

Lml Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-1995

Reported in : (1995)(77)ELT154TriDel

Appellant : Lml Ltd.

Respondent : Collector of Central Excise

Judgement :

1. These are two appeals. Appeal No. E/4697/92-A is filed against the Order-in-Original No. 2/Collr./MP/92, dt. 30-6-1992 passed by the Collector of Central Ex., Kanpur and Appeal No. E/2394/93-E is filed against the Order-in-Appeal No. 72/CE/KNP/93, dt. 5-8-1993 passed by the Collector of Central Ex. & Customs (Appeals), Allahabad. Since these two appeals are interlinked and connected they are clubbed together and are being disposed of by this common order.

2. The appellants M/s. LML Ltd. (formerly known as Lohia Machines Ltd.) C-6 to 10 Panki Industrial Estate, Kanpur are manufacturers of Motor Vehicles (Scooters) falling under erstwhile Central Excise Tariff Item 34 upto 28-2-1986 and after that under C.H. 87.11 of the Central Excise Tariff Act, 1985. It was charged that they were evading payment of appropriate Central Excise duty by lowering the assessable value of their product. Accordingly proceedings were initiated. Shri R.Santhanam, learned Advocate appearing for the appellants submitted that show cause notice dated 20-8-1987 was issued covering the period from 4-10-1985 to 31-5-1987 demanding the duty amount of Rs. 1,14,46,488.81 on various charges/items. He said that the Collector who adjudicated the proceedings

dropped the duty amount of Rs. 73,54,075.80 out of 1,14,46,488.81, but confirmed the duty amounting to Rs. 24,18,712.00 in addition to imposing penalty of Rs. 15,00,000/- as per his order dated 30-6-1992. On two issues, he directed the Assistant Collector to determine the duty amount and accordingly the Assistant Collector as per his order dated 26-4-1993 raised the demand of Rs. 7,86,711 on charging that excess amount realised on account of transit insurance during the period from 1-1-1984 to 31-5-1987 and raised demand of Rs. 8,14,050 on the ground that expenses incurred on salaries paid to Field Service Engineers (FSEs) by the Authorised Representative Dealers. He said that the order passed by the Assistant Collector was challenged before the Collector (Appeals), but the Collector (Appeals) instead of quashing the demand raised by the Assistant Collector, remanded the matter to the Assistant Collector on the ground of violation of principles of natural justice and hence these two appeals are filed by the party against the respective orders passed by the Collector of Central Excise, Kanpur and Collector (Appeals), Allahabad. He said that following demands are confirmed by the Collector as per his order dated 30-6-1992-----Sl. No. Duty demanded as per Amount confirmed by the show cause notice in para No. Collector as per his order-----7.

54-	Rs.	2,02,683.37
		2,02,680.00----- 3. Shri

Santhanam submitted that in respect of Item No. 1, it was alleged that the party has charged Rs. 25/- per scooter as forwarding charges over and above the freight charges from the customers.

Forwarding charges being part of transportation cost is not includible in the assessable value and in fact the appellant company has paid Rs. 4,56,05,1907- on account of expenditure incurred in the cost of transport against the amount recovered from the customers a sum of Rs. 4,55,93,014/- on account of transport including Rs. 12,69,600/- as cost of forwarding charges and Rs. 66,870/- as cost of Monsoon Packing charges. This factual position was supported by certificate from Chartered Accountant which was produced during the personal hearing but still Collector confirmed the demand without giving reasons for rejecting the

certificate and not following decisions including Ashok Leyland Ltd. v. U.O.I. -1986 (26) E.L.T. 676 and Indian Oxygen Ltd. v.C.C.E., 1988 (36) E.L.T. 723 S.C., on this issue. He said that the second item also relates to transportation and although the Collector has determined at Rs. 3,505/- as against Rs. 3,13,674/- but basis is not known for such determination since equalised freight is permissible and has been accepted by the Tribunal and Courts. Monsoon charges collected by the appellants for a particular period as a special case for protection during transport that too as optional from customers cannot be included and in fact charges incurred by the appellant's company is more than realised from the customers as can be seen from the Chartered Accountant's Certificate. He said that appellant's Company has provided free of cost Super 2T Oil and not supplied along with the scooter but still it was added in the assessable value and accordingly the appellants are required to pay duty on Oil at the rate applicable to Scooter. As regards advertisements the appellants have reimbursed 50% of cost incurred by the Authorised Representative but no deduction was claimed by the appellants, but still the Department added the other 50% cost of advertisement incurred by the Authorised Representatives in their respective area in determining the assessable value of the product of the appellants. He contended that appellants have not lowered the assessable value of the product manufactured by them and pleas advanced by the appellants as well as evidence adduced in respect of each item has not been properly considered by the Collector while passing the order. He said that demand was also barred by time since the price list was duly approved and detailed information was furnished as required, relying upon the decision in the case of Rainbow Industries (P) Ltd. v. Collector of Central Excise, Vadodara 1994 (74) E.L.T. 3 (S.C.). In addition, he said that the Collector has directed the Assistant Collector to determine the quantum of duty with reference to two issues viz. realisation of transit insurance and on expenditure incurred by ARS on the salaries of the FSEs on verification of documents/certificate, which amounts to continuation of adjudication which is not permissible. In support of his contention that adjudicating authority, alone has to determine the actual amount of Central Excise duty that may become payable after considering the representation of the party and that power cannot be delegated to other jurisdiction-al officers referred to the following decisions :- 1. Durga Works v. Asst. Collector of Central Excise,

1992 (61) E.L.T. 375 (Kar.)Saraogi Paper v. Collector of Central Excise, 1993 (64) E.L.T. 299 (CEGAT)Perfect Drop Pins Mfg. Co. v. Collector of Central Excise, 1991 (56) E.L.T. 189 (CEGAT).S.A. Sutlej Cotton Mills Ltd. v. Union of India and Ors., 1993 (42) ECC 114 (Raj.)Saraogi Paper Mills Ltd. v. Collector of Central Excise, 1993 (65) E.L.T. 564 (CEGAT) 4. Shri B.K. Singh, learned SDR appearing for the Revenue submitted that the Collector has directed the Assistant Collector to calculate the actual duty payable but in view of the direction that it has to be worked out on perusal of the relevant documents and certificate, he has no objection for remanding the matter in respect of two issues in view of the case law referred to by the other side. He said that the Collector has given finding in respect of the issues wherein he confirmed the duty after considering the pleas advanced by the appellants.

5. On a careful consideration of the submissions made by both sides, we find that the Collector is not right in directing the Assistant Collector to determine the duty payable with reference to the two issues on verification of documents since such power cannot be delegated and he himself has to determine the duty payable by the Assessee, with reference to show cause notice issued after considering the submissions of the party as it was rightly argued by the appellant's Counsel with reference to case law. Hence the issues in respect of which the Assistant Collector has determined the duty, requires to be examined by the Collector who adjudicated the proceedings with reference to show cause notice. Since we are remanding the matter to the concerned Collector to decide the above two issues, the pleas advanced by the party with reference to other issues also may be looked into by the adjudicating authority and to pass an appropriate order in accordance with law after providing an opportunity to the appellants. We would like to make it clear that he could confine to the issues covered by these two appeals and should not go into the issues/items in respect of which he has already dropped the demand since the department has not filed any appeal on such dropped demands, as pointed out by the appellants' Counsel. Further the party also should co-operate with the Department for speedy disposal of the matter and may make use of this opportunity in adducing the evidence if any in support of their contention. Quantum of penalty may also be redetermined by the adjudicating authority depending upon the outcome of the order passed on remand. Accordingly cases are remanded to

the concerned Collector of Central Excise, Kanpur in the above terms.

Operative portion of this order was already pronounced in open Court on conclusion of the hearing on 16-1-1995.

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