

2013 (1) ECS ( 48) (Tri-Del)

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Block No. 2, R.K. Puram, New Delhi – 110066

Date of Hearing: 8.2.2013

**M/s Maruti Suzuki India Ltd.**

**Versus**

**CCE, Delhi – III**

**NO. E/STAY/4745/2012 IN E/3752/2012 AND**

**E/STAY/4754/2012 IN E/3762/2012**

[Arising out of Order-in-Original No. 62-66/SA/CCE/2012 dated 27.8.2012 passed by the Commissioner of Central Excise, Delhi-III]

M/s Maruti Suzuki India Ltd.

Appellant

Versus

CCE, Delhi – III

Respondent

Appearance :

Appeared for Appellant : Shri Amit Jain, Advocate

Appeared for Respondent: Shri Devender Singh, Jt. CDR

**CORAM:**

**Hon'ble Ms. Archana Wadhwa, Member (Judicial)**

**Hon'ble Shri Sahab Singh, Member (Technical)**

Stay Order No. 56144-56145/2013 dated 8.2.2013

**“After hearing both the sides, we find that in the scheme of pool lifting charges the dealers placed orders for number of vehicles and certain type, model, colour required by them in future for ultimate sale to their customers. But in case later on, they received more orders for the vehicles dealer can lift these vehicles from the pool created by the applicant. In order to received these vehicles from this pool he has to pay extra charges to get these vehicles. The applicant is clearing the goods to their dealers on the invoices on which Central Excise duty had been paid. The dealers in turn sell these cars to their customers by adding their original invoice amount plus the pool lifting charges. We find that pool lifting charges are being recovered from the customers. Accordingly we are of the view that these charges prima facie are required to be added in the value under Section 4 of the Central Excise Act.” [Para 6]**

**Per Sahab Singh:**

1. This is stay application filed by M/s Maruti Suzuki India Ltd. seeking waiver of pre-deposit and stay of recovery of Rs. 3,83,03,480/- and equal amount of penalty imposed on them by the Commissioner.
  
2. The applicant is engaged in the manufacture and clearance of motor vehicles and parts thereof under Chapter 87 of the Central Excise Tariff. During the course of audit, it was found by the Departmental officers that the applicant has collected additional amount from the buyers/dealers in the various categories:-
  - (i) Penalty on dealers;
  - (ii) Income from pool cancellation and pool lifting charges from dealers and;
  - (iii) Cancellation charges for extended warranty.

It was found by the department that all these charges / considerations are liable to be added in price of the goods to arrive at the correct assessable value and Central Excise duty is required to be paid on the basis of transaction value as defined in Section 4 of the Central Excise Act, Accordingly, a Show Cause Notice was issued to them which was confirmed by the Commissioner in respect of amount received towards pool lifting charges and Commissioner dropped the proceedings in respect of penalty on dealers and amount received towards pool cancellation charges.

3. The Id. Advocated appearing for the applicant submits that pool lifting charges incurred by the dealers of the applicant cannot form part of the transaction value and therefore no duty is required to be paid on such charges. He submits that the transaction value has been defined as per Section 4 (3) (d) of the Act and this definition is quite exhaustive and covers the various other amounts charged by the assessee by reason of sale or in connection with the sale. The pool lifting charges are not covered under any of the categories mentioned in Section 4 (3) (d) of the Central Excise Act. He therefore submits that the demands on the charges are not sustainable.
4. He also submits that Show Cause Notices were issued to them on the basis of audit objections without any proper investigations. Therefore Show Cause Notice is bad in law and no demands can be raised on the basis of such Show Cause Notice. He further submits that the extended period of limitation is not applicable in the present case and demand is time barred.
5. Ld. DR appearing for the Revenue submits that the applicant is recovering various charges from their dealers in the form of pool lifting charges. These charges recovered from the dealers definitely formed a consideration in respect of sales of motor vehicles to the dealers. He submits that the Commissioner has examined all the submissions made by them and has confirmed the demand against the applicant and Commissioner has granted the relief wherever applicable to the applicant. The department has a strong case in respect of pre – deposit by the applicant in this case.
6. After hearing both the sides, we find that in the scheme of pool lifting charges the dealers placed orders for number of vehicles and certain type, model, colour required by them in future for ultimate sale to their customers. But in case later on, they received more orders for the vehicles dealer can lift these vehicles from the pool created by the applicant. In order to received these vehicles from this pool he has to pay extra charges to get these vehicles. The applicant is clearing the goods to their dealers on the invoices on which Central Excise duty had been paid. The dealers in turn sell these cars to their customers by adding their original invoice amount plus the pool lifting charges. We find that pool lifting charges are being recovered from the customers. Accordingly we are of the view that these charges prima facie are required to be added in the value under Section 4 of the

Central Excise Act. Therefore the applicant does not have a prima facie case in their favour. After taking into consideration the issue of time limitation as well as plea of cum duty benefit as contended by the Id. Advocate, we directed the applicant to make deposit of Rs. 1.15 crores within eight weeks and report compliance on 10<sup>th</sup> May 2013. On due compliance, there shall be stay of the balance dues till disposal of the appeal.

(Pronounced in open court)