are includible in the assessable value, did not include the same from April, 2016 to June,2017, which clearly points to a finding of suppression and misstatement with a malafide intention.

7.7 Once the suppression is proven, there is no escape from mandatory penalty provided under Section 11AC. The issue of mandatory penalty is 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. In the present case, the appellant suppressed the facts that they received additional consideration for tools supplied indirectly by Ford either free of cost/reduced cost and intentionally did not include the cost of tools in the assessable value of the finished goods with an intent to evade payment of central excise duty and thereby clearing final goods without payment of central excise duty. Such deliberate act of the part of the appellant has led to contravention of Section 4 and provisions of Rule 6 of the Valuation Rules, 2000 therefore, the duty not paid is required to be recoverable under Section 11A (4) of the CEA 1944, with applicable rate of interest and penalty u/s 11AA & 11AC respectively.

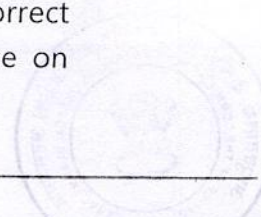


8. It is further observed that the demand on the second issue was confirmed by the adjudicating authority merely on the argument that the appellant have not taken into consideration the full amortized value of tools received from Ford for the purpose of payment of excise duty from April, 2016 to June, 2017. He observed that the excise duty is payable on the short inclusion of the money value of the additional consideration of tools which were used in the manufacture of motor vehicle parts sold to Ford. I find that the adjudicating authority has not given any findings justifying his above observations. The appellant, however, have contended that the higher amortization amount from July, 2017 was on account of reduction in expected number of finished goods and such revised amortization cost was included in the assessable value w.e.f. July, 2017. They also placed reliance on the judgment in the case of Exotech Plastics Pvt. Ltd.- 2018(364) ELT 658 (Tri-Mum); Multimedia Frontiers Ltd-2003(159)ELT 993 (Tri-Mum) and Shardlow India Pvt. Ltd-1999(110) ELT 772(Tri), in support of their argument.

8.1 It is observed that in cases, where the tools/moulds are supplied free of cost by the buyer, the amortization is to be done and a fraction of the cost is to be added to the value of each item by considering the total number of pieces which can be manufactured using the said tools/moulds in its entire life, or where the life of tools/moulds is determined in terms of the period, e.g. Number of months, years, etc., for which this can be used, then based on the number of pieces which can be made during this period. In the present case, the appellant, considering the reduction in the expected number of finished goods has revised the amortized cost of tools from July, 2017 onwards and included the same in the assessable value. Department however, claim that central excise duty on such higher amortized value, should have been paid from April, 2016 onwards i.e. from the commencement of the production.

8.2 The fact that these tools were used in manufacture of finished goods since April, 2016, is not denied by the appellant, therefore, the value of the finished goods manufactured by the appellant should include the appropriate fraction of the cost of Tools/Moulds as it has been given in the explanation of Rule 6. However, the amortized cost should be worked out on *pro rata* basis taking into consideration the life span of the tools used for the manufacture of the automotive parts and thereafter determine the duty liability accordingly. Amortization cost may increase or decrease depending on the total production. If the production increases, the amortization cost may decrease and vice versa. The appellant claim that expected production declined but they have not produced the calculation evidencing their above claim though they had sufficient time to do so either before the adjudicating authority or before me.

8.3 Moreover, I find that the adjudicating authority has also failed to examine this aspect as no finding has been given refuting appellant's above claim. It is observed that the adjudicating authority had confirmed the duty demand on the differential amount of tool amortization cost which is *prima facie* incorrect. Only proportionate amortized cost should be added in the value of automobile components manufactured by the appellant over a period of time. This cost may vary considering the actual production or the lifespan of the tools used. As no concrete documentary evidence is produced by the appellant in arriving at the higher amortized value /cost, determination of the correct demand at this stage is not possible. Further, the appellant have placed reliance on



various decisions of Hon'ble Tribunal, which I find are applicable to the present issue. In the case of Exotech Plastics Pvt. Ltd. reported at 2018 (364) ELT 658 (Tri-Mum), Hon'ble Tribunal held that "the duty demand on the total cost of the tooling is incorrect and only the amortized cost should be included in the value if automobile components manufactured by the appellant." Similarly in Multimedia Frontiers Ltd-2003 (159) ELT 993 (Tri-Mum), it was held that "prima facie realistic to say that the cost of the stampers should be spread over the actual number of compact discs in the manufacture of which it is used." Further, in Shardlow India Pvt. Ltd-1999 (110) ELT 772 (Tri), Hon'ble Tribunal held that "The law does not provide for loading of the cost of the entire cost incurred towards a particular activity which is relatable to the goods which will be manufactured over a period of time. Therefore, what is required under law is that the element of the cost incurred towards master die should be worked out on pro rata basis taking into consideration the normal life span of the master die for the manufacture of certain number of pieces of subsidiary dies or direct use of the die for manufacture of the forgings and thereafter determine the duty liability by adding the element of the cost which may be taken to be rolling over a particular quantum of goods by use of the master die etc."

8.4 Thus, applying the ratio of above decisions and in the light of my discussions held in Para 8.2 & 8.3 (supra), I am of the view that the matter needs to be remanded to the adjudicating authority for re-examination of the second issue and to re-determine the duty demand afresh. Needless to mention the appellant shall be provided opportunity to represent their case. The appellant is also directed to furnish the necessary data in this regard to the adjudicating authority.

09. In view of the above discussions and findings, I uphold the duty demand of Rs.52,84,434/- alongwith interest and penalty. Further, I allow the appeal with respect to the demand of Rs.40,63,213/- by way of remand.

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.

Arunai.
12/5 August 2022
(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 8.2022

Attested

Rekha Nair

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



By RPAD/SPEED POST

To,
M/s. Yanfeng India Automative Interior Systems Pvt Ltd,
Plot No. AV-21, Sanand GIDC-2,
Village Bol, Taluka- Sanand,

Appellant

Ahmedabad

The Additional Commissioner,
Central GST,
Ahmedabad North

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)

4. Guard File.

