

Cce Vs. Amar Coach Builders

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-2006

Reported in : (2006)(110)ECC486

Judge : N T C.N.B., M Ravindran

Appellant : Cce

Respondent : Amar Coach Builders

Judgement :

1. The respondent has been building bodies on motor vehicle chassis.

Disputes arose with the Revenue as to whether duty was payable by the appellant in regard to vehicle made as well as scrap arising in the body building. Show-cause notices were issued.

2. In adjudication, the Commissioner held in favour of the assessee in regard to both vehicles built as well as scrap. Finding was that vehicle remains exempt under Notification No. 27/02 dated 23/07/2002.

In regard to scrap, it was held that such scrap remained exempt under Notification No. 89/95 dated 18/5/95.

3. In the present appeal, the contention of the Revenue is that the exemption for scrap under Notification No. 18/9 of 1985 was in regard to scrap arising in the manufacture of exempted goods or goods which were liable to nil rate of Duty. The

contention of the Revenue is that there was no such exemption notification in regard to the body built.

It is being pointed out that exemption No. 27 dated 23/07/2002 was an order issued under 11C of the Central Excise Act, and that such an order is not an order of exemption from levy of duty.

4. The Learned Counsel for the Respondent would submit that the distinction being made by the Revenue is not permissible in view of the Circular dated 23rd July, 2001 of the board which makes it clear that "prior to 01/03/2001, it was not the intention of the Government to charge duty on the activity of the body building on job work basis on duty paid chassis". The Counsel, therefore, would content that the chassis in question were exempted.

5. On the question of durability of body built on chassis, it is to be seen that, in terms of the judgment of the Hon'ble Supreme Court, such body was classifiable under 8707 and there was no exemption for such goods. Therefore, the Revenue is right in its contention that the bodies in question were not exempt and for that reason the scrap arising was liable to duty.

6. Part of the demand in the present case has been raised by taking resort to the extended period by invoking proviso to the Section 11A. On this, the submission of the Learned Counsel is that the non-payment duty on the body built as well as (SIC) the scrap was the result of general practice of assessing the bodies under 8702 as exempt and not the result of any suppression of facts by the respondent Assessee.

7. On the question of applicability of proviso, we find in favour of the Assessee. That there was an erroneous practice of assessing chassis under 8702 is noted in para '2' of exemption Notification No. 27 of 2001 itself. Further, as pointed out by the Learned Counsel, letter dated 23rd July, 2001 of the Department of Revenue to all field (Central Excise) formations mentions that prior to 01/03/2001, it was not the intention of the Government to charge duty on the activity of body building on body built on chassis. Thus, the non-payment of duty on body as well as scrap was the result of an erroneous practice and not the result of any suppression of

the facts by the assessee.

Therefore, this is not a case to which proviso to Section 11A is attracted. Duty demand made for the extended period is not sustainable.

8. In the view we have taken above, duty demand on the scrap for the normal period under Section 11A is confirmed and appeal allowed to this extent.

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