Mahindra and Mahindra Ltd. Vs. Commissioner of Cen. Excise

Mahindra and Mahindra Ltd. Vs. Commissioner of Cen. Excise

SooperKanoon Citation : sooperkanoon.com/37730

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-12-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Mahindra and Mahindra Ltd.

Respondent : Commissioner of Cen. Excise

Judgement :

1. The application for waiver of pre-deposit of duty of Rs. 90,33,476/-and penalty of Rs. 5 lakhs arises out of the order of the Commissioner of Central Excise, Nashik, who has confirmed the differential duty demand on bullet proof vehicles manufactured and cleared by the applicants herein during the period August, 2002 to July, 2003 to Director General of Police, Nagaland, Meghalaya, Orissa and Oil & Natural Gas Commission, holding that the price received in connection with the sale of bullet proof vehicles would be the transaction value for the purpose of Section 4 of the Central Excise Act, 1944 (the assessees paid duty only on the vehicles manufactured by them without including the value addition as a result of bullet proofing carried out by Mahindra Defence System, New Delhi through Delhi based sub contractor.) 2. We have heard both sides. The contentions raised by the applicants viz. that vehicles were fully manufactured by their Nashik plant and that complete vehicle came into exist (sic) even before bullet proofing and therefore, Note 6 to Section XVI of the Central Excise Tariff which has been applied against them by the Commissioner is not applicable, that the activity of bullet proofing does not amount to manufacture, that in any event, since bullet

proofing was carried out outside the factory of clearance of vehicles, ie. Nashik, CBEC Circular No.139/08/2000-CX.4 dated 3.1.2001 by which the Board has accepted the advice of the Law Ministry that the judgment of the Supreme Court in Siddharth Tubes Ltd. v. CCE [2000(115)ELT 32(S.C)] does not enable the Excise Department to charge duty on value addition outside the factory of clearance on account of certain processes not amounting to manufacture, is applicable, are debatable, particularly, having regard to the admitted position that the contract between the applicants and their customers was for supply of bullet proof vehicles. Therefore, no strong prima facie case for total waiver can be said to have been made out. Having regard to the totality of the facts and circumstances and also noting that the Commissioner has held that the applicants are entitled to claim credit of duty on inputs after due verification, we direct pre-deposit of Rs. 10 lakhs (Rupees Ten lakhs) within a period of eight weeks from today and on such deposit, pre-deposit of balance duty and penalty shall stand waived and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without prior notice.