

Mahindra and Mahindra Ltd. Vs. Commr. of Cus. and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-21-2003

Reported in : (2002)LC6Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Mahindra and Mahindra Ltd.

Respondent : Commr. of Cus. and C. Ex.

Judgement :

2. In the order impugned in this appeal, the Commissioner has held that the place of removal of the motor vehicles manufactured by the appellant in its factory at Nashik and sold to departments of Government of India was the premises of the buyers who received these vehicles and therefore the charges for the transportation of these goods up to the buyer's premises, consisting of freight and insurance, are to form part of the assessable value. The Commissioner has reasoned, applying the definition of the "place of removal" in Section 4 of the Act, after its amendment in 1996 which includes a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold, this buyer's premises, which is the place of sale, is the place of removal. The contract executed by the appellant with the Directorate General of Supplies and Disposal, who is represented the buyer, indicates that the appellant shall insure the vehicles during transit. The appellant arranged for the transport of the goods to the buyer's premises. This indicates that the place of removal is the buyer's premises. The Commissioner has relied upon the decision of the Tribunal in

Escorts JCB Ltd. v. CCE [2000 (118) E.L.T.650 (T) = 1999 (35) RLT 9], the correctness of which has been upheld by the Larger Bench in Prabhat Zarda Factory - 2000 (119) E.L.T. 191.

3. The decision of the Tribunal in Escorts JCB Ltd. has been set aside on appeal by the Supreme Court in its judgment reported in [2002 (146) E.L.T. 31 (S.C.) = 2002 (53) RLT 1]. The Supreme Court has approved the view taken by the Tribunal in Associated Strips Ltd. and Anr. v. CCE [2002 (143) E.L.T. 131 (T) = 2002 (49) RLT 506] to the effect that the proposition that risk followed property does not hold true and there can be exception to be true and that mere fact of seller insuring the goods cannot itself lead to the conclusion that title had not passed to the buyer.

4. This is the only ground on which the Commissioner has concluded that the title passed to the buyer at its premises. The terms of the contract between the parties which he has clearly indicated (in Clause 5) that the delivery was to be given at the buyer's factory at Nashik.

Clause 15(a) provides that if a particular indenter asked for the vehicle to be insured, it can be claimed as separate item of production of document. It is therefore clear that the place of removal was factory of manufacturer and not the premises of the buyer.

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