

Mopeds India Ltd. Vs. Collector of Central Excise

Mopeds India Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/2108

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-1985

Reported in : (1991)(56)ELT241TriDel

Appellant : Mopeds India Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal has been filed against the order of the Collector of Central Excise, Hyderabad, dated 14-6-1977. The Collector imposed a personal penalty of Rs. 5 lakhs under Rule 173Q on the appellants and also directed the payment of duty to be calculated in respect of the clearances of mopeds between 1-3-1974 to 23-10-1975 with shock absorbers and/or after metallic painting and/or after chrome painting.

2. The appellants were clearing their products, (namely, mopeds) from their factory at Tirupathi. In addition to charging the values as declared in the Gate Passes, the appellants have also been recovering cost of rear shock absorbers fitted to the auto-cycles and towards labour charges for modification of frame for fitment of rear shock absorber. They have also collected labour charges for Deluxe Metallic painting and for special chrome painting of extra parts fitted to the auto cycles as per customers' orders. Besides the above, they were charging amounts towards packing and forwarding and freight on equalised basis from all the dealers irrespective of the destination.

Admittedly the price list filed by the appellants did not contain these particulars and the extra charges in the relevant columns. They had been charging Rs. 50/- per vehicle towards packing and forwarding charges which was also not declared in the price list. From a scrutiny, it was found that 262 invoices pertaining to auto cycles were cleared from the factory and the cost of rear shock absorbers and labour charges for modification of the frame were collected in addition to the price of Mopeds. Another 613 invoices contained particulars of labour charges for Deluxe Metallic painting and special chrome painting. A total sum of Rs. 10,15,450/- had been realised by way of packing, handling and forwarding and freight charges.

3. A show cause notice was issued to the appellants on 5-1-1977 for contravention of the provisions of Rules 9(1), 173-C, 173-F, 173-G(4) and 226 of the Central Excise Rules, 1944. They were called upon to explain why penalty should not be imposed under Rules 9(2), 173Q, 210 and 226 of the Central Excise Rules, 1944. The appellants in their reply repudiated the contentions. According to them, the prices had been approved by the department from time to time. Even conceding, without admitting, that there was a short levy, the Department can only act under Rule 10 read with Rule 173J and sustain the demand of differential duty within one year. The appellants had been submitting the classification lists and they were duly approved by the officers.

They also stated that during the relevant period the prices of scooters were fixed under the Scooters (Distribution and Sale) Control Order, 1960 and the price so approved should be accepted as the assessable value. The mopeds had been cleared after payment of duty. The additional fittings constituted bought out components and no duty could be charged in respect of these items. They also contended that the packing charges should not be held to form part of the assessable value. The Collector of Central Excise after an enquiry passed the orders now under appeal.

4. Shri Y.G. Ramamurty, advocate, urged that the shock absorbers were fixed at the request of the customers and the price list filed by the appellants on 27-3-1974, 13-9-1974 and 13-3-1975 did not contain a reference to them, as they were

bought out items. He stated that being a heavy industry, the appellants' factory had been inspected by several Central Excise authorities and there was no suppression. He submitted that rear shock absorber was not an essential part of moped but was merely an accessory. In support of his proposition he relied on the ruling in 1983 (14) ELT 2480 (Tribunal) (Machine Products (I) Pvt.

Ltd., Ahmedabad v. Collector of Central Excise, Ahmedabad). In that decision it was held that the value of bought out parts is not includible in the value of total clearances for eligibility for small scale industry exemption. In 1977 (1) ELT J-133 (International Tractor Co. of India Ltd. v. Union of India and Ors.) the Bombay High Court held that wheel weights and hour meters are not essential parts of tractors. In 1981 (8) ELT 725 (Bom.) (Kosan Metal Products Pvt. Ltd. v. Union of India and Ors.) the Bombay High Court held that valves and regulators were distinct and were not parts of cylinders, and it was so recognised by the International Trade and in the trade circles in the country. Shri Ramamurty urged that in any event the show cause notice was barred by time as the department was aware even on 23-10-1975 about the irregularity, if any, and the show cause notice was issued on 5-1-1977. According to him Rule 9 will not apply to the facts of the case.

5. Shri A.K. Jain, SDR, argued that the demand was not barred by time.

He stated that the party was clearing the mopeds with rear shock absorbers and with metallic painting and packings. Separate invoices were raised and the same were not disclosed to the department till October, 1975. He relied on the ruling reported in 1983 (13) ELT 966A (Tri.) (E. Merck (India) Pvt. Ltd., Bombay v. Collector of Central Excise, Bombay) where it was held that the goods have to be valued and assessed in the form in which they were presented for assessment at the time of their clearance from the factory.

6. As already observed, the relevant period is between 1-3-1974 and 23-10-1975 when mostly the unamended Section 4 of the Act was in force.

Construing the aforesaid provision, the Hon'ble Supreme Court had held in paras 26, 27 and 28 of judgment in 1983 (14) ELT 1896 (SC) (Union of India v. Bombay Tyres International etc.) that the assessable value should be taken to be the price

at which the excisable article is sold by the assessee himself at arm's length in the course of wholesale trade at the time and place of removal. Where, however, wholesale price is not ascertainable, then pursuant to the unamended Section 4B, the assessable value is the price at which the identical article or an article of like kind and quantity is sold or is capable of being sold by the assessee at the time and place of removal or failing that at a place nearest to it.

7. If, as contended, the price at which the goods in question was controlled at the material time, the maximum price at which the goods are sold at the place of removal in wholesale is ascertainable and the controlled price could furnish the basis of the assessable value even under the unamended Section 4. (Our decision in Appeal No. ED(SB)(T) 104/77-A (Mysore Rolling Mills Pvt. Ltd. v. Collector of Central Excise, Belgaum).

8. There is, however, nothing on record to show if there was indeed a controlled price for mopeds with rear shock absorbers or those which were painted in metallic colours or in chrome. For a fact, the price control order does not specify if the maximum price fixed in terms thereof is for such vehicles.

9. Nor is there any evidence on record to enable a decision as to whether the rear shock absorbers are essential parts of the vehicle or merely accessories.

10. In the circumstances, we are thus not in a position either to take the control price as the assessable value or conclude that rear shock absorbers are really in the nature of accessories.

11. It is stated that the appellants have cleared mopeds with rear shock absorbers or metallic paintings or chrome finish only in respect of at least 5.7% of the clearances. The contention that these were merely additional fittings or improvements and were effected at the request of the customers, cannot be accepted in the absence of any evidence as to whether they were essential parts or mere accessories, as a ground to exclude their value while calculating the duty. Under Section 4(b) of the Central Excises and Salt Act, 1944 (at the relevant time) the quantum of duty was dependent on the value of the articles.

On the present facts, it is obvious that the fitment of rear shock absorbers, providing metallic painting, etc. have been carried out at the time of the clearance from the factory. It is not denied that these items have not been specifically set out in the price lists which were submitted to the department. The price lists described the goods merely as "SUVEGA Mopeds". There is no reference to the extra charges recovered by the manufacturer. These shock absorbers or other improvements formed an integral part of the mopeds at the time of clearance. We are satisfied that the appellants should have disclosed the value of the mopeds with rear shock absorbers, chromium or metallic finish. The decisions cited by the learned counsel for the appellants have no application in the absence of the relevant evidence in this case.

12. Regarding the packing charges, charged by the appellants, we are of the view that it should be included in the assessable value, as there is no evidence of any special packing having been provided by the manufacturer at the request of the customer. We are therefore of the view that the appellants are liable to pay duty on the clearances as claimed by the department subject to the question of time bar discussed below.

13. The learned counsel for the appellants argued that the demand is barred by time. The lower authorities have adverted to Rule 9(2) and Rule 10(1) of the Central Excise Rules, 1944. The decision of the Tribunal in 1983 (14) ELT 1927 (Shriram Pistons & Rings Ltd., Ghaziabad v. Collector of Central Excise, Meerut) considers the effect of these provisions in juxtaposition. It was held therein that no period of limitation is prescribed for the levy of a penalty either in terms of Rule 9(2) or Rule 173Q; just as the limitation prescribed in Section 468 of the Cr.P.C. is inapplicable to a prosecution under Section 9 of the Act. The department has claimed that there was a suppression of fact. Shri A.K. Jain stated that no time-limit has been prescribed under Rule 9 and hence the demand is not time barred. But it must be pointed out that Rule 9(2) of the Central Excise Rules, 1944, at the relevant period read as follows :- "(2) If any excisable goods are, in contravention of sub-rule (1), deposited in or removed from, any place specified therein, the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made (within the period specified in Rule 10) by the proper officer,

whether such, demand is delivered personally to him, or is left at his dwelling house, and shall also be liable to a penalty which may extend to two thousand rupees, and such goods shall be liable to confiscation." So there must be a written demand made within the period specified in Rule 10. Rule 10 at the relevant time prescribed the limit of 3 months and Rule 10A read with Rule 173J provided a period of one year. In this case the suppression is manifest because the appellants have not disclosed the material particulars in the price lists. Nevertheless we must observe that the department became aware of the malpractices even on 23-10-1975 but the show cause notice was issued on 5-1-1977. Hence in that view, the department will not be entitled to recover the differential duty from 1-3-1974 to 23-10-1975.

14. In regard to the penalty the learned counsel for the appellants argued that the appellants had no intention to evade payment and the officers could have verified the particulars though the clearances were under S.R.P. From the facts of the case it is clear that the appellants were removing the mopeds with these fitments as integral parts, but did not disclose them in the price lists. It is not open to them to say that the departmental officers should have verified the particulars.

The liability to pay appropriate duty is on the appellants. It is reasonable to conclude that the infringement of Rule 173Q has been made out. However, considering the period involved and in the circumstances of the case, we direct that the penalty be reduced to Rs. 4,00,000/- (Rupees four lakhs only).

15. In the result, we hold that the claim for recovery of differential duty is time barred. The penalty is reduced to Rs. 4,00,000/-. Appeal is disposed of accordingly.