

Menon and Menon Ltd. Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-23-2005

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Menon and Menon Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. In this case duty demand of Rs. 45,77,673/- has been confirmed together with interest against the appellants herein on the ground of inclusion of the value of items supplied free by M/s. BEML to them, in the assessable value of wagons and cleared by the appellants to M/s.

BEML during the period in dispute. Penalty of amount equal to duty has also been imposed and land, plant, building machinery etc. of the appellant have been ordered to be confiscated but allowed to be redeemed on payment of a fine of Rs. 10 lakhs (Rupees Ten Lakhs only), hence this appeal.

2. We have heard both sides. We find that the Commissioner in the adjudication order relied upon the decision of Apex Court in the case of Burn Standard Co. Ltd. v. Union of India to hold that the appellants were required to pay duty on the free supply items.

However, as rightly pointed out by the appellants before us, the decision in the Burn Standard Co. Ltd. case has been subsequently distinguished by the Apex

Court in International Auto Ltd. v. Commissioner of Central Excise, Bihar 2005 (183) E.L.T. 239 (S.C) wherein the Apex Court has held that the manufacturer of the final product, would be entitled to adjust the credit on the inputs supplied by it to the intermediate purchasers and also entitled to credit for the duty paid by the intermediate purchasers on its products. The Court has held that the intermediate purchaser is not liable to pay duty on the inputs supplied since it had not taken the credit of Modvat in respect of inputs and therefore cannot be called upon to pay duty in respect of those inputs, nor can the value of the inputs be added to the assessable value of the final products. Following the ratio of the above decisions we set aside the impugned order and allow the appeal.

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