

Commissioner of Central Excise Vs. Majestic Auto Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-1999

Reported in : (2002)(146)ELT327TriDel

Appellant : Commissioner of Central Excise

Respondent : Majestic Auto Ltd.

Judgement :

1. The short point to be considered in this appeal is whether the excess amount collected as freight and insurance is to be added in the assessable value under Section 4 of the Act.

2. The Asst. Collector has taken a view that since the goods have been exported under bond and no duty is leviable, the deductions under Section 4 towards equalised freight shall not be allowable. Similarly, for specially made vehicle to transport these two wheelers from Ghaziabad to Bombay port freight deductions has been allowed only one way on the ground that this vehicle is owned by the party. Deductions towards insurance has been disallowed on the ground that appellant did not submit details. The Collector (Appeals) observed in his order that the order of the adjudicating authority is illegal and improper. The party had submitted all the details in support of the claim. He observed that if the goods are exported in bond, there is no question of levying any duty, and confirming duty of Rs. 15,35,8347- and Rs. 2,63,153/- is without any legal authority. He also observed that deductions towards equalised freight and insurance will be permissible for academic interest to arrive at F.O.B. value even where goods are

exported in bond.

3. Both the sides submit that the question involved in this case is whether department was justified in adding the excess freight and insurance charges on the ground that the amount collected by the party is more than the amount spent towards actual transport and insurance.

It was brought to our notice by the respondent's Counsel that the issue involved herein has been covered by a series of decisions including *Baroda Electric Meters Ltd. v CCE, Ahmedabad* - 1996 (85) E.L.T. 363, *Gomti Engg. Works v. CCE, Allahabad* -1998 (27) RLT 849 (CEGAT) and *Farm Fresh Foods (P) Ltd. v. CCE, Chandigarh* -1998 (29) RLT 418. He also referred to circular issued by the Board Circular No. 203/37/96-CX. 8, dated 26-4-1996 wherein clarifies this point and in this context, he drew our attention to Clause 3 of the circular. The relevant portion is as under :- "Regarding point (b), this is clarified that it is the assessable value determined under Section 4 of the Central Excise & Salt Act, which is required to be mentioned on AR4 and the corresponding invoice issued under Rule 52A. This value is relevant for the purposes of Rule 12 & Rule 13 of Central Excise Rules, 1944. "FOB Value" is relevant for Customs purposes and other schemes like drawback, exports under DEEC etc. However, in cases where it is found that on account of variance between FOB Value and the AR4 Value, the exporter is getting unusually high drawback and DEEC benefit, the matter may be referred to the agencies such as Customs, Drawback Directorate, DRI etc. for initiating necessary remedial measures to protect the revenue".

4. In the present case, we are concerned with the determination of value under Section 4 of the Act as it was pointed out by both the sides. It is settled position now that duty of excise is a tax on the manufacturer and not a tax on the profits made by a dealer on transportation. The department has not shown any evidence to show that the excess freight was nothing but part of the value of the goods and accordingly the differential amount was not includible in the assessable value. Since the issue involved herein has already been considered by the Tribunal in the aforesaid cases, following the ratio, we accept the contentions of the respondent and accordingly, the appeal filed by the department is hereby dismissed.

