

SUPREME COURT OF INDIA

Collector of Central Excise, Chandigarh

Vs.

Eicher Tractors Limited

C.A.No.3124 of 1998

(S. N. Variava and H. K. Sema JJ.)

14.01.2004

ORDER

1. This appeal is against the Judgment of the Customs, Excise & Gold (Control) Appellate Tribunal dated 22nd October 1997.

Briefly stated the facts are as follows: -

The respondents manufacture diesel engines. While selling diesel engines they recover from all customers a sum of Rs. 300/- ostensibly towards security deposit for installation, customer training and cost of labour for repairs done by the dealer during the warranty period. The question is whether this amount is to be included while calculating the assessable value of the diesel engine.

The Assistant Commissioner by his order dated 1st December, 1987 held as a finding of fact that the amount of Rs. 300/-, which was realised, was nothing but a recovery towards 'after sales service charges' to promote the marketability of the goods. The Appeal filed by the respondents was dismissed by the Commissioner (Appeals) on 11th October, 1989. While so dismissing a finding is given to the following effect: -

"... In the circumstances, their plea that the security deposit in question is on account of installation work and hence should not be included in the assessable value is not factually correct and is seen as an attempt to divert a part of the true price of the goods to "installation charges".

Thus both the lower authorities have, on facts, come to the conclusion that there was no installation and that the entire amount of Rs. 300/- was nothing else but an 'after sales service charge'.

The respondents then filed an Appeal before CEGAT. This has been allowed by the impugned Judgment. CEGAT holds that it is an agreed position that charges towards installation and training are excludable from normal price. On this reasoning CEGAT

holds that Rs. 150/-, which was towards installation and training, was excludable. Thereafter, CEGAT takes into account a circular issued by the respondents (which deals with regular service to these engines) and concludes, from that circular, that free service is not being provided by the Respondents to the customers. CEGAT holds that, service was being provided by the dealers to the customers. It is held that the Respondents were not undertaking any responsibility in this regard.

2. We have heard the parties at great length. In our view the impugned Judgment cannot be sustained. CEGAT has gone wrong on both counts. Undoubtedly, it is settled law, that if charges are towards installation then they would not be includable in the assessable value. However, the question would still remain as to whether the charges are for installation. In this case on facts it had been held that there was no installation and that the head of installation and training was merely a camouflage in order to avoid including these charges in the assessable value. CEGAT has nowhere concluded that this finding of fact was incorrect. If factually there was no installation then there was no question of such charges being excludable from the assessable value. The two authorities below have given a categorical find on this aspect and the same has not been controverted by CEGAT. It was also not shown to us that there was any material to indicate that those findings were incorrect. Therefore, CEGAT excluding the amount of Rs. 150/- on the ground that it was charges towards installation and training cannot be sustained at all.

3. The other amount of Rs. 150/- is, as stated above, for labour charges for repair by the dealers during the warranty period. CEGAT appears to have been confused in this regard. It is to be noted that "service" is separate and distinct from repairs. The dealers providing "service" has nothing to do with "repairs" during warranty period. CEGAT excluding charges recovered for repairs on the basis that service was being provided by dealers is entirely erroneous. If there is a provision for free repair during the warranty period then that is something which is being provided by the manufacturer, may be through the dealer, for the benefit of the customer to whom an additional value is provided. Also to be noted that the amount is compulsorily recovered from the customers. The mere fact that it is thereafter passed on to the dealer makes no difference. So far as customer is concerned he is paying for the price of the goods plus this amount. In our view, this case is fully covered by the ratio of this Court in the case of Union of India and Others v. Bombay Tyre International Ltd. and Others reported in [] wherein it has, inter alia, been held as follows:-

"We shall now examine the claim. It is apparent that for the purpose of determining the "value", broadly speaking both the old Section 4(a) and the new Section 4(1)(a) speak of the price for sale in the course of wholesale trade of an article for delivery at the time and place of removal, namely, the factory gate. Where the price contemplated under the old Section 4(a) or under the new Section 4(1)(a) is not ascertainable, the price is determined under the old Section 4(b) or the new Section 4(1)(b). Now, the price of an article is related to its value (using this term in a general sense), and into that value have poured several components, including those which have enriched its value and given to the article its marketability in the trade. Therefore, the expenses incurred on account of the several factors, which have

contributed to its value up to the date of sale, which apparently would be the date of delivery, liable to be included. Consequently, where the sale is effected at the factory gate, expenses incurred by the assessee up to the date of delivery on account of storage charges, outward handling charges interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely after-sales service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organisation expenses and after-sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee up to the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery."

4. On behalf of the respondents, reliance was placed upon the cases of Philips India Limited², M/s. Partap Steel Limited and TELCO Limited³. It was sought to be submitted that cost of free 'after sales service' cannot be included in the assessable value. In our view, the ratio laid down in those cases has no application to the facts of the present case. In those cases, no amounts were being recovered from the customer. In these cases there were agreements between the manufacturers and the dealers by virtue of which the dealers were providing free 'after sales service'. The question, therefore, was whether the value of these services was included. As the customer did not pay for them, it was held that this value could not be included. In the present case, the customer is compulsorily paying this amount. Therefore, the ratio of those cases cannot apply.

5. For the above reasons, we are unable to uphold the impugned Judgment. We set aside the same. The order of the Commissioner (Appeals) is restored.

The Appeal stands disposed of accordingly. There will be no order as to costs.