

Commissioner of Central Excise Vs. Jay Cee Coach Builders Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-2002

Reported in : (2003)(86)ECC312

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise

Respondent : Jay Cee Coach Builders Ltd.

Judgement :

1. In these four Appeals, preferred by Revenue against two Orders-in-Appeal, the issue involved is whether Central Excise Duty is payable by the Respondents on the seats manufactured and used captively in fabricating bodies on the chassis received from M/s Swaraj Mazda Ltd. under Rule 57F of the Central Excise Rules, 1944.

2.1. Shri Jagdish Singh, learned DR, submitted that the Respondents M/s Jay Cee Coach Builders Ltd. are engaged in building of body on chassis received under the provisions of Rule 57F(3)/57F(4) of the Central Excise Rules from M/s Swaraj Mazda Ltd.; that the Respondents also manufacture seats classifiable under Heading 94.01 of the Schedule to the Central Excise Tariff Act; that these seats are captively consumed in the body building by the Respondents availing the exemption from payment of duty under Notification No. 67/95-CE, dated 16.3.95; that the Adjudicating Authority under the Adjudication Orders, demanded central excise duty on the seats and imposed penalty, holding that as the seats are being

used in relation to bus body which was being cleared without payment of duty, the benefit of Notification No.67/95-CE was not available to them; that, however, Commissioner (Appeals), has allowed the appeals filed by the Respondents on the ground that the final products, Motor vehicles, are finally cleared from the factory premises of M/s Swaraj Mazda Ltd. after discharging appropriate duty of excise on the value of Motor Vehicles which included the value of seats manufactured by them and fitted in the motor vehicles.

2.2. The learned DR, further, submitted that the proviso to Notification No. 67/95 clearly provides that the benefit of Notification will not be available if the inputs are used in or in relation to the manufacture of final products which are exempt from the whole of duty of excise leviable thereon; that in the present matters the seats manufactured by the respondents have been used in relation to bus body building which is being cleared without payment of duty, the benefit of Notification 67/95 cannot be extended. He relied upon the decision in the case of *Bhor Industries Ltd. v. CCE*, 1989 (21) ECC 1 (SC): 1989 (40) ELT 280 (SC).

3.1. On the other hand Shri A.R. Madhav Rao, learned Advocate, submitted that M/s Swaraj Mazda Ltd. are sending chassis for fabrication of body thereon under the permission granted by the jurisdictional Commissioner under Rule 57F(3) of the Central Excise Rules, 1944; that the said Rule clearly provided for sending the inputs or semi-processed inputs for the purpose of its repair/refining/reconditioning or carrying, out any other operation necessary for the manufacture of final product, to job worker and getting them back after process had been undertaken by the job worker; that it has been held by the Tribunal in the case of *M. Tex v. CCE*, Jaipur, 2000 (68) ECC 578 (T) : 2000 (39) RLT 1091 that job worker working under Rule 57F(3) is not required to observe Central Excise formalities and pay duty on the goods processed and returned by him to principal manufacturer and that this decision has been affirmed by the Supreme Court on 3.10.2002 as the issue involved therein was covered by the Board's Circular No. 306/22/97-CX dated 20.3.97; that it has been clarified by the Board in the said Circular that under the provisions of Rule 57F(4) a manufacturer can get the job work done on its inputs or on partially processed inputs in terms of the provisions of Rule 57F(4) and in such cases duty liability is required to be discharged by the manufacturer and not

by the job workers. Learned Advocate further relied upon the decision in the case of P.P. Fabric (Private) Ltd. v.CCE, Jaipur, 2000 (121) ELT 823 (T) wherein it has been held that no duty is required to be paid by the job worker while sending the processed fabric received under Rule 57F(4) to the principal manufacturer. Learned Advocate emphasised that the scheme of movement of inputs provided under Rule 57F is complete in itself and no further notification is required for exempting the goods from payment of duty on their return from job worker's premises to the principal manufacturer's premises. He relied upon the decision in the case of CCE, Jaipur II v. Noorani Textile Mills, 2000 (40) RLT 441 (CEGAT) wherein the Appellate Tribunal did not find any infirmity in the view taken by the Commissioner (Appeals). The Commissioner (Appeals) had held that the provisions of Rule 57F(4) are clearly independent and self-contained and the benefit conferred under Rule 57F(4) cannot be curtailed by relying upon the Notification No. 214/86-CE and the Commissioner (Appeals) had further observed that if any such linkage was envisaged, the same would have been mentioned in the Rule. Learned Advocate, therefore, contended that as the respondents had received the chassis under Rule 57F(4) they had fabricated the body which included the impugned seats and also returned back the same to the principal manufacturer, no central excise duty is payable by them.

3.2. Learned Advocate also mentioned that the manufacture of seat was a part of the fabrication of the body on the chassis received from M/s Swaraj Mazda Ltd. under Rule 57F; that Rule 57F neither exempts any excisable goods from the whole of duty of excise nor make it chargeable to nil rate of duty and as such the proviso to Notification 67/95 is not attracted.

4. We have considered the submissions of both the sides. Revenue wants to levy central excise duty on the seats which are manufactured by the respondents and are further utilised by them in fabrication of the body building on motor vehicle chassis sent to them under Rule 57F(3)/(4) of the Central Excise Rules, 1944. We observe thus that the question of seats used in the body building on the motor vehicle chassis is not in dispute. The issue, therefore, in our opinion, is not to be considered from the angle that the duty of excise will be payable on the seats as the same has been used in the manufacture of body on the chassis which suffers

no duty and proviso to Notification No. 67/95 comes into play.

The issue is to be considered, in our opinion, as to whether the respondents are required to discharge the duty on the body fabricated on the motor vehicle chassis received by them from M/s Swaraj Mazda Ltd. This issue has been heard by the Appellate Tribunal in the case of Respondents themselves in Appeal No. E/240/2002-B and the Order has been reserved. If the movement of chassis and fabrication of body thereon is covered by the provisions of Rule 57F(3)/(4), the question of payment of duty on seats will not arise as the manufacture of seat is part and parcel of the activity of fabrication of bus body and the activity being covered by the provisions of Rule 57F(3)/(4), the question of payment of duty separately on seats would not arise. If the duty is held to be payable on the body built on the chassis, the proviso to Notification No. 67/95 will not be attracted. The said proviso provides that the benefit of Notification No. 67/95 shall not apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of duty of excise leviable there or are chargeable to nil rate of duty. As the Tribunal's decision in the Appeal filed by the Respondents against demand of duty on the chassis is to be pronounced we are of the view that these matters should be remanded to the jurisdictional Adjudicating Authority to re-adjudicate the matters in the light of the decision of the Tribunal in Appeal No. E/240/2002-B and the observations made hereinabove. We, therefore, remand all the matters to the Adjudicating Authority for deciding the matters afresh after affording a reasonable opportunity of hearing to the Respondents. The Appeals are allowed by way of remand.

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