

SUPREME COURT OF INDIA

Commissioner of Central Excise, Delhi

Vs.

M/s. Maruti Udyog Ltd.

C.A.No.3783 of 2000

(B.N. Kirpal, Shivaraj V. Patil and Bisheshwar Prasad Singh JJ.)

27.02.2002

ORDER

B.N. Kirpal, J.

1. The respondent is manufacturing motor vehicles and it had availed of MODVAT credit of the duty paid on inputs under Rule 57A of the Central Excise Rules. As it had not paid any excise duty on the raw material, it became liable to pay excise duty on the waste and scrap of aluminium and iron and steel which scrap had been sold by the respondent.

2. The Collector raised a demand of excise duty on the waste and scrap which was sold. The demand was challenged by the respondent who contended that excise duty was not payable. Having been unsuccessful before the Collector, an appeal was filed before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal by the impugned order came to the conclusion that excise duty was payable on the scrap sold by the respondent. It further came to the conclusion that the price on which the waste and scrap had been sold should be considered to be cum-duty price and the assessable value should be determined after deducting the element of excise duty. It is this part of the decision of the Tribunal which is sought to be challenged by the Revenue in this appeal.

3. The respondent has sold the scrap and according to it the purchaser was not liable to pay any amount in addition thereto and it is for this reason the Tribunal regarded this transaction as being one of cum-duty price.

4. Section 4 of the *Central Excises and Salt Act, 1944* provides for valuation of excisable goods for purposes of charging of duty of excise. Under Section 4(1), the duty of the excise is chargeable on any excisable goods with reference to the value which is deemed to be the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade where the buyer is not a related person and the price is the sole consideration for the sale. Section 4(4)(d)(ii) states that value in relation to any excisable goods does not include the amount of duty of excise, sales tax and other taxes, if any, payable on such goods

and, subject to such rules as may be made, the trade discount, etc., is also to be allowed as a deduction.

5. A reading of the aforesaid Section clearly indicates that the wholesale price which is charged is deemed to be the value for the purpose of levy of excise duty, but the element of excise duty, sales tax or other taxes which is included in the wholesale price is to be excluded in arriving at the excisable value. This Section has been so construed by this Court in *Asstt. Collector of Central Excise and Others v. Bata India Ltd.*¹, and it is thus clear that when cum-duty price is charged, then in arriving at the excisable value of the goods the element of duty which is payable has to be excluded. The Tribunal has, therefore, rightly proceeded on the basis that the amount realised by the respondent from the sale of scrap has to be regarded as a normal wholesale price and in determining the value on which excise duty is payable the element of excise duty which must be regarded as having been incorporated in the sale price, must be excluded. There is nothing to show that once the demand was raised by the Department, the respondent sought to recover the same from the purchaser of scrap. The facts indicate that after the sale transaction was completed, the purchaser was under no obligation to pay any extra amount to the seller, namely, the respondent. In such a transaction, it is the seller who takes on the obligation of paying all taxes on the goods sold and in such a case the said taxes on the goods sold are to be deducted under Section 4(4)(d)(ii) and this is precisely what has been directed by the Tribunal. There is also nothing to show that the sale price was not cum-duty.

6. It will be useful here to refer to the observations of this Court in *Hindustan Sugar Mills v. State of Rajasthan & Ors*².

¹1996(4) SCC 563

²1978(4) SCC 271