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Majestic Auto Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-17-2005

Judge : S Kang, Vice-, S T T.V.

Appellant : Majestic Auto Ltd.

Respondent : C.C.E.

Judgement :

1. The appeals are being taken up in pursuance to the order-dated 20.4.2005 passed by the Hon'ble Supreme Court.

2. Brief facts of the case are that appellants are engaged in the manufacturing of two Wheeled Motor Vehicles. Appellants also exporting the motor vehicles manufactured by them. The assessments were made Page 0547 provisional and, thereafter, getting the relevant data from the appellants, the adjudicating authority finalized the assessment. While finalizing the assessments, the adjudicating authority held that in view of Section 4 (1) of Central Excise Act, 1944 the expenses incurred on freight and insurance for export under Bond without payment of duty are not allowable as deductions from the assessable value on goods for home consumption. Against this finding, appellants filed appeals and the Commissioner (Appeals) allowed the appeals filed by the present appellants on the ground that the expenses incurred on freight and insurances goods exported under Bond, is admissible deductions. Revenue filed appeals before the Tribunal and the Tribunal set aside the orders passed by the Commissioner (Appeals) and confirmed the demands on the ground that transport charges incurred in relation to

the goods exported cannot be excluded from the price of sold from domestic consumption. The present appellant filed (Appeals) before Hon'ble Supreme Court and Hon'ble Supreme Court set aside the order passed by the Tribunal and remanded the matter. The Hon'ble High Court held as under: However, the grievance of the appellant is that the question framed by the Tribunal was wholly wrong. According to the appellant, it had never sought to include the freight incurred for transporting the goods from the factory for export for computing the freight to be deducted for fixing the assessable value of the goods cleared from home consumption. The appellant has said that the Tribunal should have considered the matter in the light of the following questions alone: (1) Whether the calculation of equalized freight had to be determined on the basis of the total freight incurred on the transport of the goods manufactured and cleared by the manufacturer from its factory irrespective of the destination of the goods after clearance-whether for home consumption or for export? (2) Whether the deduction of the freight incurred for the transportation of the goods to the port in the course of export could be allowed from the assessable value of such goods? There appears to be some confusion as to the factual and legal basis on which the original order of assessment had been passed. But it appears that the questions as formulated by the appellant should have arisen for consideration by the Tribunal.

In that view of the matter, we set aside the order of the Tribunal and remand the matters back to the Tribunal for determining the questions so formulated. The appeals are, accordingly, disposed of but without any order as to costs.

3. There is no dispute that expenses incurred on freight and insurance for the goods exported under Bond without payment of duty are not allowable as deductions from the assessable value on goods for home consumption. The contention is that for arriving at the assessable value of the exported goods equalized the freight and insurance expenses incurred on the goods from the factory to the Airport are deduct-able. The contention is that this Page 0548 exercise is necessary in view of the Board Circular No. 203/37/96-CX dated 26.4.1996. It is also mandatory on the part of the appellants to mention assessable value of the goods in the AR-4 Form and in the invoice also. Therefore,

assessable value of the goods which are exported to be determined. The contention is that for determination of the assessable value they are entitled for the equivalent freight and insurance from the factory to the port. The contention, is that lower authority as well as the adjudicating authority has wrongly decided the issue. The contention is that now the Supreme Court has framed the issues to be decided to resolve the dispute.

4. The contention of the Revenue is that the adjudicating authority rightly held that equalized freight and insurance incurred on the exported goods is not admissible deduction from the assessable value of the goods cleared for the home consumption. For this preposition, the appellant had no objection. Now, the issues are to be decided as framed by the Hon'ble Supreme Court. We find that Hon'ble Supreme Court framed the following issues : 1. Whether the calculation of equalized freight had to be determined on the basis of the total freight incurred on the transport of the goods manufactured and cleared by the manufacturer from its factory irrespective of the destination of the goods after clearance-whether for home consumption or for export? 2. Whether the deduction of the freight incurred for the transportation of the goods to the port in the course of export could be allowed from the assessable value of such goods? 5. For deciding this issue the relevant data is required regarding the expenses as equalized freight on the goods exported and the goods cleared for the home consumption separately. Further, we find that adjudicating authority has gone into the issue whether the equalized freight incurred on the exported goods is admissible from the assessable value cleared for home consumption. The issues framed by the Hon'ble Supreme Court are not gone into by the lower authorities.

Therefore, we find it is a fit case for re-consideration by the lower authorities in view of issues framed by the Hon'ble Supreme Court after taking into consideration the data produced by the appellant the impugned orders are set aside and the matter is remanded to the adjudicating authorities to decide afresh as directed by the Hon'ble Supreme Court after taking into necessary data, supplied by the appellants which is already on record or by calling for expert opinion if required. The appellants are also at liberty to produce any additional evidence in support of their claim. The adjudicating authority will decide after

affording an opportunity of hearing to the appellants. The appeals are disposed of by way of remand.

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