

Commissioner of Cen. Excise Vs. Telco Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2003

Judge : J Balasundaram, S T C.

Appellant : Commissioner of Cen. Excise

Respondent : Telco Ltd.

Judgement :

1. The issue in dispute in the above appeal of the Revenue against the order of the Commissioner of Central Excise, Pune is, as to whether freight and transit insurance charges received by the respondents/assesseees from their customers is required to be included in the assessable value of the vehicles cleared by them. The show cause notice issued to the respondents proposed to recover Rs. 17,44,09,403/- and automobile cess of Rs. 59,654/- on the ground that sale took place only at the premises of dealer/customer as defined in Sub-clause (iii) of Section 4(4)(b) of the Act and not at the factory gate, as the title of the goods was transferred only at the premises of the buyers and the sellers were collecting insurance charges for transporting the goods, indicating that the ownership remains with them till delivery to the customers. The notice also proposed imposition of penalty. The period in dispute is 28.9.96 to 31.12.2000. The Commissioner of Central Excise dropped the demands and penalty, accepting the assesseees' submission that the place of removal of the motor vehicle is their factory gate.

Hence, this appeal by the Revenue.

2. We have heard both sides. In the appeal before the Tribunal, the Revenue relied upon the Tribunal's decision in the case of M/s. Escort JCB Ltd v. CCE [2000 (118) ELT 650] and CCE v. Prabhat Zarda (2000 (119) ELT 191) wherein it was held that where the ownership of excisable goods remained with the manufacturer up to the place of buyer from where the goods were delivered, the place of removal for the purpose of Clause (iii) of Section 4(4)(b) of the Act, would be the place of delivery. We find that both these decisions have been reversed by the Hon'ble Supreme Court as seen from 2002 (146) ELT 31 (S.C.) (Escorts JCB Ltd. v. CCE, Delhi) and 2002 (146) ELT 497 (S.C.) [Prabhat Zarda Factory Ltd. v. CCE]. The Apex Court has held that the factory premises is the place of removal since the transaction of sales, payment of price and delivery of goods to the carrier occurred at factory premises and that ownership of goods have no relevance in so far as transit insurance of goods is concerned. The Court has held that delivery to the carrier at the factory gate is the delivery to the buyer and that the element of freight and transit insurance are not includible in the assessable value of the goods. Following the ratio of the above decision which apply on all fours to the facts of the present case, we hold that there is no ground to interfere with the impugned order and accordingly uphold the same and reject the appeal.

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