

Bajaj Auto Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-23-1997

Reported in : (1998)(100)ELT289Tri(Mum.)bai

Appellant : Bajaj Auto Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The issue for decision in this appeal is includibility or otherwise in the assessable value of the motor scooters and auto-rikshaws manufactured by the appellant, the amounts collected as insurance premium, but actually not incurred as such insurance. The appellant insured, for transportation, the scooters and auto-rikshaws from its factory to the premises of the dealers who purchase them. The amount collected as insurance premium for such insurance from the dealers exceeded the premium actually paid to the insurance company. The Commissioner (Appeals) has held that this amount was payable by the appellant and would form part of the assessable value.

2. The advocate for the appellant contends that the notice is barred by limitation. It was issued in December, 1990 and related to clearances made from July, 1985 to December, 1989. He says that the question of any excess premium arose because the appellant paid to the insurance company at the beginning of every year an amount towards premium to be collected on the goods to be insured in that year, this amount being worked out on the basis of previous year's premium, expected quantity of goods to be cleared etc. It is only when, at the end of the year

the actual premium payable became known, that any surplus of such collection was refunded to the appellant. Therefore, the entire amount was in the nature of transportation costs which would not form part of the assessable value. The fact of surplus amount so collected was not required to be declared. Therefore, there has been no suppression or misdeclaration and the extended period is not invokable. As to the merits, he relies upon the decision of the Supreme Court in *Baroda Electric Meters Ltd. v. C.C.E.*, Ahmedabad -1997 (94) E.L.T. 13 (S.C.).

3. The Departmental Representative contends that when the amount collected as transportation charges exceeded the charges incurred would have form part of the assessable value. In this case the appellant has collected from the dealer, which is sought to be included in the assessable value, was not clearly such insurance premium because it is not paid to the insurance company. It was retained by the appellant. It would therefore form part of the assessable value. He contends that there is no dispute that the fact of the appellant having paid the insurance premium was not known to the Department. The Department only knew that the goods were insured, insurance premium collected from dealers and paid to the insurance company. It did not, and could not, in the absence of any intimation from the appellant, know that part of the amount so collected was not used for the purpose for which it was collected but was retained by the appellant. Therefore, there has been failure to declare on this element in the part of the assessable value and the extended period has been rightly invoked.

5. As to the merits, he says that the principle which the Supreme Court has adopted in the case of *Baroda Electric Meters Ltd. v. C.C.E.* is the one which was already enunciated in the Supreme Court judgment in *Indian Oxygen Ltd. v. C.C.E.* - 1988 (36) E.L.T. 723 (S.C.) that duty of excise is a tax on the manufacture, not a tax on the profits made by a dealer on transportation. This principle, he says, cannot be applied to the facts of the present case. These facts are different from those of *Baroda Electric Meter Ltd. v. C.C.E.* and *Indian Oxygen Ltd. v. C.C.E.*6. It is doubtful whether, on limitation, the appellant has a case. The contention that the contract of insurance being one between the assessee and the insurance company, and the amount collected being insurance premium it was not to be declared to the Department would hold true, if such were actually the case.

Whatever the circumstances which led to the retention by the appellant of an apportion of the amount collected as insurance premium, the fact remains that it did retain the amount. At the end of year it knew that it had retained in its hand some amount which was collected as insurance charges but not actually paid to the insurance company. The explanation that this also represented insurance premium and was not required to be declared is not, in our view, one that justifies the failure to declare. In our view, therefore the notice is not barred by limitation.

7. However, that is not of relevant to the decision of this appeal.

While deciding the appeal of Baroda Electric Meter Ltd. the Tribunal had held that wherever freight and insurance charges actually paid was less than the amount collected by way of freight and transport charges from the dealer, it would become part of the price of the goods and would form part of the assessable value. The Supreme Court, in its judgment in the appeal against that order, has held that the Tribunal proceeded on an incorrect premise and that has held in *Indian Oxygen Ltd. v. C.C.E.* "duty of excise is a tax on the manufacturer, not a tax on the profits made by a dealer on transportation" and therefore set aside the Tribunal's order. By this decision, the Court has, in our view, said that any amount collected as transportation charges, but not incurred as such cannot form part of the assessable value. We fail to see why this principle would not apply to the facts of this case. The facts that the goods, the manufacturer, and the purchaser are different would not affect the application of the principle laid down. Following the Supreme Court's decision, therefore we allow the appeal and set aside the order. Consequential relief, if any.

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