

Lml Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-02-2007

Reported in : (2007)(116)ECC478

Judge : R Abichandani, N T C.N.B.

Appellant : Lml Ltd.

Respondent : C.C.E.

Judgement :

This appeal is before us on remand by Hon'ble Supreme Court under order dt. 3.8.06 in Civil Appeal No. 895/01.

3. The appellant/assessee is a manufacturer of scooters. The differential duty demand and penalty under the impugned order have arisen on account of dispute about the correct assessable value for scooters manufactured and sold by the appellant after payment of duty.

The period of dispute is Jan'84 to May'87. Under the impugned order, the Commissioner has found that the cost realizations in respect of nine items were required to form part of the assessable value of scooters and on account of the exclusion of these items, non-payment of duty of about Rs. 30 lakhs took place. We may read the Commissioner's findings: In view of the above facts the various demands confirmed on different grounds are summarized below: 4. During the hearing, we have been taken through the accounts and record relating to these

items and detailed arguments have also been advanced by both sides on each of the aforesaid items. In regard to excess recovery of insurance and the excess freight recovery, the position is that the appellant's recovery from the buyers of the scooters was in excess of the actual amounts spent by it on those items. The contention of the assessee is that insurance and freight being entirely different activities from manufacturing and sale of scooters, recoveries and expenses under those headings cannot have any bearing on the valuation of manufactured goods(scooters). This contention of the assessee remains accepted in the judgments of the Hon'ble Supreme Court in the cases of Baroda Electric Meters v. Collector and Indian Oxygen Ltd. that demands on these items are not sustainable in view of the judgments. We find that there is no merit in the demands in as far as they relate to the aforesaid items in view of the ruling contained in the judgments of the Hon'ble Supreme Court.

5. In regard to 'Forwarding charges' the submission is that this recovery is towards costs incidental to the despatch of the scooters to outstation buyers and does not relate, in any way, to delivery on ex-factory basis. It is noted that this charge is collected over and above the ex-factory sale price. It is well settled that all costs incurred upto delivery at the factory gate are required to form part of assessable value; but not costs beyond the factory gate. Since the forwarding charges in the present case are in relation to freight forwarding, it cannot be part of the assessable value. Thus, there is merit in the appellant's contention on this issue also.

6. In regard to 'F.S.E. Salary' it is being explained that this is a contribution made by the company towards the cost of Service Engineers' employed by dealers. The contention is that since service engineers are employees of authorized dealers, cost of those engineers do not form part of the cost of manufacture. It is being pointed out that this is a case where the appellant incurred expenditure by subsidizing the cost of the service engineers employed by dealers. It is the contention that such subsidy made by a manufacturer would not require to be added in the assessable value of the goods since the entire expenses incurred by the manufacturer remain included in the sale price which is the assessable value. This contention of the appellant merits acceptance in as-much as the service

engineers were employed by the dealers and the cost of employees of dealers are not to form part of manufacturing cost/assessable value. The position is not altered merely because part of the cost is being met by the manufacturer.

7. In respect of 'Monsoon Packing', it is being pointed out that scooters are not sold in any packing and scooters do not require packing. The explanation is that this item is related to the supply of certain plastic items to protect the scooters from rain water. The submission of the Counsel for the appellant is that only the normal packing in which excisable goods are offered for delivery is to form part of assessable value, and that the additional supply of plastic material is not in the nature of packing. This contention of the appellant has merit as it is not the common practice to pack scooters before making delivery at the factory gate.

8. In regard to 'Oil Supply' it is being explained that the supply takes place at the time of servicing of the scooter at the dealers end and not at the time of clearance of the scooter from the factory. The submission is that the measure of assessable value under the Act is the ex-factory sale price and therefore, cost of supplies made subsequent to sale at the stage of servicing, maintenance etc. can not form part of assessable value. It is to be noted that during the relevant period, the normal price at the factory gate was the measure for the purpose of assessment under Section 4(1) of the Central Excise Act. Since the supply of this oil takes place much after the clearance of the goods from the factory, at the time of servicing, the assessee is right in contending that this cost cannot be included in the assessable value.

9. In regard to 'Shared Advertising' dealers are required to carry out their own advertisement in their areas. 50% of this local advertising cost is reimbursed by the manufacturer. Under the impugned order, it has been held that manufacturer's share of local advertisement cost should be added to the sale price of the scooters for the purpose of assessment. Much case law has been advanced by both sides. We are of the opinion as in the case of manufacturer's share of service engineer's salary, that the question of including manufacturer's share of cost of local advertisement cannot arise since the assessment of scooters is done at the total sale price of the manufacturer which is the sole recovery towards the full range of

costs incurred by him.

Therefore, this addition also is contrary to the measure of valuation laid down in Section 4(1)(a) of the Act.

10. The appellant started its manufacturing and sale at a time of scarcity of two-wheelers in the market. Therefore, even before manufacture commenced, booking for sale was opened. The appellant was charging @ Rs. 4/- for the booking form. The finding in the impugned order is that the cost of this form should be included in the assessable value of the scooters. The submission of the assessee is that the cost of this booking form is not a part of the sale consideration of the scooters and therefore, it cannot form part of the assessable value. We find merit in this contention also in as much as the sale price of scooters was not linked to the cost of the Form. The cost of the form is a separate item altogether, like the cost of similar forms(stationery items) like money order forms. The sale of the booking form was a separate sale of a different item from scooter as not all purchasers of forms need or would book the scooter.

11. A demand of over Rs. 9 lakhs is on a finding that 'retention charges' collected by the appellant should be added to the sale price for the purpose of assessment. The factual position relating to collection of this charge is that scooters are sold at the time of their removal from the factory to buyers. The scooters are sent to delivery centers wherefrom buyers have to take, delivery, after paying the outstanding amount of price and other charges. The period fixed for taking delivery ranged from 20 to 25 days. In the event of delay in taking delivery,(beyond the period of 20-25 days) the buyer was charged additionally @ Rs. 5/- per day. The contention of the assessee is that such retention charges are, no way, relatable to the sale price of the scooters, and instead, are entirely in consideration of increased storage costs. It is being pointed out that since the tax is required to be assessed on the price at the time of removal of the goods, a recovery towards additional retention period cannot form part of the assessable value. The assessee's contention is in terms of the relevant legal provision. As a matter of fact, it is to be noted that such retention charges are collected only in new cases of delayed collection of the scooters by the purchasers and is not made from

purchasers who take delivery during the normal period.. Therefore, retention charges have no connection to the normal ex-factory sale price of the scooters in question. The addition of this charge to sale price for the purpose of valuation is not justified.

12. In view of our above findings on each of the items, there is no justification for adding any of these items in the assessable value.

The finding to the contrary in the impugned order is not sustainable.

There was no short of duty remaining to be recovered. In the absence of short levy of duty, imposition of penalty was not called for.

13. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant.

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