Maestro Motors Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/36091

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-29-2004

Reported in : (2004)(97)ECC447

Judge : A T V.K., P Bajaj

Appellant : Maestro Motors Ltd.

Respondent : Cce

Judgement :

1. Though the appeal filed by M/s. Maestro Motors Ltd. is posted for hearing the Stay Application, we, after granting the stay of the entire amount of duty Rs. 74,725 50p take up the appeal itself for disposal with the consent of both the sides as the issue stands remanded by the South Zonal Bench of the Tribunal vide Final Order No. 457-460/2003 dated 28.3.2003.

2. We heard Shri Krishna Kant, learned Advocate, for the Appellants and Mrs. Charul Baranwal, learned SDR, for the Revenue. The issue in this appeal is whether the duty is chargeable on the price mentioned in the invoice at the time of clearing Saloon cars to M/s. Dolphin Motors (India) Ltd., who have sold the cars to the customers as they were only acting as agent and the transaction between the Appellants and the Dolphin Motors (India) Ltd. do not involve sale of cars. We find that the South Zonal Bench at Bangalore have remanded the matter with the following observations: Since it is the case of the Revenue itself that the cars have been directly sold to the retail customers and amounts received directly by SAL

and such sales have been admitted to be retail sale by SAL, which have been found not to be sales to dealers by the learned Commissioner, we find no reason not to accept the sales in question to be retail sales. When a manufacturer is effecting retail sales, no duty could be levied on the component of dealers discounts and wholesale prices will have to be worked out, as per valuation rules.

Since the same has not been worked out, the demands of duty in this case cannot be sustained and are required to be set aside with direction to work out the assessable values after abating the dealers discount and other permissible deductions from such cum-duty sale proceeds as received by SAL on sale effected to retail customers at the factory gate. For this purpose, the order is required to be remitted back for de novo determination.

Since the matter is being remanded for de novo determination, the issues of eligibility of Modvat as claimed but denied by the Adjudicator and the liability for confiscation of the engine in the premises of DM can also be re-determined in the remand proceedings.

As regards penalties imposed on SAL, DM, R.K. Sipani, Dinesh Sipani under the Central Excise Rules, they will have to be set aside and the matter required to be remanded back to redetermination of the penalty, if any, depending upon the duties which may be redetermined in the remand proceedings by considering the sale at factory gate to be in retail.

We make it clear that all other issues are left open in the remand proceedings and we therefore arrive at no findings on the other grounds taken in appeal.

3. We also remand the present matter with the same directions as contained in Final Order F. No. 457 to 460/2003 dated 28.3.2003 passed by the South Zonal Bench of the Tribunal at Bangalore. The appeal is thus allowed by way of remand.