Mahindra and Mahindra Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-14-1993

Reported in : (1994)(74)ELT916Tri(Mum.)bai

Appellant : Mahindra and Mahindra Ltd.

Respondent : Collector of C. Excise

Judgement :
1. In this case duty amount has not been quantified. Hence the stay application is considered only with regard to a penalty of Rs. 2.00 lacs and confiscation of plant and machinery ordered confiscation but allowed to be redeemed on payment of fine of Rs. 5.00 lacs, vide Order-in-Original No. 34-35/93, dated 30-6-1993 of Collector of Central Excise, Bombay II.2. Shri A. Setalwad, the Ld. Sr. Counsel pleads that the issue involved is as below. They had filed a Modvat declaration describing the final product as motor vehicles and indicating T.H. 8703. The inputs declared were motor vehicle parts and other items required for motor vehicles.

However, in April 1991 they enlarged capacity of the motor vehicles to accommodate 10 persons including the driver and started manufacturing such vehicles, consequent on which Tariff classification for such type of vehicles fell under 8702. At that time, they had also filed the classification list ... 8702 indicating the availment of Modvat Credit.

However, on account of an omission, they have not included the sub-heading 8702 in the Modvat declaration. The entire proceedings are only on account of that, and a penalty of Rs. 2.00 lacs has been imposed and also their plant and machinery have been ordered confiscation but allowed on payment of redemption fine of Rs. 5.00 lacs.

3. Shri Mondal, the Ld. SDR, however, contends that different items of vehicles are described in Chapter 87 and declaration is only for 8703.

It cannot be said to cover motor vehicle classifiable under Chapter 8702. Hence for not filing the proper declaration, after introduction of new type of vehicle, they not only lose the Modvat Credit benefit but are exposed to penal liability.

4. After hearing both the sides, there is no dispute that they have filed a declaration for the final product motor vehicle. They manufactured two different types of motor vehicles. There is no dispute that the final product has been declared as motor vehicle. At a particular point of time they were manufacturing motor vehicles with a capacity to carry persons less than ten and the same inputs are also required for the motor vehicles which they started manufacturing after April 1991. In view of this, prima facie the element of mala fides or any deliberate violation of the rules seem to be absent especially when they have also indicated the availment of Modvat Credit in the classification list. We therefore grant stay and waiver of recovery of penalty. We also direct the department not to dispose of the plant and machinery ordered confiscation and the normal process of manufacture should not be interfered with till the disposal of the appeal. The appeal may be listed for hearing in January, 1994.