

Mahindra and Mahindra Ltd. Vs. Asstt. Collr. Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-25-1988

Reported in : (1990)(26)LC561Tri(Mum.)bai

Judge : A C Excise

Appellant : Mahindra and Mahindra Ltd.

Respondent : Asstt. Collr. Central Excise

Judgement :

1. This is an appeal filed by M/s. Mahindra and Mahindra Ltd., (ITD), Kandivali (East) Bombay-400 101 against the order-in-original No. V-68 (18) 99/86/1497 dated 6.2.1987 passed by the Assistant Collector Central Excise, Div. VIII, Bombay-II rejecting their refund claim of Rs. 1556.32.

2. The appellants were heard by me through S/Shri J.N. Pikle, Manager, Excise and M.V. Joshi, Officer of their company when they reiterated the submissions already made in the appeal petition.

3. The appellants have made the following main submissions in their appeal petition: (1) The appellants are the manufacturers of Tractors, Engines and parts in their factory at Kandivali. Besides, they also being Tractor & Engine parts, Tyres, Batteries, etc. on payment of duty as inputs in the manufacture of Tractor and in respect of which they take credit of duty paid, under Rule 57A. (2) During the period from 4.7.1986 to 18.8.1986, they had cleared some of the aforesaid

purchased goods on which the credit had already been taken to their Research and Development Department Nasik for further manufacture, on payment of duty under Rule 57F(1)(ii).

(3) However, while removing the said purchased goods, they had to pay the appropriate duty on the wholesale price of like kind of goods, sold by them, through mistake of law and under protest.

(4) Having thus paid the duty under protest on the purchased goods on the wholesale price which obviously is higher than the price at which the same were purchased, they filed a refund claim for the excess duty paid by them.

(5) Since the purchased goods were not subjected to any process by them in their factory but have been removed in the same condition as were received, the same cannot be treated as manufactured in their factory in terms of Section 2(f) of the Central Excise Act.

(6) Section 2(f) being very clear as to what manufacture is the provision of Rule 57F(1)(ii) to the effect "as if such inputs have been manufactured in the said factory" becomes a nullity.

(7) As the appellants not being the manufacturers of the purchased goods, the Assistant Collector's action in assessing the duty on the appellants' sale price is in variance with Rule 7 since the duty liability is only on the manufacturer.

4. I have carefully considered the submissions made and have also gone through the impugned order appealed against. The short point involved in this case is how to arrive at the assessable value of the purchased duty paid inputs on which credit is taken under Rule 57A. and permitted to be removed from the factory on payment of duty under Rule 57F(1)(ii) of the Central Excise Rules. 1944. In his impugned order, the Assistant Collector has stated that the appellants have to pay the duty on the price prevailing in the market. Rule 57F(1)(ii) permits clearances for home consumption of the inputs on payment of appropriate duty of excise as if such inputs have been manufactured in the said factory. This in my opinion would mean that if the assessee is also manufacturing these goods in his factory and is

having an approved price list, that price will govern these goods also. My presumption is strengthened by the proviso to the Rule which suggests that the duty of excise at the credit and debit stages could be different.

5. Hence, the question here is this: Does the appellant manufacture these components and does there exist a price list for that? If he does manufacture and if there is a price for that, such price would govern these clearances also. This flows from the words, "as if such goods have been manufactured in the said factory" in the Rule.

6. However, in case the appellant is not manufacturing them and has got a selling price (which is higher than the value on which the inputs have suffered duty) as in his trading capacity, in my opinion that price will not prevail, as this need not be the price which would be his price had he been the manufacturer of the inputs. To prevent any abuse or misuse of this concession only the facility of Rule 57F(1)(ii) has been made conditional on Collector's permission so that it would be given in case of genuine exigencies only.

7. Assistant Collector's order is very brief and does not give the factual details. Depending on whether the appellant manufactures these components and there is an approved price, this case will have to be decided. If the appellants claim that there is no such manufacture and no such price is factually correct, the Assistant Collector's demand is bad.

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