

Volvo India Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2005

Reported in : (2005)(100)ECC115

Judge : S Kang, Vice, N T C.N.B.

Appellant : Volvo India Limited

Respondent : Cce

Judgement :

1. The appellants manufacture motor vehicles in their factory near Bangalore. Those motor vehicles are liable to Central Excise duty on advelorum basis. Under the impugned order, Commissioner of Central Excise, Bangalore confirmed differential duty demand of about Rs. 7.5 crores on the appellant with regard to vehicles cleared from July 1998 to August 2002. There is also demand of differential cess, interest and penalty. The reason for the duty demand is that the appellant did not determine the assessable value of the motor vehicles correctly by including amounts collected under service contracts also in the assessable value. The present appeal challenges that order.

2. The contention of the appellant is that amounts collected under the service agreement with the buyers is not a consideration for the sale of the motor vehicles or, for that matter, they are amounts paid or liable to be paid "by reason of" "or in connection with" the sale of the motor vehicles. It is being pointed out that the services rendered in terms of the service agreement are for the maintenance of

the vehicles, after their sales and they have nothing to do with the sale as such. It is also being pointed out that the service agreement is optional and many buyers do not exercise that option (35% of the buyers have not opted) and that service agreement can be entered into by a buyer at any time subsequent to the purchase.

3. The appellants have pointed out that the only service which is part of the sale or in connection with the sale is the free service which is carried out by the appellant on completion of 10,000 Kms. by a vehicle and its value remains included in the price of the vehicle, It is the submission of the appellant that the service cost which is liable to be included in the assessable value in terms of the definition of Transaction value under Section (3)(d) of the Central Excise Act is the free service provided by the appellant in connection with the sale and not the post sale maintenance service provided in terms of another agreement, 4. During the hearing of the case, learned Counsel for the appellant has submitted that the issue relating to the includibility of service charge in the assessable value had come up for consideration before the Apex Court in the case of Kelvinator of India Ltd., Vs. Collector central Excise, Delhi-1988 (33) ELT 695 and the Apex Court had ruled that optional service charges, after removal of goods from the factory, are not includible in the assessable value. Learned Counsel, therefore, submitted that no demand can be raised till 1.7.2000 when the valuation provision was replaced by the current Section in the Central Excise Act. Learned Counsel has pointed out that even in terms of the Section which came into force from 1.7.2000, only "Servicing" which is "by reason of and or in connection with the sale would be liable to be included in the assessable value". In the present case, as the servicing is not in connection with the sale, there is no warrant for including the service charge even subsequent to 1.7.2000, Learned Counsel has in this connection referred to the decision of the Apex Court in the case of Eicher India Ltd. - 2004 (64) RLT 539 (SC) in support of his contention that the service charge is not to be included. reliance in particular has been made on para 78 of the judgment which is reproduced below:- "78. In other words, computers and softwares are different and distinct goods under the said Act having been classified differently and in that view of the matter, no central excise duty would be leviable upon determination of the value thereof by taking the total value of the computer and software, So far as, the

valuation of goods in terms of 'transaction value' thereof, as defined in Section 4(3)(d) of the Act is concerned, suffice it to say that the said provision would be subject to the charging provisions contained in Section 3 of the Act as also Sub-Section (1) of Section 4. The expressions "by reason of sale" or "in connection with the sale" contained in the definition of 'transaction value' refer to such goods which is excisable to excise duty and not the one which is not so excisable. Section 3 of the Act being the charging section, the definition of 'transaction value' must be read in the text and context thereof and not de'hors the same. The legal text contained in Chapter 84, as explained in Chapter Note 6, clearly states that a software, even if contained in a hardware, does not lose its character as such. When an exemption has been granted from levy of any excise duty on software whether it is operating software or application software in terms of heading 85.24, no excise duty can be levied thereupon indirectly as it was impermissible to levy a tax indirectly, In that view of the matter the decision of PSI Data Systems (supra) must be held to have correctly been rendered".

5. The contention of the learned Senior Counsel for the Revenue is that "servicing" is a specifically Included item in the definition of transaction value under Section 4 of the Central Excise Act and that a perusal of the connected documents revealed that the service agreement is in connection with the sale of the motor vehicles. Learned Senior Counsel has also contended that the optionality of the service agreement or some people not making payments under the agreement are not relevant for purpose of determining the assessable value since the statutory provision has specifically included the cost of servicing in the assessable value. It has also been pointed out that a perusal of the relevant documents would show that the service agreement is for provision of "preventive maintenance/repairs" and that such preventive maintenance is a pre-condition for making the vehicle eligible for the manufacturers warranty in terms of the sale. Thus, according to the learned Counsel "servicing" is an integral part of the sale and warranty and no inclusion of "servicing" cost in the assessable value is not correct. Specific reference was made to the condition in the warranty that in order for Volvo's Warranty to apply, "you must maintain the truck in accordance with Vovlo's Preventive Maintenance Programme and continually record all the service occasions".

6. The learned senior Counsel has relied on the decision of the Apex Court in the case of State of Gujarat Vs. Jamnadas G. Pabri and Others (1995) 1 Supreme Court Cases 138 as to the scope of the term "by reason of" figuring in the definition of transaction value under Section 4(3)(d). The specific reference has been made to para 16 of the Judgment which reads as under:- "16. Assuming that the disturbances had abated after the dissolution of the State assembly on March 15, 1974, the abnormal situation in the State, which was the direct product of the disturbances, continued to exist throughout March, 1974. Sufficient time was therefore, required for the situation to limp back to normalcy. It is to be noted that Section 303A (1), speaks of the existence of a situation "by reason of" disturbances. The expression "by reason of" indicates that the 'disturbances' and the 'situation' must be proximately connected as cause and effect. The 'situation' envisaged by this sub-section, therefore, may not necessarily be coterminous with the disturbances. It is sufficient if the situation is the immediate outcome of the disturbances, and it subsists. The situation after such massive and violent disturbances would continue to be 'disturbed' for some time even after the abatement or over cessation of the disturbances".

Based on the above ruling of the Hon'ble Supreme Court, it is the contention of the learned Senior Counsel that a proximate connection between the cause and effect would be sufficient to satisfy the condition of "by reason of". According to him, in the present case, such a connection exists between sales and the service agreements.

7. We have perused the records and considered the submissions made by both sides. As the entire dispute turns around the definition of "transaction value" under Section 4(3)(d), we may read that definition.

"(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage,

outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods." 8. a perusal of the definition makes it clear that transaction value includes any amount which the buyer is liable to pay in connection with the sale, whether payable at the time of sale or any other time.

"Servicing" is specifically included as one such item. Therefore, the only question for consideration is whether the service provided under the agreements in the present case falls under "servicing" by reason of or in connection with the sale of the motor vehicles. The service agreement starts with the citation "that the CUSTOMER has sought and VOLVO has agreed to provide or procure the provisions of preventive maintenance/repairs for the vehicle (identified in the agreement hereto) upon the terms and conditions mentioned under this agreement and the schedule hereto". thus, it is a service sought by the customer and provided by Volvo. It is not a part of or implicit in the sale and purchase of the vehicle. There is, of course, "servicing" which forms part of the sale consideration and that is the free service which is available to every purchaser "by reason of" the purchase of the vehicle on completion of 10,000 Kms. or four weeks of run. This service is part of the sale consideration and its value remains included in the sale price. The service agreement in question is a separate transaction and the consideration for it is also separate. It is for the maintenance of the vehicle during its operation. That all vehicles require servicing during their operating life cannot be taken to mean that servicing is in connection with the sale or by reason of sale. Such servicing is by reason of and in connection with the operation of the vehicle. That assessable value should take in only expenses in connection with the manufacture of the goods is made clear by the judgment of the Apex Court in the case of Eicher India Limited (supra) case when it ruled that the said provision would be subject to the charging provisions contained in Section 3 of the Act as also Sub-Section (1) of Section 4.

The Court further observed that the expressions "by reason of sale" or "in connection with the sale" contained in the definition of transaction value refer to such goods which is subject to excise duty and not to activities which are not excisable. The Apex Court also has cautioned that Section 3 of the Act being the

charging section, the definition of 'transaction value' must be read "in the text and context thereof" and not de'hors the same. thus, just as the value of an item, which is not excisable (though sold with the excisable item) cannot form part of the assessable value, cost of a service which is not part of the sale of the goods cannot also form part of the assessable value.

The life time service of a vehicle is not part of sale of the vehicle.

It is an entirely different activity. Only the serviced provided by reason of the sale or in connection with the sale can alone be included in the sale transaction. In the present case that servicing is the free service provided upon 10,000 Km. run and not the life time service procured through a separate agreement.

9. In Philips India Limited Vs. CCE, Pune reported in 1997 (6) SCC 31, dealing with the question of includibility of advertisement expenditure by dealer in the assessable value of electronic goods, the Apex Court again cautioned as under:- "7. We think that in adjudicating matters such as this, the Excise authorities would do well to keep in mind legitimate business considerations".

10. In the present case, the terms and conditions between the manufacturer appellant and his dealers make it clear that the preventive maintenance service is a separate arrangement from the manufacture and sale of motor vehicles, even though, for legitimate business considerations, both the parties may enter into such an agreement while the same is not integral to the sale of motor vehicles.

11. A reading of the sale warranty and service document make it clear that the service agreement and cost recovered for it is not by reason of sale. It is not a condition of sale that party should enter into service agreement. Nor is it in connection with the sale. A proximate connection also does not exist between the two transaction. Service agreement does not have to follow sale. Servicing by the manufacturer is purely optional. Service can be procured from any source that the buyer considers advantageous to him in terms of cost, quality etc. Even though for legitimate business considerations the service agreement may be entered into between the manufacturer and buyer, there is no conditionality to the sale. Both are entirely separate. The linking of proper maintenance with warranty also is no

ground to hold that there is proximity between sale and servicing. Such linkage is to be found even under insurance.

12. In view of what is stated above, we hold that there was no warrant to include payments under the service agreement in the assessable value of the Motor vehicles. The impugned order which has held to the contrary is, therefore, set aside and the appeal is allowed with consequential relief, if any, to the appellants.

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