

Collector of Central Excise Vs. Bajaj Auto Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-03-1995

Reported in : (1996)(83)ELT654Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Bajaj Auto Ltd.

Judgement :

1. This is an appeal against the order in appeal No. HN-357/PN-81/87(F.No. V-2(68) 510/85), dated 7-5-1987 allowing the appeal of the respondents.

2. The main issue relates to incentive rebate in respect of the goods manufactured and cleared during the period 1-3-1982 to 28-2-1983 in terms of Not. No. 283/82, dated 27-11-1982 under Rule 56AA. The question calls for interpretation in the appeal is relating to the term" 'closed' referred to in the base clearance in the explanation in the said notification-which reads as below : "base clearance" - (a) in the case of a factory which had not remained closed for a period of more than 15 days at one time during the base period due to any reason

(b) In the case of factory which had remained closed for a period of more than 15 days at one time during the base period due to any reason

3. It was pleaded by the respondents that the fact of lock out was intimated to the Department. The lock out was effective from 25-9-1981 to the third shift of 21-10-1981. During the aforesaid period, the factory was closed for more than 15 days

and (b) of the explanation of the said notification was applied for considering the incentive production credit. Accordingly, adjudication order was passed holding that the respondents' factory remained closed for a period of more than 15 days during the base period. On appeal before the Collector (Appeals) the Collector (A) relied on the decision of the South Regional Bench in the case of Indian Organic Chemicals Ltd. reported in 1985 (22) E.L.T. 945 (Tribunal) holding that though a lock out was declared, the factory was not closed because the activities of production were noticed by the Range Supdt. and he had assessed the RT.12 returns. Hence it cannot be construed that the factory was closed during the period of lock out. Accordingly, he allowed the appeal of the respondents, Revenue have come up in appeal against the aforesaid order.

4. Shri Nair, the Id. SDR, mainly pleades that the order of the South Regional Bench was not accepted by the Department. A reference application was moved before the South Regional Bench and that Bench admitted the reference application 1986 (26) E.L.T. 593 (Tri.) and the High Court is yet to decide on the Reference Application. The other decision cited by the respondents in the case of Swadeshi Polytex Ltd. reported in 1991 (55) E.L.T. 90 (Tri.) seems to be based on the decision, of the South Regional Bench supra, which is under reference to the Madras High Court. In the circumstances, he would plead that this Bench may not follow the said decisions, but take an independent view. He contends that definition of closure in the Industrial Dispute Act may not be attracted because it calls for a permanent closure whereas the Notification in questions contemplates closure for a period of 15 days. Having regard to the objective of the notification, when the normal production and clearance is not noticed on account of strike or lock out or any other reason, they cannot be construed to be normal clearance in the base period and accordingly, the wording 'closed' should be interpreted.

5. Shri Attar, the Id. advocate for the respondents produced before us the RG.I register showing production of motor vehicles and also GPs showing clearances of the two wheelers motor vehicles on 21-10-1981.

The lock out was lifted only in the third shift on 21-10-1981, despite that clearance of motor vehicles has taken place on 21-10-1981 and hence the period should not

be construed to be closure of the factory.

6. After hearing both the sides, we find that both the decisions of the South Regional Bench and North Regional Bench have discussed the position as to how to consider the meaning of the term 'closed' used in the notification. Even the dictionary meaning has been considered and they have come to the conclusion that in such circumstances, the factory cannot be construed to be closed and they also relied on the judgment of the Assam High Court reported in AIR 1.968 Assam & Nagaland 57 in view of the aforesaid position, even if the reference application has been allowed by the South Regional Bench, which is yet to be decided by the Madras High Court, when 2 Benches have taken the view on the same issue, which are before us, we do not find any reason to disagree with their reasoning.

7. Shri Nair also pleads that in this case there was no clearance of motor vehicles, which is the specific item eligible for incentive exemption. The clearances on other dates during the lock out period are only motor vehicle parts. Only on the date of lifting the lock out, some clearance of motor vehicle is shown as per the RG 1 register. That might be even after lifting of the lock out. Even these arguments do not persuade us to accept the appeal from the Revenue for the following reasons. In this case, though a lock out was declared, production of Motor vehicle parts and also of some vehicles has been noticed as reflected from the RG 1 records. Clearance of the excisable goods have also taken place during this period. Hence, it is not possible to conclude [xx] the factory was closed on account of the declared lock out. Moreover, Shri Attar also produced a judgment of the Supreme Court in the case of General Labour Union v. B.V. Chavan and Others reported in 1985 1 S.C. Cases 312, wherein it has been observed, that in lock out, the employer refuses to continue to employ the workmen employed by him, even though the business activity was not closed down nor intended to be closed down. The essence of lock out is the refusal of the employer to continue to employ the workmen. There is no intention to close the industrial activity. Viewed in the context of this decision, we may not be able to hold that the term 'closed' can be viewed differently for the purpose of the notification. In any case, if there is an ambiguity in the notification with regard to cases of factories affected by strike or lock out, where partial production and clearances are noticed, the benefit of

ambiguity in the law has to go to the citizen. Viewed from the angle also, the Collector (Appeals)' order cannot be disturbed. Hence, we reject the appeal from the revenue.

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