



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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F.No:- V.87/15-21/OA/2020

आदेश की तारीख/Date of Order : - 27.05.2021
जारी करने की तारीख/Date of Issue :- 27.05.2021

DIN No.:20210564WT000000A5ED

द्वारा पारित/Passed by:-

एम. एल. मीणा / M.L.Meena
अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 04/ADC/MLM/2021-22

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(83) उक्त अपील की प्रति।

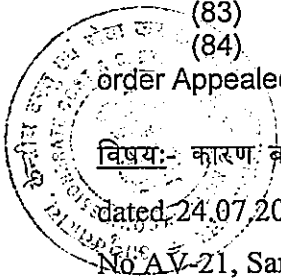
(84) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

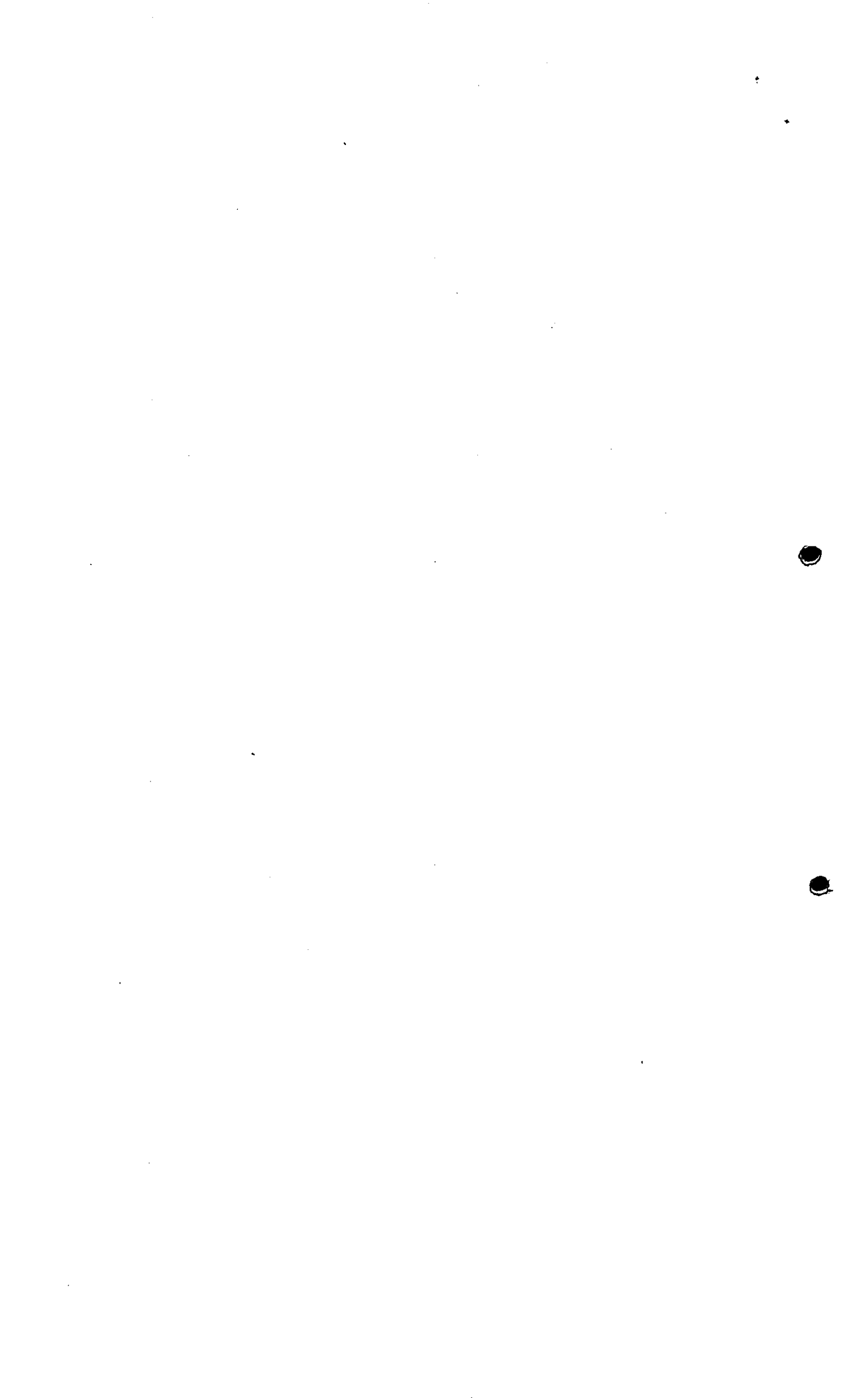
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(83) Copy of accompanied Appeal.

(84) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice F.No. VI/1(b)/Tech-09/SCN/Yangfeng/2020-21 dated 24.07.2020 issued to M/s. Yanfeng India Automotive Interior Systems Private Ltd, Plot No AV-21, SanandGIDC-2, Village Bol Taluka: Sanand, District: Ahmedabad 382 110.





Brief Facts of the Case:

1 M/s Yanfeng India Automotive Interior Systems Private Ltd, Plot No AV-21, SanandGIDC-2, Village Bol, Taluka: Sanand, District: Ahmedabad 382 110 ('assessee') are engaged in the manufacture of motor vehicle parts. They were having Central Excise registration No. AAACY5078PEM002 and Service Tax registration No. AAACY5078PSD002.

2 During the course of audit of the assessee for the period from April 2016 to June 2017, the following observations were raised.

Non-inclusion of the amortize cost of tools supplied by buyer of final products in their assessable value

3 During the course of audit, it has been noticed that the assessee had purchased tools on behalf of M/s Ford India Pvt Ltd ('Ford'). In addition to tooling orders received from Ford, they had received advances amounting to Rs 5,09,95,913/- each, on 5.6.2015, 24.8.2015 and 6.8.2016 from Ford. It was seen that Ford had indirectly supplied tools free of cost or at reduced cost to the assessee for the manufacture of motor vehicle parts for them. It was noticed that the tools had not been capitalised by the assessee and shown in the inventory of moulds & tools. No depreciation was charged in the books of accounts by the assessee. It appeared that the assessee had not included the amortized value of the tools received for a certain period in their assessable value when they cleared their final products (motor vehicle parts) to Ford. It appeared that this has resulted in non-payment of the duty of excise.

4 The relevant text to Section 4 of the Central Excise Act, 1944 ('Act') reads as under:

"SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall —

- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed".*

5 'Transaction value', as defined, under the provisions of Section 4(3)(d) of the Act is reproduced below:

"(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods"

6 As it appeared that there was some additional consideration towards the free supply of tools from the end of Ford, recourse has to be taken to the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 ('Valuation Rules'), as per the provisions of Section 4(1)(b) of the Act read with the definition of 'transaction value' as defined under the provisions of Section 4(3)(d) of the Act. The relevant text to Rule 6 of the Valuation Rules 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.

[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 : -

(ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods"

7 As per Rule 6 of the Valuation Rules, where the price is not the sole consideration for sale, the money value of any additional consideration flowing directly or indirectly from the buyer of the goods to the assessee would have to be added to the transaction value for the purpose of determination and payment of the duty of excise. Explanation 1 to Rule 6 of the Valuation Rules specifies that the value, apportioned as appropriate, of goods supplied indirectly and free of cost/reduced cost by the buyer of goods in connection with the sale of such goods would be an additional consideration flowing from the buyer end. Clause (ii) of Explanation 1 to Rule 6 of the Valuation Rules specifies 'tools' which are used in the production of goods to the buyer.

8 From the provisions of Rule 6 of the Valuation Rules, especially clause (ii) to Explanation 1, it appeared that the value of tools indirectly received from Ford free of cost/reduced cost by the assessee for production and sale of motor vehicle parts to Ford, would be an additional consideration flowing from the buyer end to the assessee. It, therefore, appears that such value would be addable to the transaction value for the purpose of payment of the duty of excise on the motor vehicle parts sold to Ford.

9 It appeared that the assessee have not taken into consideration the value of tools received from Ford for the purpose of payment of the duty of excise. Accordingly, the duty of excise is payable by the assessee on the money value of the additional consideration of tools

which were used in the manufacture of motor vehicle parts sold to Ford. The differential assessable value calculated comes to Rs. 42275474/- and the corresponding duty of excise payable for the months from April 2016 to June 2017 comes to Rs. 5284434/- .

10 From the above, it appeared that the assessee has contravened the provisions of:

- Section 4 of the Act read with the provisions of Rule 6 of the Valuation Rules as they failed to add the money value of the additional consideration received by them in the nature of tools from Ford;
- Rule 4(1) of the Central Excise Rules, 1944 ('Rules') read with the provisions of Rule 8(1) of the Rules as they failed to pay the appropriate duty on the money value of the additional consideration of tools on removal of motor vehicle parts to Ford;
- Rule 6 of the Rules as they failed to assess their duty liability correctly;

11 It appeared that the assessee have suppressed the material facts of receipt of tools indirectly and free of cost/reduced cost from Ford. It appeared that they have not added the money value of the additional consideration for the tools flowing from their buyer (Ford) to the assessable value and have not paid the appropriate duty of excise. Accordingly, it appeared that the extended period of time is invokable for demand and recovery of the duty of excise amounting to Rs 52,84,434/- on the differential value of Rs.4,22,75,474/- covering the period from April 2016 to June 2017, under the provisions of Section 11A(4) of the Act. Interest is also required to be paid by the assessee under the provisions of Section 11AA of the Act. It further appeared that by the act of not valuing their goods properly for payment of duty, the assessee has suppressed the material facts with an intention to evade the payment of central excise duty, as discussed above and it, therefore, appeared that the assessee would also be liable for penalty under the provisions of Sections 11AC(1)(c) of the Act read with the provisions of Rule 25 of the Rules.

Short-inclusion of the amortized cost of tools supplied by buyer of final products in the assessable value

12 During the course of audit, it has been noticed that the assessee had purchased tools on behalf of Ford. In addition to tooling orders received from Ford, they had received advances amounting to Rs 5,09,95,913/- each, on 5.6.2015, 24.8.2015 and 6.8.2016 from Ford. It was seen that Ford had indirectly supplied tools free of cost or at reduced cost to the assessee for the manufacture of motor vehicle parts for them. It was noticed that the tools had not been capitalised by the assessee and shown in the inventory of moulds & tools. No depreciation was charged in the books of accounts by the assessee. It appeared that the assessee had included the amortized value of the tools received for a certain period in their assessable value. However, some variations were noticed in the value added to the assessable value when they cleared their final products (motor vehicle parts) to Ford. It appeared that the full amortised value of the tools was not added for the purpose of payment of the duty of excise. It appeared that this has resulted in short payment of the duty of excise.

13 The relevant text to Section 4 of the Act, definition of 'transaction value' and the relevant provisions of Rule 6 of the Valuation Rules have already been reproduced above.

14 As it appeared that there was some additional consideration towards the free supply of tools from the end of Ford, recourse had to be taken to the Valuation Rules, as per the provisions of Section 4(1)(b) of the Act read with the definition of 'transaction value' as defined under the provisions of Section 4(3)(d) of the Act.

15 As per Rule 6 of the Valuation Rules, where the price is not the sole consideration for sale, the money value of any additional consideration flowing directly or indirectly from the buyer of the goods to the assessee would have to be added to the transaction value for the purpose of payment of the duty of excise. Explanation 1 to Rule 6 of the Valuation Rules specifies that the value, apportioned as appropriate, of goods supplied indirectly and free of cost/reduced cost by the buyer of goods in connection with the sale of such goods would be an additional consideration flowing from the buyer end. Clause (ii) of Explanation 1 to Rule 6 of the Valuation Rules specifies 'tools' which are used in the production of goods to the buyer.

16 From the provisions of Rule 6 of the Valuation Rules, especially clause (ii) to Explanation 1, it appears that the value of tools indirectly received from Ford at free of cost/reduced cost by the assessee for production and sale of motor vehicle parts to Ford, would be an additional consideration flowing from buyer end to the assessee. It, therefore, appeared that such value would be addable to the transaction value for the purpose of payment of the duty of excise on the motor vehicle parts sold to Ford.

17 It appeared that the assessee have not taken into consideration the full amortised value of tools received from Ford for the purpose of payment of the duty of excise against certain transactions. Accordingly, the duty of excise is payable by the assessee 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. The differential assessable value has been worked out to Rs. 32505702/- and the corresponding duty of excise payable for the months from April 2016 to June 2017 comes to Rs. 4063213.

18 From the above, it appeared that the assessee has contravened the provisions of:

- Section 4 of the Act read with the provisions of Rule 6 of the Valuation Rules as they failed to add the full amortized money value of the additional consideration received by them in the nature of tools from Ford;
- Rule 4(1) of the Central Excise Rules, 1944 ('Rules') read with the provisions of Rule 8(1) of the Rules as they failed to pay the appropriate duty on the full amortized money value of the additional consideration of tools on removal of motor vehicle parts to Ford;
- Rule 6 of the Rules as they failed to assess their duty liability correctly;

19 It appears that the assessee have suppressed the material facts of receipt of tools indirectly and free of cost/reduced cost from Ford. It appeared that they have not added the full

amortized money value of the additional consideration for the tools flowing from their buyer (Ford) to the assessable value and have not paid the appropriate duty of excise. Accordingly, it appeared that the extended period of time is invokable for demand and recovery of the duty of excise amounting to Rs 40,63,213/- on the differential value of Rs 3,25,05,702/- covering the period from April 2016 to June 2017, under the provisions of Section 11A(4) of the Act. Interest is also required to be paid by the assessee under the provisions of Section 11AA of the Act. It further appeared that by the act of not valuing their goods properly for payment of duty, the assessee has suppressed the material facts with an intention to evade the payment of central excise duty, as discussed above and it, therefore, appeared that the assessee would also be liable for penal action under the provisions of Sections 11AC(1)(c) of the Act read with Rule 25 of the Rules.

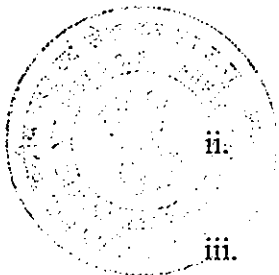
20 On being pointed out, the assessee have not agreed to the objection. It was contended that they were the owners of the tools procured by them. They had raised a commercial invoice dated 1.10.2016 and transferred the legal ownership of the tools to Ford. They had also started to add the amortised value of the tools when they sold motor vehicle parts to Ford.

21 It is seen that the assessee have shown the tools as 'inventory' in their books of accounts. They have not capitalised the tools and charged any depreciation in their books of accounts. Accordingly, it appears that the contention that they had the ownership of the tools is not proper and legal. It was further found that even after 1.10.2016, various transactions were found where the cost of tools were not fully amortised and added to the assessable value of the motor vehicle parts sold to Ford. Therefore, this contention too does not appear to be justifiable.

22 As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-consultation has been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Based on these instructions, a communication was made to the assessee fixing the date for pre-consultation discussion on 9.7.2020. Nobody turned up for the pre consultation discussions.

23 Therefore, M/s Yanfeng India Automotive Interior Systems Private Ltd, Plot No AV-21, Sanand GIDC-2, Village Bol, Taluka: Sanand, District: Ahmedabad 382 110 were called upon to show cause to the Additional/Joint Commissioner of Central Tax, Ahmedabad North as to why:

- i. The central excise duty amounting to Rs 52,84,434/- (Rupees Fifty two lacs eighty four thousand four hundred thirty four only), should not be demanded and recovered from them, under the proviso to Section 11A(4) of the Act.
- ii. Penalty should not be imposed on them under the provisions of Section 11AC(1)(c) of the Act on the duty demand at (i) above.
- iii. Penalty should not be imposed on them under the provisions of Rule 25 of the Rules on the duty demand at (i) above;



- iv. Interest should not be charged and recovered from them under the provisions of Section 11AA of the Act on the duty demand at (i) above;
- v. the central excise duty amounting to Rs 40,63,213/- (Rupees Forty lacs sixty three thousand two hundred thirteen only), should not be demanded and recovered from them, under the proviso to Section 11A(4) of the Act.
- vi. Penalty should not be imposed on them under the provisions of Section 11AC(1)(c) of the Act on the duty demand at (v) above.
- vii. Penalty should not be imposed on them under the provisions of Rule 25 of the Rules on the duty demand at (v) above;
- viii. Interest should not be charged and recovered from them under the provisions of Section 11AA of the Act on the duty demand at (v) above;

Defence Reply.

24. Vide their reply dated, 26.12.2020, the assessee inter-alia, stated that -

The Company is engaged in the manufacture of automotive parts for Ford India. For the said purposes, the Company had entered into an agreement with Ford India for supply of finished goods as required by Ford India, that the Company had received purchase order in year 2015 from Ford India for supply of finished goods for which manufacturing of finished goods had been started in year 2016, that the Company had, on the said basis, purchased the tools / moulds and received the same in its factory for manufacturing of finished goods for sale to Ford India, that the Company had subsequently transferred the ownership in tools / moulds to Ford India, which had been purchased for manufacturing the finished goods as per the agreement between the Company and Ford India..

25. The assessee further stated that the ownership in tools / moulds had been transferred on 01 October 2016 and < February 2017 respectively and accordingly, the Company has discharged applicable sales tax (i.e. Gujarat VAT) on the same when the ownership in the tools / moulds had been transferred. However, excise duty liability was not discharged by the Company at the time of raising sales tax (i.e. Gujarat VAT) invoices. The Company has discharged applicable Central Excise Duty at the time of physical removal of all the tools / moulds on 09 June 2017 for delivery to Ford India. The removal was made under cover of excise invoice in terms of provisions of Rule 11 of the Central Excise Rules 2002. In addition to the above, the Company has also discharged applicable sales tax (i.e. Gujarat VAT) and Central Excise Duty at the time of transfer and physical removal of finished goods to Ford India on assessable value determined in terms of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000. The assessee submitted that at the time of discharging sales tax (i.e. Gujarat VAT) and Central Excise Duty on finished goods, the Company had also included the amortization cost of tools / moulds, on the basis of expected number of outputs of finished goods.

26. The assessee stated that Company had received another purchase order in year 2013 from Ford India for which the project of manufacturing finished goods had been started in year 2014.

The Company had, on the basis of the same, purchased the requisite tools / moulds and received the same in its factory for manufacturing of finished goods for sale to Ford India. Also, the Company has discharged applicable sales tax (i.e. Gujarat VAT) and Central Excise Duty at the time of transfer and physical removal of finished goods to Ford India on assessable value determined in terms of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000.

27. The assessee stated that the Company had re-computed the expected number of outputs of finished goods in July 2017. The re-computed balance number of outputs of finished goods in July 2017 had reduced compared to the expected output computed at the time of initiation of project in year 2014. Therefore, on the basis of re-computed balance number of outputs of finished goods, the Company has re-computed the amortization cost and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods.

- 28. The assessee has stated that the Company has not taken into consideration the value of tools / moulds received from Ford India for the purpose of payment of Central Excise Duty. Accordingly, the Central Excise Duty is payable by the assessee on the money value of the additional consideration of tools / moulds which were used in the manufacture of motor vehicle parts sold to Ford India. Below is the summary of the differential assessable value on account of the additional consideration of the money value to be loaded and the Central Excise Duty to be paid from April 2016 to June 2017:

Month	Differential Assessable Value	Differential Central Excise Duty
Apr-16	99,880	12,485
May-16	1,50,790	18,849
Jun-16	13,63,529	1,70,441
Jul-16	1,37,67,279	17,20,910
Aug-16	1,11,26,967	13,90,871
Sep-16	97,69,046	12,21,131
Oct-16	6,16,253	77,032
Nov-16	1,77,216	22,152
Dec-16	1,62,821	20,353
Jan-17	9,88,624	1,23,578
Feb-17	10,46,039	1,30,755
Mar-17	11,26,341	1,40,793
Apr-17	6,59,602	82,450
May-17	5,78,514	72,314
Jun-17	6,42,575	80,322
Total	4,22,75,474	52,84,434

29. The assessee further stated that the Company has not taken into consideration the full amortised value of tools / moulds received from Ford India for the purpose of payment of Central Excise Duty. The department has demanded differential Central Excise duty considering the re-computed amortised cost of tools / moulds. Accordingly, the Central Excise Duty is payable by the assessee on the short inclusion of money value of the additional consideration of tools / moulds which were used in the manufacture of motor vehicle parts sold to Ford India. Below is the summary of the differential assessable value on account of the additional consideration of the money value short loaded and the Central Excise Duty to be paid from April 2016 to June 2017:

Month	Differential Assessable Value	Differential Central Excise Duty
Apr-16	24,03,911	3,00,489
May-16	20,70,870	2,58,859
Jun-16	19,08,086	2,38,511
Jul-16	11,48,430	1,43,554
Aug-16	27,17,669	3,39,709
Sep-16	36,60,350	4,57,544
Oct-16	13,11,874	1,63,984
Nov-16	15,75,734	1,96,967
Dec-16	24,11,900	3,01,488
Jan-17	22,86,687	2,85,836
Feb-17	23,11,764	2,88,970
Mar-17	25,20,278	3,15,035
Apr-17	19,87,142	2,48,393
May-17	20,64,640	2,58,080
Jun-17	21,26,368	2,65,796
Total	<u>3,25,05,702</u>	<u>40,63,213</u>

30. The assessee stated that the department has failed to appreciate the facts of the case properly. They submitted that it had purchased certain tools / moulds during the FY 2015-16. The said tools / moulds were lying at Company's premises for manufacture of finished goods for Ford India. Thereafter, the Company had raised commercial invoice on Ford India on 01 October 2016 and February 2017 for sale of tools / moulds and discharged sales tax (i.e. Gujarat VAT). Central Excise duty was not payable at this instance as there was only transfer of ownership without any movement of goods. It is also submitted that the tools / moulds were not removed from the factory even after such commercial sale. They were lying only at Company's premises during these years. Only when these tools / moulds were actually removed from the factory on 09 June 2017, applicable Central Excise Duty was discharged. However, the

question raised by the department in the impugned SCN is the non-inclusion of amortization cost of tools / moulds supplied by buyer of finished goods in calculation of assessable value of finished goods and thus there is short-payment of Central Excise duty.

31. The assessee stated that firstly, the tools / moulds had been purchased by the Company only and the same had not been supplied by Ford India whether directly or indirectly free of cost i.e. the Cost of moulds / tools is deemed to be included in sale value of finished goods sold by the Company to Ford India. Further, the ownership of tools / moulds remained with the Company only and it was on 01 October 2016 for some tools and \sphericalangleFebruary 2017 for balance tools respectively, that the Company had transferred the ownership to Ford India and possession remained with the Company for manufacturing finished goods. However, the contention of the department is that the amortization cost of tools / moulds should be included in the assessable value of finished goods starting from 01 April 2016 whereas the Company had transferred the ownership in tools / moulds to Ford India on 01 October 2016 and included the cost of amortization of tools / moulds in assessable value from 01 October 2016. Therefore, the contention of the department that the amortization cost of tools / moulds should be included from 01 April 2016 in assessable value of finished goods is not tenable.

32. The assessee stated that Company had on the basis of expected number of outputs of finished goods computed the amortization cost of tools / moulds and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty on the finished goods from 01 October 2016. The demand to discharge Central Excise Duty on the finished goods starting from 01 April 2016 is not tenable and without any grounds as the Company has transferred the ownership to Ford India on 01 October 2016 and on each subsequent removal of finished goods discharged Central Excise Duty considering the expected number of outputs of finished goods from 01 October 2016. Therefore, the demand should be set aside on this ground itself.

33. The assessee stated that the demand to discharge Central Excise Duty on the finished goods starting from 01 April 2016 will result into payment of Central Excise Duty on a value of tools / moulds which will be in excess of the actual value of tools / moulds. The Company has already amortised the entire value of cost of tools/ moulds over the total number of finished goods. Any additional amortization will result into amortising excessive value of tools / moulds. The Company cannot recover an amount in excess of cost of tools / moulds from the customer and also, the Company cannot pay Central Excise Duty on an amount which is in excess of the total cost of tools / moulds. Accordingly, the demand for the same should be set aside.

34. The assessee stated that considering the business conditions prevalent in July 2017, the Company had re-computed the expected number of outputs of finished goods. The re-computed balance number of outputs of finished goods in July 2017 had reduced compared to the expected output computed at the time of initiation of project in year 2014. Therefore, on the

basis of re-computed balance number of outputs of finished goods, the Company had re-computed the amortization value and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods. Since, the re-computed number of outputs had reduced, the amortization cost of tools / moulds had increased per product from July 2017 and accordingly, the Company had discharged sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods considering the re-computed amortization cost. However, the department has without going into facts of the case, demanded the increased amortization cost of tools / moulds for the period starting from April 2016 to June 2017. They submitted that this will result into discharging Central Excise Duty on higher total value of tools / moulds which in fact is in excess of the actual value of tools / moulds and the same will be not received by the Company from Ford India and is also not in terms with the provisions of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000.

35. The Company wishes to submit that at the time of initiation of project, value of tools / moulds is amortised considering expected number of outputs. However, if there is a situation where it appeared that there will be a deviation in actual number of outputs (considering situation at that time) compared to the estimated number of outputs, the cost of tools / moulds can be amortised considering actual number of outputs. In such cases, considering the fact that the "amortization" is the cost of tools / moulds which is to be included in assessable value of finished goods, the same should be proportionated to the actual number of outputs. The contention of the department to include the amortization cost of tools / moulds from April 2016 is not correct as the same will result into charging excess amortization and will result into payment of Central Excise Duty on a value of tools / moulds which will be in excess of the actual value of tools / moulds. The Company has already amortised the entire value of cost of tools/ moulds over the total number of finished goods. Any additional amortization will result into amortising excessive value of tools / moulds.

36. The assessee stated that the contention of the department to charge increased amortization cost from April 2016 is also not correct considering the fact that the Company had already amortised cost of tools / moulds until June 2017 and it was from July 2017 that the Company re-computed the expected number of finished goods and accordingly, included the revised amortization cost of tools / moulds in assessable value. In case the Company includes such higher amortization from April 2016, it will result into charging higher total amount of cost of tools / moulds than the actual total cost of tools / moulds. To reiterate, in both the cases, the entire value of tools / moulds has been amortised over the finished goods. There is no amount which is not amortised for the purpose of Central Excise Duty payment purposes. There can be no additional Central Excise Duty demand when Central Excise Duty is paid on the entire cost of tools / moulds. On this ground, the impugned SCN is not tenable in law at all.

37. The assessee placed the following judicial precedents and submitted copy of the same.:
- i. **EXOTECH PLASTICS PVT. LTD. Versus COMMISSIONER OF C. EX., PUNE-III.**
 - ii. **MULTIMEDIA FRONTIERS LTD. Versus COMMISSIONER OF C. EX., AHMEDABAD-II,**
 - iii. **COMMR. OF C. EX., MADRAS Versus SHARDLOW INDIA LTD.,**

38. The assessee stated that the Company has included cost of amortization in assessable value starting from 01 October 2016 and discharged applicable sales tax (i.e. Gujarat VAT) and Central Excise Duty on finished goods. Further, on transfer of ownership in tools / moulds to Ford India, the Company has also discharged applicable sales tax (i.e. Gujarat VAT). Therefore, there is no fraud, collusion, willful mis-statement or suppression of facts and accordingly, extended period of time cannot be invoked.

39. The assessee stated that the Company has included cost of amortization in assessable value and discharged applicable sales tax (i.e. Gujarat VAT) and Central Excise Duty on finished goods. Further, considering the business conditions in July 2017, the Company had to re-compute the expected number of outputs of finished goods. The re-computed balance number of outputs of finished goods in July 2017 had reduced compared to the expected number of outputs computed at the time of initiation of project in year 2014. Therefore, on the basis of re-computed balance number of outputs of finished goods, the Company has re-computed the amortization value and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods. Therefore, there is no fraud, collusion, willful mis-statement or suppression of facts in this case and accordingly, extended period of time cannot be invoked.

40. The assessee placed reliance on the following judicial precedents:
- i. ***Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay* [1995 (78) E.L.T. 401 (S.C.)],**
 - ii. ***M/S. Uniworth Textiles Ltd. Versus Commissioner of Central Excise. Raipur* (2013 (1) TMI 616 - Supreme Court),**
 - iii. ***Collector of Central Excise Versus Chemphar Drugs & Liniments* 1989 (40) E.L.T. 276 (SC),**
 - iii. ***M/s Continental Foundation Joint Venture Sholding, Nathpa Hp Versus Commissioner of Central Excise, Chandigarh-I*2007 (216) E.L.T. 177 (S.C.),**

41. The assessee submitted that charging of interest under aforesaid provisions is not proper and legal since the demand of Central Excise Duty on account of non-inclusion of amortization cost of tools / moulds in assessable value of finished goods itself is not sustainable.

42. The assessee stated that levy of penalty is not proper and legal since the demand of Central Excise Duty on account of non-inclusion of amortization cost of tools / moulds in assessable value of finished goods itself is not sustainable and that the penalty should not be

levied as there is no contravention of any of the provisions under law. Also, the appellant has not acted dishonestly or contumaciously and therefore, not even a token penalty could be justified. Additionally, such penal provisions are only a tool of safeguard against the contravention of the provisions and as the assessee has acted on bonafide belief and has rightly discharged duty there was no intention on the part of the appellant to evade duty.

43. The assessee placed reliance on the following judicial precedents:

- i. **COMMISSIONER OF C. EX., THANE-II Versus BRIGHT BROTHERS LTD.,**
- ii. **MULTIVAC INDIA PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, DELHI-III,**
- iii. **COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III Versus CEAT LTD.,**

44. The assessee stated that in the series of judgments, the Hon'ble Supreme Court as well as Hon'ble Tribunal has ruled that for imposition of penalty, intention to evade payment of duty must be shown and in absence of the same there is no justification to invoke penal provisions. Further, neither suppression of facts nor wilful misstatement is involved in the present case, hence in the present case, the question of imposition of penalty does not arise at all and requested for following relief

1. Quash the subject show cause notice;
2. Extended period of time under provisions of Section 11A(4) of the Central Excise Act, 1944 cannot be invoked.
3. No Interest under Section 11AA of the Central Excise Act, 1944 should be demanded;
4. No Penalty under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules should be demanded;
5. Any other relief as deemed fit.

45. The assessee also requested for a personal hearing before passing any final order on this show cause notice.

Personal Hearing:

46. Personal Hearing in this case was held on 16.04.2021. Ms Khushboo Kundalia along with Shri Gaurav Kodrani of B S R & Associates LLP appeared for virtual hearing. They reiterated the contents of their written submission dated 30.12.2020 and explained the issue at length and also various case laws in their favour. They stated that the company has already amortised the entire value of cost of tools/moulds over the total number of finished goods. Any additional amortization will result into amortising excessive value of tools/moulds. They also requested to take into consideration their written submission and various case laws submitted therein and requested to drop the proceedings.

Discussion and Findings:

47. I have carefully gone through the records of the case, submission made by the assessee in reply to the show cause notice as well as during the personal hearing. I find that show cause notice in the present case was issued to the assessee involving the following issues-

1). Non-inclusion of the amortize cost of tools supplied by buyer of final products in their assessable value involving Central Excise duty of Rs.52,84,434/-; and

2) Short-inclusion of the amortized cost of tools supplied by buyer of final products in the assessable value involving Central Excise duty of Rs.40,63,213/-.

48. In the first case, the show cause notice has alleged that the assessee had purchased tools on behalf of M/s Ford India Pvt Ltd ('Ford'). In addition to tooling orders received from Ford, they had received advances amounting to Rs. 5,09,95,913/- each, on 5.6.2015, 24.8.2015 and 6.8.2016 from Ford. It was seen that Ford had indirectly supplied tools free of cost or at reduced cost to the assessee for the manufacture of motor vehicle parts for them. It was noticed that the tools had not been capitalised by the assessee and shown in the inventory of moulds & tools. No depreciation was charged in the books of accounts by the assessee; the assessee had not included the amortized value of the tools received for a certain period in their assessable value when they cleared their final products (motor vehicle parts) to Ford and this has resulted in non-payment of the duty of excise to the tune of Rs.52,84,434/-.

49. The assessee submitted that their Company is engaged in the manufacture of automotive parts for Ford India, that the Company had entered into an agreement with Ford India for supply of finished goods as required by Ford India, that the Company had received purchase order in year 2015 from Ford India for supply of finished goods for which manufacturing of finished goods had been started in year 2016, that the Company had, on the said basis, purchased the tools / moulds and received the same in its factory for manufacturing of finished goods for sale to Ford India, that the Company had subsequently transferred the ownership in tools / moulds to Ford India, which had been purchased for manufacturing the finished goods as per the agreement between the Company and Ford India.

50. The assessee also stated that the ownership in tools / moulds had been transferred on 01 October 2016 and < February 2017 respectively and accordingly, the Company has discharged applicable sales tax (i.e. Gujarat VAT) on the same when the ownership in the tools / moulds had been transferred. However, excise duty liability was not discharged by the Company at the time of raising sales tax (i.e. Gujarat VAT) invoices. The Company has discharged applicable Central Excise Duty at the time of physical removal of all the tools / moulds on 09 June 2017 for delivery to Ford India. The removal was made under cover of excise invoice in terms of provisions of Rule 11 of the Central Excise Rules 2002. In addition to the above, the Company has also discharged applicable sales tax (i.e. Gujarat VAT) and Central Excise Duty at the time of transfer and physical removal of finished goods to Ford India on assessable value determined in terms of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000. The assessee submitted that at the time

of discharging sales tax (i.e. Gujarat VAT) and Central Excise Duty on finished goods, the Company had also included the amortization cost of tools / moulds, on the basis of expected number of outputs of finished goods.

51. The assessee stated that the Company had re-computed the expected number of outputs of finished goods in July 2017. The re-computed balance number of outputs of finished goods in July 2017 had reduced compared to the expected output computed at the time of initiation of project in year 2014. Therefore, on the basis of re-computed balance number of outputs of finished goods, the Company has re-computed the amortization cost and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods. The assessee has stated that the Company has not taken into consideration the value of tools / moulds received from Ford India for the purpose of payment of Central Excise Duty. Accordingly, the Central Excise Duty is payable by the assessee on the money value of the additional consideration of tools / moulds which were used in the manufacture of motor vehicle parts sold to Ford India.

52. I find that Section 4 of the Central Excise Act, 1944 ('Act'), with reference to Valuation of excisable goods for purposes of charging of duty of excise has been stipulated that

" (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall –

- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed".*

53. Further, the 'Transaction value', as defined, under the provisions of Section 4(3)(d) of the Central Excise Act is mentioned as below:

"(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods"

54. It is on record that there was some additional consideration towards the free supply of tools from the end of Ford, recourse has to be taken to the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 ('Valuation Rules'), as per the provisions of Section 4(1)(b) of

the Act read with the definition of 'transaction value' as defined under the provisions of Section 4(3)(d) of the Act. The relevant text to Rule 6 of the Valuation Rules 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.

[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 : -

(ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods"

55. As per Rule 6 of the Valuation Rules, where the price is not the sole consideration for sale, the money value of any additional consideration flowing directly or indirectly from the buyer of the goods to the assessee would have to be added to the transaction value for the purpose of determination and payment of the duty of excise. Explanation 1 to Rule 6 of the Valuation Rules specifies that the value, apportioned as appropriate, of goods supplied indirectly and free of cost/reduced cost by the buyer of goods in connection with the sale of such goods would be an additional consideration flowing from the buyer end. Clause (ii) of Explanation 1 to Rule 6 of the Valuation Rules specifies 'tools' which are used in the production of goods to the buyer.

56. From the provisions of Rule 6 of the Valuation Rules, especially clause (ii) to Explanation 1, the value of tools indirectly received from Ford at free of cost/reduced cost by the assessee for production and sale of motor vehicle parts to Ford, would be an additional consideration flowing from the buyer end to the assessee. Therefore, such value would be addable to the transaction value for the purpose of payment of the duty of excise on the motor vehicle parts sold to Ford. I find that this has not been followed by the assessee.

57. On going through the records, I find that the assessee has not followed the correct valuation of goods for the purpose of payment of Central Excise duty. I find that that the assessee have not taken into consideration the value of tools received from Ford for the purpose of payment of the duty of excise. Accordingly, the duty of excise is payable by the assessee on the money value of the additional consideration of tools which were used in the manufacture of motor vehicle parts sold to Ford. In fact, the assessee themselves in their reply to the show cause

notice stated that removal was made under cover of excise invoice in terms of provisions of Rule 11 of the Central Excise Rules 2002. However, they had not discharged the Central Excise duty. The differential assessable value calculated comes to Rs. 42275474/- and the corresponding duty of excise payable for the months from April 2016 to June 2017 comes to Rs. 5284434/-.

58. The assessee's contention that they have discharged applicable sale tax (Gujarat VAT) on the tools/moulds when the ownership in tools/moulds had been transferred. I find that in the present case, the question is not payment of VAT but payment of Central Excise duty on the consideration of the value of tools received from Ford for payment of Central Excise duty. I find that in the case of Idea Mobile Communication Ltd. Vs. Commissioner of Central Excise & Customs, Cochin before the Hon'ble Supreme Court (Civil Appeal No. 6319 of 2011) has held that "*It also cannot be disputed that even if sales tax is wrongly remitted and paid that would not absolve them from the responsibility of payment of service tax, if otherwise there is a liability to pay the same.* In view of the above observation of Hon'ble Supreme Court, in the instant case, M/s. Yanfeng are required to pay Central Excise duty, even if they have paid VAT, on the additional consideration recovered from their client.

59. Therefore, clearly there is a contravention of the following provisions by the assessee.:

- Section 4 of the Act read with the provisions of Rule 6 of the Valuation Rules as they failed to add the money value of the additional consideration received by them in the nature of tools from Ford;
- Rule 4(1) of the Central Excise Rules, 1944 ('Rules') read with the provisions of Rule 8(1) of the Rules as they failed to pay the appropriate duty on the money value of the additional consideration of tools on removal of motor vehicle parts to Ford;
- Rule 6 of the Rules as they failed to assess their duty liability correctly;

60. I find that the assessee have suppressed the material facts of receipt of tools indirectly and free of cost/reduced cost from Ford. They have not added the money value of the additional consideration for the tools flowing from their buyer (Ford) to the assessable value and have not paid the appropriate duty of excise. Therefore, the extended period of time is invocable for demand and recovery of the duty of excise amounting to Rs 52,84,434/- on the differential value of Rs.4,22,75,474/- covering the period from April 2016 to June 2017, under the provisions of Section 11A(4) of the Central Excise Act, 1944. The assessee is also liable to pay interest on the amount of Central Excise duty under the provisions of Section 11AA of the Central Excise Act, 1944. By the act of not valuing their goods properly for payment of duty, the assessee have suppressed the material facts with an intention to evade the payment of central excise duty, as discussed above and it, therefore, that the assessee would also be liable for penalty under the provisions of Sections 11AC(1)(c) of the Central Excise Act, 1944 read with the provisions of Rule 25 of the Rules.

61. Regarding short-inclusion of the amortized cost of tools supplied by buyer of final products in the assessable value involving Central Excise duty of Rs.40,63,213/-, the show cause notice has alleged that the assessee had purchased tools on behalf of Ford. In addition to tooling

orders received from Ford, they had received advances amounting to Rs 5,09,95,913/- each, on 5.6.2015, 24.8.2015 and 6.8.2016 from Ford. The Ford had indirectly supplied tools free of cost or at reduced cost to the assessee for the manufacture of motor vehicle parts for them, that the tools had not been capitalised by the assessee and shown in the inventory of moulds & tools. No depreciation was charged in the books of accounts by the assessee. The assessee had included the amortized value of the tools received for a certain period in their assessable value. However, some variations were noticed in the value added to the assessable value when they cleared their final products (motor vehicle parts) to Ford. The full amortised value of the tools was not added for the purpose of payment of the duty of excise, resulting in short payment of the Central Excise to the tune of Rs.40,63,213/-.

62. It was also alleged in the show cause notice that the assessee had not followed the provisions of Section 4 of the Act, definition of 'transaction value' and the relevant provisions of Rule 6 of the Valuation Rules. It appeared that there was some additional consideration towards the free supply of tools from the end of Ford, recourse had to be taken to the Valuation Rules, as per the provisions of Section 4(1)(b) of the Act read with the definition of 'transaction value' as defined under the provisions of Section 4(3)(d) of the Act. As per Rule 6 of the Valuation Rules, where the price is not the sole consideration for sale, the money value of any additional consideration flowing directly or indirectly from the buyer of the goods to the assessee would have to be added to the transaction value for the purpose of payment of the duty of excise. Explanation 1 to Rule 6 of the Valuation Rules specifies that the value, apportioned as appropriate, of goods supplied indirectly and free of cost/reduced cost by the buyer of goods in connection with the sale of such goods would be an additional consideration flowing from the buyer end. Clause (ii) of Explanation 1 to Rule 6 of the Valuation Rules specifies 'tools' which are used in the production of goods to the buyer.

63. From the provisions of Rule 6 of the Valuation Rules, especially clause (ii) to Explanation 1, it appeared that the value of tools indirectly received from Ford at free of cost/reduced cost by the assessee for production and sale of motor vehicle parts to Ford, would be an additional consideration flowing from buyer end to the assessee. Such value would be addable to the transaction value for the purpose of payment of the duty of excise on the motor vehicle parts sold to Ford which the assessee had not followed. The assessee have not taken into consideration the full amortised value of tools received from Ford for the purpose of payment of the duty of excise against certain transactions. Accordingly, the duty of excise is payable by the assessee 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. The differential assessable value has been worked out to Rs. 32505702/- and the corresponding duty of excise payable for the months from April 2016 to June 2017 comes to Rs. 4063213/-

64. On the basis of the above facts, I find that the assessee has contravened the provisions of:

- Section 4 of the Act read with the provisions of Rule 6 of the Valuation Rules as they failed to add the full amortized money value of the additional consideration received by them in the nature of tools from Ford:
- Rule 4(1) of the Central Excise Rules, 1944 ('Rules') read with the provisions of Rule 8(1) of the Rules as they failed to pay the appropriate duty on the full amortized money value of the additional consideration of tools on removal of motor vehicle parts to Ford;
- Rule 6 of the Rules as they failed to assess their duty liability correctly;

65. The assessee submitted that it had purchased certain tools / moulds during the FY 2015-16. The said tools / moulds were lying at Company's premises for manufacture of finished goods for Ford India. Thereafter, the Company had raised commercial invoice on Ford India on 01 October 2016 and \sphericalangleFebruary 2017 for sale of tools / moulds and discharged sales tax (i.e. Gujarat VAT). Central Excise duty was not payable at this instance as there was only transfer of ownership without any movement of goods. They submitted that the tools / moulds were not removed from the factory even after such commercial sale. They were lying only at Company's premises during these years. Only when these tools / moulds were actually removed from the factory on 09 June 2017, applicable Central Excise Duty was discharged.

66. The assessee stated that firstly, the tools / moulds had been purchased by the Company only and the same had not been supplied by Ford India whether directly or indirectly free of cost i.e. the Cost of moulds / tools is deemed to be included in sale value of finished goods sold by the Company to Ford India. Further, the ownership of tools / moulds remained with the Company only and it was on 01 October 2016 for some tools and \sphericalangleFebruary 2017 for balance tools respectively, that the Company had transferred the ownership to Ford India and possession remained with the Company for manufacturing finished goods. However, the contention of the department is that the amortization cost of tools / moulds should be included in the assessable value of finished goods starting from 01 April 2016 whereas the Company had transferred the ownership in tools / moulds to Ford India on 01 October 2016 and included the cost of amortization of tools / moulds in assessable value from 01 October 2016. Therefore, the contention of the department that the amortization cost of tools / moulds should be included from 01 April 2016 in assessable value of finished goods is not tenable.

67. The assessee stated that Company had on the basis of expected number of outputs of finished goods computed the amortization cost of tools / moulds and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty on the finished goods from 01 October 2016. The demand to discharge Central Excise Duty on the finished goods starting from 01 April 2016 is not tenable and without any grounds as the Company has transferred the ownership to Ford India on 01 October 2016 and on each subsequent removal of finished goods discharged Central Excise Duty considering the expected number of outputs of finished goods from 01 October 2016. Therefore, the demand should be set aside on this ground itself.

68. The assessee stated that the demand to discharge Central Excise Duty on the finished goods starting from 01 April 2016 will result into payment of Central Excise Duty on a value of tools / moulds which will be in excess of the actual value of tools / moulds. The Company has already amortised the entire value of cost of tools/ moulds over the total number of finished goods. Any additional amortization will result into amortising excessive value of tools / moulds. The Company cannot recover an amount in excess of cost of tools / moulds from the customer and also, the Company cannot not pay Central Excise Duty on an amount which is in excess of the total cost of tools / moulds. Accordingly, the demand for the same should be set aside.

69. The assessee stated that considering the business conditions prevalent in July 2017, the Company had re-computed the expected number of outputs of finished goods. The re-computed balance number of outputs of finished goods in July 2017 had reduced compared to the expected output computed at the time of initiation of project in year 2014. Therefore, on the basis of re-computed balance number of outputs of finished goods, the Company had re-computed the amortization value and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods. Since, the re-computed number of outputs had reduced, the amortization cost of tools / moulds had increased per product from July 2017 and accordingly, the Company had discharged sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods considering the re-computed amortization cost.

70. The assessee also stated that the contention of the department to charge increased amortization cost from April 2016 is also not correct considering the fact that the Company had already amortised cost of tools / moulds until June 2017 and it was from July 2017 that the Company re-computed the expected number of finished goods and accordingly, included the revised amortization cost of tools / moulds in assessable value. In case the Company includes such higher amortization from April 2016, it will result into charging higher total amount of cost of tools / moulds than the actual total cost of tools / moulds. To reiterate, in both the cases, the entire value of tools / moulds has been amortised over the finished goods. There is no amount which is not amortised for the purpose of Central Excise Duty payment purposes. There can be no additional Central Excise Duty demand when Central Excise Duty is paid on the entire cost of tools / moulds. On this ground, the impugned SCN is not tenable in law at all.

71. The re-computed balance number of outputs of finished goods in July 2017 had reduced compared to the expected number of outputs computed at the time of initiation of project in year 2014. Therefore, on the basis of re-computed balance number of outputs of finished goods, the Company has re-computed the amortization value and included the same in assessable value of finished goods and discharged the sales tax (i.e. Gujarat VAT) and Central Excise Duty for the balance output of finished goods. Therefore, there is no fraud, collusion, willful mis-statement or suppression of facts in this case and accordingly, extended period of time cannot be invoked.

72. The assessee submitted that charging of interest under aforesaid provisions is not proper and legal since the demand of Central Excise Duty on account of non-inclusion of amortization cost of tools / moulds in assessable value of finished goods itself is not sustainable.

73. The assessee stated that levy of penalty is not proper and legal since the demand of Central Excise Duty on account of non-inclusion of amortization cost of tools / moulds in assessable value of finished goods itself is not sustainable and that the penalty should not be levied as there is no contravention of any of the provisions under law. Also, they have not acted dishonestly or contumaciously and therefore, not even a token penalty could be justified. Additionally, such penal provisions are only a tool of safeguard against the contravention of the provisions and as the assessee has acted on bonafide belief and has rightly discharged duty there was no intention on the part of the Appellant to evade duty.

74. Regarding the assessee's contention that they have discharged applicable sale tax (Gujarat VAT) on the tools/moulds when the ownership in tools/moulds had been transferred. I find that their contention is not tenable as in the present case, as the question is not payment of VAT but payment of Central Excise duty on the full amortised value of the tools which was not added for the purpose of payment of the duty of excise, resulting in short payment of the Central Excise to the tune of Rs.40,63,213/-. As already discussed above, in the case of **Idea Mobile Communication Ltd. Vs. Commissioner of Central Excise & Customs, Cochin** before the Hon'ble Supreme Court (Civil Appeal No. 6319 of 2011) has held that "*It also cannot be disputed that even if sales tax is wrongly remitted and paid that would not absolve them from the responsibility of payment of service tax, if otherwise there is a liability to pay the same.*" I find that the said case law is squarely applicable to the present case and M/s. Yanfeng are required to pay Central Excise duty, even if they have paid VAT.

75. In view of the discussion above, it is evident that the assessee have suppressed the material facts of receipt of tools indirectly and free of cost/reduced cost from Ford. They have not added the full amortized money value of the additional consideration for the tools flowing from their buyer (Ford) to the assessable value and have not paid the appropriate duty of Central Excise. Accordingly, the extended period of limitation is invocable for recovery of the duty of excise amounting to Rs 40,63,213/- on the differential value of Rs 3,25,05,702/- covering the period from April 2016 to June 2017, under the provisions of Section 11A(4) of the Central Excise Act, 1994 Interest is also required to be paid by the assessee under the provisions of Section 11AA of the Central Excise Act, 1944. Further, by the act of not valuing their goods properly for payment of duty, the assessee has suppressed the material facts with an intention to evade the payment of central excise duty. Therefore, the assessee would also be liable for penalty under the provisions of Sections 11AC(1)(c) of the Act read with Rule 25 of the Rules.

76. The assessee, in their written reply has stated that the show cause notice is not maintainable, extended period is not applicable in the present case, no penalty is leviable on them and also no interest is recoverable from them and discussed their case in details. I find that this is a case non-payment / short payment of Central Excise duty. The assessee themselves are a

well-known established unit. They are well aware of the tax laws and implications of non-fulfilment of applicable Central Excise duties. In the present case, it is only after the Audit has brought to the notice of the Department that there is a non-payment/short payment of Central Excise duties on account of non-inclusion of the amortize cost of tools supplied by buyer of final products in their assessable value and short-inclusion of the amortized cost of tools supplied by buyer of final products in the assessable value to the tune of Rs. 5284434/- and Rs. 4063213/-. Had they followed the correct valuation method, this non-payment/short payment of Central Excise duties would not have arisen. Therefore, I find that definitely there is a lapse on the part of the assessee. Therefore, I find that the Department has rightly issued the show cause notice invoking the extended period of limitation demanding Central Excise duties, demanded interest and also proposed penalty in terms of Central Excise Act, 1944 and rules made there under.

77. I also find that the assessee has relied a large number of case laws in their favour and argued that extended period is not invocable in the present case and requested that no penalty may be imposed on them and also interest may not charged from them. On going through the case laws, I find that the said case laws are not comparable with the present case as facts and circumstances of the cases are different as in the present case, I am of the view that there is a deliberate attempt has been made by the assessee to avoid payment of Central Excise duties by discarding the Central Excise (Valuation) Rules, 2000.

78. I find that penalty has been proposed in the show cause notice under Section 11AC(1)(c) of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002 separately. Rule 25 of the Central Excise Rules, 2002 is clubbed with 11AC of the Central Excise Act. Therefore, I am not imposing separate penalty under Rule 25 of the Central Excise Rules, 2002.

79. In view of the above discussion, I pass the following orders:-

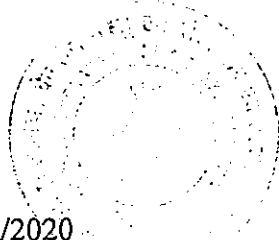
ORDER


- i. I confirm the Central Excise duty amounting to Rs 52,84,434/- (Rupees Fifty two lakhs eighty four thousand four hundred and thirty four only), under Section 11A(4) of the Central Excise Act, 1944 and order the assessee to pay the amount forthwith.
- ii. I impose a penalty of Rs. 52,84,434/- (Rupees Fifty two lakhs eighty four thousand four hundred and thirty four only), on M/s Yanfeng India Automotive Interior Systems Private Ltd, Ahmedabad under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 25 of the Rules Central Excise Rules, 2002.
- iii. I order that interest be recovered from the assessee under Section 11AA of the Central Excise Act, 1944 on the duty confirmed at (i) above;
- iv. I confirm the Central Excise duty amounting to Rs 40,63,213/- (Rupees Forty lakhs sixty three thousand two hundred and thirteen only), under Section 11A(4) of the Central Excise Act, 1944 and order the assessee to pay the amount forthwith.
- v. I impose a penalty of Rs. 40,63,213/- (Rupees Forty lakhs sixty three thousand two hundred and thirteen only) on M/s Yanfeng India Automotive Interior Systems

Private Ltd, Ahmedabad under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

- vi. I order that interest be recovered from the assessee under Section 11AA of the Central Excise Act, 1944 on the duty confirmed at (iv) above;
- vii. In terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s. Yanfeng India Automotive Interior Systems Pvt.Ltd Ahmedabad, pays the Central Excise duty determined at Sl. No. (i) & (iv) above and interest payable thereon at (iii) & (vi) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Yanfeng India Automotive Interior Systems Pvt.Ltd. Ahmedabad shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

80. Show Cause Notice F.No. VI/1(b)/Tech-09/SCN/Yanfeng/2020-21 dated 24.07.2020 issued to M/s. Yanfeng India Automotive Interior Systems Private Ltd, Plot No AV-21, SanandGIDC-2, Village Bol Taluka: Sanand, District: Ahmedabad 382 110, is disposed-of in the above matter.




(M. L. Meena)
Additional Commissioner
CGST & CEX, Ahmedabad-North. 27/5

F No.V.87/15-21/OA/2020
By Registered Post AD

Date: 27.05.2021.

M/s Yanfeng India Automotive Interior Systems Private Ltd
Plot No AV-21, SanandGIDC-2, Village Bol
Taluka: Sanand, District: Ahmedabad 382 110

Copy to:

- The Commissioner of Central GST & Central Excise, Ahmedabad North.
- The Deputy Commissioner of Central GST & Central Excise, Division III (Sanand), Ahmedabad North.
- The Superintendent of Central GST & Central Excise, Range V, Division III (Sanand) Ahmedabad North.
- Guard File ✓