CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20667 of 2018

(Arising out of Order-in-Original No. 04/2018-PR Commr. dated 07.02.2018 passed by the Commissioner of Central Tax, Bangalore.)

M/s. Toyota Kirloskar Motor Private Limited
Plot No.1, Bidadi Industrial Area,
Bidadi – 562 109.
Ramnagar District

Appellant(s)

VERSUS

The Commissioner of Central Tax
GST West Commissionerate,
1st Floor, TTMC (BMTC Building),
Banashankari,
Bengaluru – 560 070.

Respondent(s)

APPEARANCE:

S/Shri Ravi Raghavan and Roshan, Advocates for the Appellant.

Shri H. Jayathirtha, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20568 /2024

DATE OF HEARING: 03.04.2024

DATE OF DECISION: 26.07.2024

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.04/2018-PR Commr. dated 07.02.2018 passed by the Commissioner of Central Tax, Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Multi Utility Vehicle (MUV) / passenger cars and parts thereof falling under Chapter Sub-Heading 8703 23 10 and 8708 10 90 of the Central Excise Tariff Act, 1985. They manufacture various models of cars viz., Innova, Fortuner, Corolla, Etios Sedan, Etios Liva, Camry and Camry Hybrid. The effective rate of Central Excise duty vary from one vehicle model to another. The Fortuner, Innova and Corolla models carry high rate of Central Excise duty in comparison to other models. During the course of audit of the records, it has been observed that appellant is passing on discounts under various sales incentive/promotion schemes circulated to its dealers from time to time. The discount was declared for each model of the vehicle specifying the discount amount. The discounts have been extended for specific models. On an analysis of the discounts based on various models, it was observed that they had adopted discount methodology only for specific type of models viz., Etios, Liva, Innova and Camry hybrid models. It was accounted through reduction in the assessable value in the dealers invoices in respect of clearances of Fortuner, Innova and Corolla models which attracts higher rate of duty. Further, it was noticed that the assessable value of the vehicles was reduced by adjusting the discounts allowed by dealers on spare parts turnover sold to end-users based on the previous month turnover and also for payment of service charges for various services such as after-sales warranty expenses. It is alleged that due to cross-model discount and adjustment of discounts provided to spare parts and service charges against the value of vehicles attracting higher rate of duty were not informed to the department, hence, they had indulged in undervaluation of the goods. Consequently, a show-cause notice was issued to them on 11.4.2017 for recovery of short-payment of duty of Rs.54,33,17,188/- for the period April

2012 to June 2014 with interest and penalty. On adjudication, the demand was confirmed with interest and equal amount of penalty. Hence, the present appeal.

3. The learned advocate Shri Ravi Raghavan for the appellant submits that they engage dealers across India through various dealership agreements to sell their vehicles to consumers / end-users. As per the general industry practice, the appellant offered various incentive schemes to their dealers and discount schemes were floated in advance to the dealers i.e., prior to the removal of the vehicles from the factory. The discounts schemes were of various nature viz., wholesale incentives (Target linked, Early Bird, Non-target linked), retail sale incentives (Target linked, Non-target linked) and documents based incentives - Loyalty Scheme, Exchange claims, etc. Based on the eligibility conditions and the dealer's performance during the month, entitlement incentives earned by each dealer is computed in the beginning of the following month. The said computation is consolidated by the marketing team of the appellant and communicated to the Finance Team for disbursement. The incentives to the dealer in a staggered manner in respect of the vehicles purchased by them in the following month have been passed through invoices. He has submitted that the Comptroller Auditor of General conducted an audit on their records and through letter dated 8.2.2016 raised an objection that practice of passing discounts on motors vehicles to dealers and claiming deduction of the same from the transaction value is covered against the appellant by the decision of the Tribunal in the case of **Toyota Motors Ltd. vs. CCE, Pune: 2015 (328) ELT 321 (Tri.-Mumbai)**.

3.1 The learned advocate further submitted that the definition of 'Transaction value' as prescribed under Section 4(3)(d) of the Central Excise Act, 1944 has been satisfied in the present case and post 1.7.2000, net realisation from the customer is relevant

for the purpose of payment of duty. In support, he has referred to the judgment of the Hon'ble Supreme Court in the case of **Purolator India Ltd. vs. CCE, Delhi-III: 2015 (323) ELT 227 (SC)**. He has submitted that in the present case, the price actually paid or payable as mentioned in the invoice is relevant for the purpose of assessment. The price mentioned in the invoices, which is net of the discount offered therein is the sole consideration for sale of goods which is the amount actually paid or payable. The appellants have duly discharged Central Excise duty on this amount, therefore, there is no short-payment of Excise duty.

3.2 He further submits that the vehicles have been sold by the appellant to the dealers who are unrelated parties at the price mentioned in the invoice which is the actually paid or payable by the dealer to them, thus there is no flow of additional consideration from the dealer to the appellant. In support, he has placed reliance on the decision of **CCE vs. Grasim Industries Ltd.: 2016-TIOL-38-CX-LB**.

3.3 Further, he has referred to the Circular dated 30.6.2003 issued by the Board wherein it has clarified that transaction value includes whatever is recovered from the buyer which is in connection with the sale and the said Circular is binding on the department. In support, he referred to the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Bolpur vs. M/s. Ratan Melting and Wire Industries, Calcutta: 2005-TIOL-41-SC-CX-LB**.

3.4 Further, he has submitted that incentive provided by them are merely in the nature of quantity discount which must be deducted for arriving at the transaction value on the face of the invoice raised in respect of Fortuner, Innova and Corolla models

and the disallowance of such deduction is because of alleged cross utilisation of discount which has resulted into undervaluation cannot be sustained. He has submitted that the incentive scheme is only qualifying or eligible criteria for quantum of incentive which is issued for a particular month and does not provide the discounts for the goods / models sold in that particular month. Once the incentive has been earned by the dealers, the same is awarded by the appellant in the form of discount. Hence, cross-utilisation of discounts results into undervaluation is incorrect and unsustainable.

3.5 Further, he has submitted that the incentive schemes floated by the appellant are driven factors and would even relate to the high rate of duty related to cars such as Fortuner, Innova and Corolla and are not specifically limited to other cars.

3.6 Referring to the PR sheets submitted during the course of adjudication, the learned advocate submits that a portion of the total incentive unlocked by the dealers by satisfying various conditions of the incentive schemes floated during relevant month also relates to vehicles Fortuner, Innova and Corolla. It is immaterial whether the discount schemes were floated for small cars, once the discount has been given on the face of the invoice. It satisfies the criteria by passing on to the buyers made known prior to the date of removal of goods, hence eligible deductions irrespective of any relation or not to the earlier schemes floated by the appellant.

3.7 Further, he has submitted that extended period of limitation cannot be applicable in the present case as appellant has not suppressed any facts and all facts were within the knowledge of the department. They have been following this methodology from the year 2008 and there have been periodical visits to the appellant’s factory by the Departmental Officers and

the invoices raised have been examined and no objection whatsoever was raised by the department at any point of time. In support, he referred to the judgment of the Hon'ble Supreme Court in the case **Commissioner of Central Excise, Bangalore vs. Pragathi Concrete Products (P) Ltd.: 2015 (322) ELT 819 (SC)**. He submitted that there is no specific column assigned in the ER-1 returns to mention the break-up of the elements included or deductions made in computing assessable value. The appellant has declared the total clearance value in the ER-1 returns, hence allegation of the suppression is unsustainable. In support, he has referred to the judgment of the Tribunal in the case of **Goran Pharma Pvt. Ltd. vs. CCE, Bhavnagar: 2010 (250) ELT 57 (Tri.-Ahmed.)**. Further, he has submitted that the present demands were based on statutory records maintained by the appellant, hence invocation of extended period is also unsustainable. The department failed to bring out any evidence on suppression or mis-statement; hence making a bald allegation cannot be sustained. Also, penalty on the appellant is not imposable.

4. Per contra, the learned Authorised Representative for the Revenue has reiterated the findings of the learned Commissioner. He has submitted that the mechanism and the procedure adopted by the appellant to pass on the incentive/ discounts earned against a particular model and for a particular month is based passed on against another model and during the following month, which is not permissible and admissible discount under the provisions of Section 4 of the Central Excise Act, 1944. The adjudicating authority has found that on the basis of the evidence that discount passed on certain models of cars were actually related to the discount of some other model of cars, hence, held that transaction value of the said cars is not in accordance with Section 4(1)(a) of the Central Excise Act, 1944.

In case of such model of cars, the department is disputing the cross model utilisation of discount scheme. Further, he has submitted that the issue is squarely covered by the judgment of this Tribunal in the case of **Tata Motors Ltd.** (supra). Also, he has submitted that appellant has suppressed the correct assessable value, hence, extended period of limitation is invocable and penalty warranted.

5. Heard both sides and perused the records.

6. The short issued involved in the present appeal for consideration is whether the incentive of discounts declared for small/mid segment cars be allowed to luxury model cars i.e., Fortuner, Innova and Corolla attracting higher rate of duty. In other words, whether cross model utilisation of incentives/discounts are admissible.

6.1 The appellant vehemently argued that since the price has been reduced by the incentive discount passed on the face of the invoice irrespective of the applicability of discount to any model of cars, the same are allowable from the price. The department's contention on the other hand is that cross model utilisation of discounts are not admissible in view of the judgment of this Tribunal in the case of **Tata Motors Ltd.** (supra). Therefore, it is relevant to discuss the facts and findings of the Tribunal in the case of **Tata Motors Ltd.** (supra). The facts in that case are briefly that the Tata Motos Ltd. are manufacturers of passenger cars of Indica and Indigo and Multi Utility Vehicle such as Sumo and Safari in its factory at Pimpri, Pune. Various incentives and discounts were passed on to the said vehicles. On the basis of investigations, it was alleged that they were passing various incentives attributable to Indica and Indigo cars on their dealer's performance as per monthly car target scheme to Indigo cars; in the event sufficient number of Indica cars are not lifted. In other

words, the question raised before the Tribunal was whether cross-model utilisation of discounts are admissible under Section 4 of the Central Excise Act, 1944. The findings recorded at para 6.5 are herein reproduced below:

> **"6.5** When we apply the ratio of the above judgments to the facts of the present case, as detailed in Paragraph 5.15 above, it can be easily seen that the so-called "special discount" offered by the appellant does not conform to any of the requirements of a trade discount. That is, it is not known at or prior to the removal of the goods; it is not in accordance with any established trade practice; it is not uniform within the same class of buyers; it is purely arbitrary; it is a compensation for the services rendered by the dealers on behalf of the manufacturer, masqueraded as a discount; it is not passed on to the end-customers; and it is not passed on as a price reduction of the goods to which it pertains to. Thus the so called special discount claimed to have been passed on by the appellant to the dealers is not a trade discount at all so as to be eligible for exclusion from the assessable value of the goods removed as per the provisions of Section 4 of the Central Excise Act. Therefore, denial of abatement of the said discount from the assessable value of the goods sold is clearly sustainable in law and accordingly, we uphold the demand for differential duty confirmed in the impugned order. Arguments to the contrary made by the appellant in this regard merits total rejection. The appellant has relied on a number of judicial pronouncements in support of their claim that the special discount is a permissible trade discount. We have already given our reasons, both factual and legal, why this contention is not acceptable. Therefore, we do not find it necessary to discuss each individual decision and give a finding as to why it is not relevant or acceptable. Once the demand for differential duty is upheld, the liability to pay interest thereon is automatic and consequential. Therefore, the demand for interest on the differential duty liability is also upheld."

In the said case, this Tribunal held that discounts passed on by the appellant to the dealers does not satisfy the requirement of a trade discount to qualify for deduction in as much as if the

discount is declared for a particular model of car, the end-user is not receiving the discount and the discount is purely arbitrary; hence, not available as an abatement from the price of the goods.

7. We do not find any reason to differ from the principle laid down in the case of **Tata Motors Ltd.** (supra). No contrary judgment on the subject was placed before us. Therefore, the cross-model utilisation of discount are inadmissible to the appellant. On the issue of invoking larger period of limitation, we find that the appellant has been following the said mechanism of passing incentives/discount since 2008 and no objection has been raised by the department. The issue raised only after the judgment of the Tribunal in **Tata Motors Ltd.'s** case by Central Excise Revenue Audit and the demand has been computed on the basis of available records; show-cause notice was issued to the appellant demanding differential duty proposing denial of said deduction from the price. Hence, we do not see any suppression or mis-declaration or mis-statement of facts on the part of the appellant. In absence of any suppression or mis-declaration of the facts, in our view, larger period of limitation cannot be invoked. Consequently, the demand is barred by limitation. In the result, the impugned order is modified and appeal is allowed on the ground of limitation only.

(Order pronounced in Open Court on 26.07.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)