SUPREME COURT OF INDIA

Commissioner of Central Excise, Meerut

Vs.

Majestic Auto Limited

C.A.No.93 of 2000

(Mrs.Ruma Pal, Arijit Pasayat and C. K. Thakker JJ.)

20.04.2005

ORDER

1. We see no reason to interfere with the decision of the Tribunal particularly in view of the decision of this Court in *Baroda Electric Meters Ltd. v. Collector of Central Excise reported in*[1]. The appeal is, accordingly, dismissed with no order as to costs.

C.A. Nos. 1537/2001, 4321 & 4472-4473/2004:

2. The appellant manufactures two wheelers some of which are exported and some of which are sold in the domestic market. According to the appellant, at the time of removal of the goods for export, the appellant had taken recourse to the provision of the then applicable procedure relating to the export of manufactured goods on bond, namely, the removal of goods under Form AR-4. In that form, the appellant had mentioned not only the number of scooters being exported but also the rate of duty and the amount payable thereon as required. It is not in dispute that the goods which were exported no excise duty was in fact leviable subject to the fulfilment of the conditions of the bond.

3. It is the case of the appellant that the Central Excise Officer had wrongly held that the appellant was not entitled to claim exemption in respect of freight and insurance charges in respect of the goods exported. According to the appellant the issue had been correctly appreciated by the Commissioner (Appeals) when he had said that under Section 4 of the Central Excise Act, 1944, there are no separate provisions for valuation of the goods meant for export and that provisions contained under Section 4 were also applicable to goods meant for export and that while determining the value of the exported goods the expenses incurred on freight and insurance would have to be deducted.

4. The Tribunal proceeded on the basis as if the issue was whether the expenses incurred by the appellant in transporting the goods meant for export were to be deducted from the price of the goods sold for domestic consumption in arriving at the assessable value of the goods sold domestically. The Tribunal held that the goods exported had no relation whatsoever with the goods sold for domestic consumption and that the freight incurred by the appellant in

relation to the exported goods were not deductible from the price of goods sold for domestic consumption. As a proposition of law, there can be no dispute with regard to the conclusion of the Tribunal.

5. However, the grievance of the appellant is that the question framed by the Tribunal was wholly wrong. According to the appellant, it had never sought to include the freight incurred for transporting the goods from the factory for export for computing the freight to be deducted for fixing the assessable value of the goods cleared from home consumption. The appellant has said that the Tribunal should have considered the matter in the light of the following questions alone:

> "(1) Whether the calculation of equalized freight had to be determined on the basis of the total freight incurred on the transport of the goods manufactured and cleared by the manufacturer from its factory irrespective of the destination of the goods after clearance - whether for home consumption or for export ?
>
> (2) Whether the deduction of the freight incurred for the transportation of the goods to the port in the course of export could be allowed from the assessable value of such goods ?"

6. There appears to be some confusion as to the factual and legal basis on which the original order of assessment had been passed. But it appears that the questions as formulated by the appellant should have arisen for consideration by the Tribunal.

7. In that view of the matter, we set aside the order of the Tribunal and remand the matters back to the Tribunal for determining the questions so formulated. The appeals are, accordingly, disposed of but without any order as to costs.

[1]*1997 (22) RLT 5 (SC)*