SUPREME COURT OF INDIA

Collector of Central Excise, Kanpur

Vs.

Lml Ltd. (Scooter Unit), Kanpur

(B.N. Kirpal and M.B. Shah JJ.)

09.02.2000

ORDER

1. The respondent manufactures scooters in the State of U.P. which are sold throughout India. The question which arises for consideration in these appeals relates to the applicability of Rule 6(a) of the Central Excise (Valuation) Rules, 1975 to such sales for the purpose of determining the value of the goods on which excise duty is leviable.

2. Prior to 4-10-1985, the respondent was selling the scooters directly to the buyers through their authorised representatives. After 4-10-1985, within the State of U.P sales were made through dealers but outside the State of U.P. sales were made directly, to the buyers through authorised representatives.

3. The Assistant Collector was of the opinion that the sales which were made to the purchasers should be regarded as wholesale sales and it is that price which should be taken into consideration for the purpose of determining the value on which the excise duty was leviable. The contention of the respondent, however, was that there was no wholesale dealer in respect of the scooters manufactured by the respondent and the value could not be determined either under Rule 4 or under Rule 5 of the said Rules but the determination had taken place in accordance with the principles contained in Rule 6. This contention was accepted by the Collector (Appeals) and was affirmed by the CEGAT. Hence, these appeals.

4. As a result of the orders of the CEGAT, the position is that for the period prior to 4-10-1985 valuation had taken place as per Rule 6(a) but for the subsequent period the price which was being charged by the respondent from their dealers in U.P. has been taken to be the value for the purpose of determining the excise duty. That price has to be taken to be the price for the whole of India and excise duty is chargeable on that value. There is no dispute between the counsel for the parties as far as this is concerned.

5. We are unable to accept the contention on behalf of the appellant that where sales were made directly to the buyers before 4-10-1985, that price should be taken as a wholesale price. It appears to us that there was no wholesale market in respect of the said goods and this is a question of fact determined by the Collector (Appeals) as well as CEGAT and this being so Rule 6 was applicable with respect to the said sales. The decision of the CEGAT, in other words, on the merits of the case calls for no interference.

6. It was submitted by the learned Counsel for the appellant that during pendency of these appeals, the respondent on the basis of the decision of the CEGAT had filed a writ petition in the Allahabad High Court claiming refund of the excise duty. The High Court passed an interim order directing the refund but that order specifically stated that it was subject to the outcome of the writ petition which is still pending.

7. According to the appellant, the refund which has been taken by the respondent amounts to unjust enrichment inasmuch as the respondent has realised excise duty from its customers at the higher value which was originally determined by the Assistant Collector. The submission was that in view of the decision of this Court in Mafatlal Industries Ltd. v. Union of India the principle of unjust enrichment applies and refund of excise duty cannot be allowed to the respondent. Mr. Santhanam, learned Counsel for the respondent states that on facts the principle of unjust enrichment is not applicable.

8. It is not appropriate, in our opinion, for this Court to decide whether there has been unjust enrichment or not. The provisions of the Central Excise Act and Section 11D in particular as well as the decision of this Court in Mafatlal (supra) clearly postulate that the assessing authority, namely, the Assistant Commissioner will have to determine on facts whether the refund, if granted, would result in unjust enrichment or not. If the respondent has realised excise duty from its customers at the higher value than the one which now stands determined as result of the CEGAT's order, then certainly the principle of unjust enrichment will apply and the respondent cannot be allowed to retain the excess amount of excise duty realised. Accordingly to the learned Counsel for the appellant, this excess amount comes to Rs. 52,84,783.31. We are not indicating as to what is the amount Which constitutes unjust enrichment, if any, and this question will have to be determined by the Assistant Commissioner in the light of the provisions of Sections 11B and 11D and the decision of this Court in Mafatlal (supra).

9. The appeals are disposed of in the aforesaid terms. No costs.