(2003) 09 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

BAJRANG MOTORS APPELLANT

Vs

JAGDISH CHANDRA PANDEY RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Citation : 2004 2 CLT 572 : 2004 2 CPJ 268

Hon'ble Judges : K.D.Shahi , Surendra Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the judgment and order dated 27.10.1999 passed by the District Forum, Almora, whereby a refund of Rs. 30,000/- as excise duty with 12% interest was allowed in favour of the complainant against the appellant.

2. THE appellant is a registered dealer. From him, the complainant purchased a Jeep manufactured by Mahindra and Mahindra Company on 22.7.1998 for a sum of Rs. 3,16,094/-. He got the vehicle registered by RTO. THE vehicle purchased was a taxi for self-employment to an unemployed person and the complainant was entitled to refund of excise duty. On 20.8.1998 the complainant informed about the purchase. THE complainant requested the appellant to refund the excise duty. He again gave a letter on 30.10.1998, but refund was not allowed. Subsequently, he was informed through a letter dated 24.11.1998 that the vehicle has not been registered as a taxi within the stipulated time of 90 days from the date of the factory gate-pass. THErefore, the complainant is not entitled to any refund. The complainant filed the complaint before the District Forum, where it was alleged that the vehicle was purchased from Haldwani, whose head office is in Mumbai, Almora Court has got no jurisdiction. The appellant has got no right to order for a refund and there is no deficiency in service of the appellant. After hearing the learned Counsels for the parties, the learned Forum held that the complainant is a consumer. Almora Forum has got jurisdiction and further held that the appellant is liable to refund the excise duty because through him the vehicle has been purchased.

Coming to the point of jurisdiction, the learned Forum in a detailed judgment dated 27.10.1999 held that the Forum has got jurisdiction to decide the matter. The matter of jurisdiction was not seriously challenged here. Even otherwise, the learned Forum has given a finding on facts that the draft was prepared at Almora, the refund was also to be made at Almora, therefore, cause of action arose at Almora also. This finding is correct one.

3. ACCORDING to the established principles of law, the refund of the excise duty is to be made by the manufacturer. The rules also say like this. Since the delivery was made by the dealer, therefore, the refund was also to be made through the dealer. In a recent judgment reported in II (2003) CPJ 302, we have held in a case where a van was purchased out of taxi quota, excise rebate was not refunded on production of required documents. Deficiency in service was proved. Dealer and manufacturer were jointly and severally liable to refund the amount with interest and it was ordered that if the dealer pay the amount of award, he shall be indemnified by the manufacturer. He was a party in the District Forum as well as in the appeal, but did not contest. The refund in this case has been refused by the manufacturer merely only on the ground that the vehicle has not been registered as taxi within the stipulated time of 90 days from the date of factory gate-pass. In this case the factory gate-pass is said to be issued on 23.4.1998. The vehicle, itself, has been sold on 22.7.1998, which is on the last date of 3 months. How it could have been registered within three months. The registration was done on 18.8.1998, which is definitely beyond three months. It was the duty of the dealer, therefore, in those circumstances to have sold the vehicle to the complainant within 3 months of the gate-pass and it was the obligatory duty of the dealer as well as the manufacturer to have informed the complainant that since the factory gate-pass is of 23.4.1998, therefore, the vehicle should be sold before 3 months and got registered within 3 months only. Even if the registration could not be done within three months, a further extension of three months could have been taken from the Assistant Commissioner by the manufacturer, but the manufacturer does not appear to have taken any care of this fact and did not apply to the Assistant Commissioner that delay has been caused in the sale of the vehicle and, therefore, further time may be granted.

4. THERE is definitely negligence of the dealer as well as the manufacturer. But to our utter surprise, the complainant impleaded the manufacturer as opposite party Nos. 2 and 3 in the complaint, but, God knows, all of a sudden, under what advice or law he deleted the manufacturer from the array of the opposite party and the learned Forum was helpless to decide the matter only against the dealer. Since the liability is joint and several, therefore, both dealer and manufacturer were necessary parties to the proceedings. It is very easy to decree or dismiss the case, but it is very difficult to give relief. There was no proper advice to the complainant either from the dealer or manufacturer at the time of sale and there is no proper advice in the trial. Unless the manufacturer is a party to the proceedings, no directions can be issued against him and no finding can be given that it has been negligent and there has been deficiency in service on their part.

Neither of the parties should be allowed to suffer for this. It is, therefore, proper that the case be remanded for fresh hearing by the learned Forum after impleading the manufacturer as party to the proceedings because it is a necessary party. As such the appeal is fit to be allowed. ORDER The appeal is allowed. The judgment and order dated 27.10.1999 is set aside. The case is remanded to the learned Forum for fresh hearing after impleading the manufacturer as party to the proceedings and giving the parties reasonable time to file their pleadings and to lead evidence. Cost of this appeal shall be easy. Appeal allowed.