Caparo Maruti Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-2003

Reported in : (2003)(87)ECC651

Judge : K Usha, N T C.N.B.

Appellant : Caparo Maruti Ltd.

Respondent : Cce

Judgement :

1. The appellant manufactures 'Sheet Metal Components' (Motor Vehicle) for Maruti Udyog Ltd. The production is undertaken by the appellant as a job work. The sole raw material for the manufacture of the components, 'Cold Rolled Sheet blanks', is supplied by M/s Maruti Udyog Ltd. (MUD, free of cost. Appellants paid conversion charge for the job they carry out. The components so manufactured by the appellants are liable to pay Central Excise Duty, and the appellants were clearing the goods on payment of duty. The duty on components being on ad valorem basis, their assessable value was computed on the basis of cost of production-value of the sheet blanks supplied by the appellants plus the cost of conversion. However, under a Show-cause Notice dated 27.8.2001, it was proposed to reopen the assessment on the ground that the goods were not assessed at the full assessable value. Under the impugned order, the Commissioner has reassessed the goods for the period from September 1996 to February 2000 and demanded a differential duty of over Rs. 80 lakhs. An equal amount of penalty has also been imposed under Section 11AC. The reassessment

and demand of short-levied duty have been made by invoking the extended period as permitted under the proviso to Section 11A of the Central Excise Act.

2. The appellant contends that the order is wholly illegal and has been passed on an incorrect view about how the cost of production of goods is to be worked out. It is pointed out that the duty demand has arisen because, while computing value of raw material (Cold Rolled Sheet) used in the manufacture of components, the appellant abated the cost of scrap. The Commissioner has held that this abatement of the cost of scrap is not permissible. The Order has held that "It is not the cost of raw material which have gone into component but the cost of total raw material used including raw material wasted is to be taken into consideration for arriving at the assessable value of the components".

On this issue it is the contention of the appellant that the view taken by the Commissioner is wholly erroneous inasmuch as abating realization from the sale of scrap is a normal and permissible accounting practice.

Learned Counsel for the appellant has pointed out that in the present case the agreement between MUL and the appellant specifically provided for abatement towards realisation from the sale of scrap while computing the cost of the component. Learned Counsel has also produced Text Book in support of this.

3. The appellants have also contended that, irrespective of the merits of the case, the present demand cannot cross the bar of limitation. It is their submission that proviso to Section 11A was not attracted at all in the facts of the present case inasmuch as there was no suppression of facts as alleged, which circumstance would have enabled the invocation of the proviso. Learned Counsel pointed out that production and clearance of the goods were in terms or agreement with the MUL and the appellant had stated these facts in the Rule 173C declarations filed before the Central Excise Authorities. He referred in this connection to various declarations which had specifically stated, "Prices are mutually fixed and job Purchase Orders are issued by Maruti Udyog Ltd.", "We are converting the Raw Material into Finished Product on job basis and no sale is being made", "We are supplying goods exclusively to MUL on the prices mututally agreed upon taking all expenses, overhead and profits into consideration" "appellants are engaged in the

manufacture of excisable goods out of raw material supplied by them, free of cost as mentioned in the invoice under Rule 57F (3)". During the hearing of the case, the learned Counsel for the appellants has submitted that once these facts were stated to the Central Excise Authorities, it was for them to see for themselves whether the assessable value worked out on the basis of cost of production is correct and included all elements. Learned Counsel took us through the component cost working sheets for various years, in order to show that revenue from scrap was one of the items specifically mentioned in those cost sheets and if revenue had any objection to excluding the realisations from scrap as a matter of principle, or the amount deducted on that count, they should have raised duty demands within the normal period of six months provided in the main clause of Section 11A. In any case, it was not open to them to make delayed reassessment by making allegation of suppression of facts.

4. We have perused the records and have heard the learned SDR. The dispute centers around the method of costing, i.e. whether scrap value has to be abated from the price of the raw material. There is also a side issued that the appellant was not passing the actual amount realised from the sale price of scrap to MUL, but was giving abatement towards scrap value on an estimation basis. On the face of it, abating the cost of raw material to the extent of realisation from the sale of scrap would appear to be a correct method of costing. The impugned order does not mention any authority in support of a contrary view. Be that as it may, whatever be the merits of the case, at the threshold, it is to be seen whether the reassessment as carried out is permissible under Section 11A. The proviso to the Section 11A allows the reopening of assessment for the period going back by five years in exceptional cases involving fraud, collusion, suppression of facts etc., with intent to evade payment of duty. But then, the short-levy or non-levy should be attributable to such circumstances. We find no such circumstance involving contumacious conduct by the appellants. They had been filing declarations before the Central Excise authorities indicating the facts surrounding the transaction. It had been made dear that the manufacture is a job work, that raw material is received free of cost under the conversion cost as agreed under job orders etc. A mere perusal of the job orders or the working sheet at the relevant time would have made the authorities wise on the fact that abatement towards realisation on

sale of scrap was being made and that the amount of abatement is not on actuals but on agreed estimation basis. But that was not done. Instead, the belated issue of Notice is being justified by fastening the charge of suppression of facts. The short-levy, if at all, is not the result of suppression of facts by the appellants. That being the case, the demand could not have been raised and confirmed in terms of proviso to Section 11A. The proceedings have to fail. The impugned order is, therefore, set aside and the appeal is allowed with consequential relief, if any, to the appellants.