

Mauria Udyog Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-2004

Reported in : (2005)(118)LC205Tri(Delhi)

Judge : J Balasundaram, Vice, A T V.K.

Appellant : Mauria Udyog Ltd.

Respondent : Cce

Judgement :

1. These two cases have a chequered history. Show cause notice was issued to the appellants proposing recovery of duty of Rs. 12,24,492/- on the ground that freight charges from the appellant's factory to the buyers place were includible in the assessable value. Penal action was also proposed in the notice. The demand raised in the notice was confirmed and penalty of equal amount was imposed on the appellants. In appeal, the Commissioner of Central Excise (Appeals) upheld the duty demand but reduced the penalty to Rs. 4.5 lakhs. Against the demand confirmation, the assessee came up in appeal to the Tribunal; against the reduction in the quantum of penalty, the Revenue came up in appeal to the Tribunal. In the appeal of the assessee, predeposit of Rs. 2.5 lakhs was directed in terms of Section 35F of the Central Excise Act, 1944 and due to non-compliance with that order, the appeal of the assessee was dismissed by the Tribunal on 12.12.2000. In the meanwhile, the appeal of the Revenue against the order of the Commissioner (Appeals) who reduced the penalty was dismissed by the Tribunal. When the application for restoration for the appeal of the assessee was taken up

for hearing, it was brought to the notice of the Bench by the Revenue that their appeal against the order of the Commissioner (Appeals) had been dismissed and consequently, it was argued that the order of the Commissioner (Appeals) got merged into the order of the Tribunal and, therefore, the Tribunal could not entertain the appeal of the assessee. The Tribunal accepted that submission and thus dismissed the ROA application and the appeal of the assessee. The matter was carried in appeal to the Supreme Court by the assessee which vide its order dated 16.8.2002 held as follows: It is evident from the facts noticed above that the principle of merger has no applicability. The appeal of the Revenue was restricted to the reduction of the penalty amount by the Commissioner (Appeals). In the appeal of the appellant, the challenge was not only to the penalty but to the entire order including the order of the Commissioner confirming the demand and holding that the freight expenses of the appellant's factory to the buyers factory are includible in the assessable value. The restricted question which was the subject matter of the appeal of the Revenue, under these circumstances, cannot result in the dismissal of appellant's appeal by application of principle of merger. The said principles on the factual situation herein has no applicability whatsoever. Mr. Rawal, the learned Additional Solicitor General very rightly did not support the order on the ground of the applicability of the principle of merger.

2. The Hon'ble Supreme Court restored the appeal filed by the appellants to the file of the Tribunal for decision on merits in accordance with law. Vide a separate order dated 26.2.2003, the Supreme Court disposed of Civil Appeal No. 5354 of 2001 of the Commissioner of Central Excise, New Delhi by directing that this appeal should also be decided on merits along with the appeal of the assessee which had already been sent to the Tribunal. This is how both the appeals came up for hearing before us.

3. As for as the assessee's appeal is concerned, we find that issue of freight charges from the factory of the appellants to the buyers premises being includible in the assessable value or not, stands decided in favour of the assessee by the Apex Court decision in Escorts JCB Ltd. v. Commissioner of Central Excise, New Delhi , reversing the Judgment of the Tribunal in. Following the ratio of the Supreme Court decision, we hold that freight expenses are not includible in the

assessable value and set aside the demand of duty and penalty confirmed against the appellants.

4. Since the duty itself is held to be not payable, the question of enhancement of the penalty does not arise. The appeal of the Revenue is hereby rejected.

5. In the result appeal No. E/2978/00/A filed by M/s. Mauria Udyog Ltd. is allowed and appeal No. E/3328/00-A of the Revenue is dismissed.

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