SUPREME COURT OF INDIA

Tata Engineering & Locomotive Co.Ltd

Vs.

Commissioner of Central Excise, Jamshedpur

C.A.No.1367-1369 of 2002

(Ashok Bhan and V.S. Sirpurkar JJ.)

29.11.2007

JUDGMENT:

BHAN, J.

1. The assessee-appellant is, inter alia, engaged in the manufacture of chassis for various models and parts thereof falling under Chapter 87 of the Central Excise and Tariff Act, 1985 (for short "the Tariff Act") at its factory at Jamshedpur

2. The appellant manufactures motor vehicles of various models. For each model the parts are according to its configuration and technical specifications and the price is also declared accordingly to the department. In other words, the value of the chassis depends upon its firments. All the chassis in question had been actually fitted with Engine No. 697 NA and Gear Box GBS 40. There is no dispute on this factual position between the parties.

3. The appellant submitted the price list dated 1.11.1994 and 1.4.1995 wherein it was mentioned that the chassis of model no. 1612 is fitted with engine no. 692 DI engines and GBS 30 gear box whereas the chassis in question were fitted with engine no. 697 NA and gear box GBS 40. Relying on these price lists, Department raised differential demand and issued show cause notices to the appellant dated 22nd June, 1995, 4th July, 1995 and 1st November, 1995. In these notices, it was assumed that the appellant has collected Rs.15,290/- per chassis over and above the value declared in the price lists. This demand was confirmed by the Commissioner-respondent. Against the order of the Respondent, the appellant filed appeals before the Tribunal.

4. On 31st October, 2000, the Tribunal passed a final order dismissing the appeal filed by the appellant. The contentions of the Appellant that they have paid duty at its invoice price on all clearances of chassis of model no. 1612 and that they have never recovered any amount over and above the invoice price from their customers, was not taken into account by the original Bench of the Tribunal dismissing the appeal. Therefore, appellant filed an application for rectification of mistake. Thereafter, the Tribunal passed order dated 11th January, 2001, dismissing the application for rectification of mistake. However, while passing the order on the application for rectification of mistake, a difference of opinion arose in the matter. The Member (Judicial), who was a party to the original Bench, allowed the application for rectification of mistake and ordered rehearing of the appeal. Learned Member specifically held that the appellant did urge this ground during the earlier

arguments. The Member (Technical) dismissed the application on the ground of inherency. The 3rd Member who heard the matter referred to, agreed with the Member (Technical).

5. The present appeals have been filed by the appellants challenging the order dated 31st October, 2000 passed by the Tribunal as also the order dated 8th October, 2001 on the application for rectification of mistake.

6. Mr. Lakshmikumaran, learned counsel appearing for the appellant, submitted that there was a clerical /typing error in the price lists dated 1st November, 1994 and 1st April, 1995 filed by the appellant. In other words, his case is that due to oversight engine no. 692 and gear box GBS 30 was mentioned instead of engine no. 697 NA and GBS 40, which are indeed standard fitments for all vehicles of chassis of model no. 1612. That, for the period prior and subsequent to 1st November, 1994 and 1st April, 1995, price lists indicating engine 697NA and gear box GBS 40 as a standard fitment have been accepted by the Department and no duty demand has been raised for that period. He also relied upon the statutory cost audit report as well the certification from Automobile Research Association of India. That in the absence of any finding directly or indirectly to suggest that the appellant had collected the amount of Rs.15,290/- for each chassis over and above the price declared at the time of clearance of the goods at the factory gate, the order passed by the authority-in-original as well as the Tribunal was perverse and arbitrary.

7. As against this, Mr. K. Radhakrishnan, learned senior counsel appearing for the Department, supported the findings recorded by the Tribunal.

8. We find substance in the submissions advanced by Shri Lakshmikumaran, learned counsel appearing for the appellant. For the periods prior and subsequent to 1st November, 1994 and 1st April, 1995, price lists indicating engine no. 697NA and gear box GBS 40 as a standard fitment have been accepted by the department and no demand for additional duty has been raised for that period. The statutory cost audit report of the company also mentioned that engine no. 697 NA and gear box GBS 40 are the standard parts of the chassis of model no. 1612 which has not been considered by the Tribunal. Certification from Automobile Research Association of India, which is a mandatory requirement under the Central Motor Vehicles Rules and VRDE, also shows that the specification of chassis of model no. 1612 are engine no. 697NA and gear box GBS 40. This aspect has also been overlooked by the Tribunal while passing the order.

9. Further, it is also clear from the invoices raised by the appellant during the disputed period that engine no. 697NA and gear box GBS 40 are not mentioned as additional fitment but as a standard fitment and full duty has been paid on that basis. Had the standard fitment of chassis of model no. 1612 been engine no. 692 DI and gear box GBS 30, then the appellant would have charged separately for fitting the chassis with engine no. 697NA and gear box GBS 40 as additional fitment, but in fact it is not so.

10. Central excise duty is payable under Section 4 of the Central Excise Act. Under Section 4(1)(a) of the Excise Act when the goods are sold for to an unrelated person and price is the sole consideration, then the assessable value of the goods is transaction value at the time and place of removal / delivery of the goods. Appellant has paid excise duty on the entire price charged by it from its customers in respect of sales made at the factory gate and no extra amount was realized over and above the invoice price. Even in respect of sales made from the depot, the amount of Rs.15,290/-, as alleged, has not been charged from the buyer. The invoices evidencing payment of

duty on the entire amount collected from the buyer are also on record and the department has not disputed this position. Either in the order of the authority- in-original or in the order of the Tribunal, there is no finding directly or indirectly to suggest that the appellant had collected the amount of Rs.15,290/- for each chassis over and above what it had charged at the time of the clearance of the goods at the factory gate. In the absence of any evidence or a finding recorded by the Tribunal on the basis of such evidence, the findings recorded by the Tribunal that there is a short levy of the payable excise duty to the tune of Rs.15,290/- for each of the chassis, is not sustainable.

11. For the foregoing reasons, the appeals are allowed the impugned orders of the Tribunal as well as that of the Original Authority are set aside. Follow up action, if any, in terms of this Judgment be taken henceforth. The parties are left to bear their own costs.