
(2015) 11 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 4922 of 2007

Commissioner of Central Excise

APPELLANT

Vs

Hero Honda Motors Ltd.

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Citation : (2015) 326 ELT 8 : (2016) 53 GST 144

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : K. Radhakrishnan, Sr. Advocate, Arijit Prasad, Nisha Bagchi and B. Krishna Prasad, Advocates, for the Appellant; S. Ganesh, Senior Advocate, P.K. Ram, Advocate and Temple Law Firm, for the Respondent

Final Decision : Disposed Of

Judgement

1. The Respondent-assessee is in the business of manufacturing motorcycles since 1985. On this product, the Respondent has been paying excise duty at ad valorem basis. In July, 1991, a show cause notice was issued to the Assessee alleging that it had not declared correct value of motorcycles in the price lists and that evasion of duty had taken place. The period covered by the said notice was 1985-86 to 1990-91. The precise allegation in the show cause notice was that the Assessee was taking a deposit of Rs. 500/- per motorcycle at the time of booking of the motorcycle from the customers and this deposit was an additional consideration.

2. The Assessee replied to the said show cause notice taking the plea that the said deposit had no relevance with the cost of the motorcycle. It, however, was not accepted by the Commissioner who passed the Order-in-Original whereby he included the fact of deposit of Rs. 500/- to the price of the motorcycles and thereby arrived at the valuation of the said motorcycles for the purpose of excise duty. In this manner, a differential duty of Rs. 2 cores along with penalty of Rs. 50 lakhs was demanded. Aggrieved by that order, the Assessee filed appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter

referred to as "Tribunal") which was allowed by it vide order dated 6-10-1998 [2000 (124) E.L.T. 552 (Tri. - Del.)]. Against that order, the Department came in appeal before this Court. This Court, after considering the matter, remanded the same to the Tribunal for fresh disposal [2005 (183) E.L.T. 120 (S.C.)]. The reason for the remand was that the Tribunal had dealt with the issue in a perfunctory manner and did not examine as to whether the aforesaid deposit which was termed as "customer's advance" had contributed to the pricing of the motorcycle. This was so discussed by this Court in following manner:

"At the outset, we may point out that in this case the Annual Reports of the Assessee show the opening and closing balance of the funds received under the capital "Customers" Advances". They show deployment of funds so received. The income accruing to the Assessee was reflected in profit & loss accounts. For the year ending 31-3-1986 the outstanding balance under the above head was Rs. 33.40 crore out of which Rs. 28.90 crore was invested in various securities/deposits leaving a balance of Rs. 4.42 crore (see Schedule 4). The said schedule further indicates utilization of capital gains and interest income to reduce the liability under the said head. That, the said Schedule 4 indicated not only liquidation of liabilities under the head "customers advances" by utilization of income on investments from such advances, they also indicated flow-back of the benefits from the customers to the Assessee. Moreover, the income from such investments was shown under the head "Sales & Other Income". The said "Other Income" included interest on deposits, profit on sale of units and income from units (schedule 10). Even the Report of the Directors under the head "Financial Reports" show that the profits of the company have been based on implication of Sales with Other Incomes. For example, for the year 1985-86, Sales & Other Incomes were of Rs. 49.20 crore (rounded to "0") out of which Income from Sales was Rs. 45.02 crore (Round to "0") whereas Rs. 4.06 crore was on account of other Income. Therefore, according to the adjudicating authority, the total income (Sales & Other Income) contributed to the profits which had a direct impact on pricing. According to the adjudicating authority the said "Other Income" had contributed to the pricing. That, but for the said "other Income", it was not possible for the company to sell the motorcycles at a price lower than the unit cost of production. Lastly, the adjudicating authority found on facts that since interest paid at 9% to the customers was indicated as an expense, the income on the investments from the advances was includible in the assessable value. This aspect has also not been considered by the Tribunal.

For the above reasons, we hold that the tribunal has disposed of the appeal before it in a most perfunctory manner without going into any figures at all but by merely on the statement made by counsel and on the basis of material which appears to have been produced first time before the Tribunal. We, therefore, set aside the order of the Tribunal and remand the matter back to the Tribunal. The Tribunal will consider in detail, if necessary by taking the help of a cost accountant and after looking into the accounts of the Respondent whether or not the advances or any part thereof have been used in the working capital and

whether or not the advances received by the Respondent and/or the interest earned thereon have been used in the working capital and/or whether it has the effect of reducing the price of the motorcycle. The Tribunal to so decide on the material which was placed before the Commissioner and not to allow any additional documents/materials to be filed before it. None of our observations made herein shall bind the Tribunal to which this case is remitted."

3. After remand, the Commissioner once again reiterated the conclusion of his earlier order which compelled the Assessee to approach the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "Tribunal") again challenging the order of the Commissioner. The finding of the Commissioner was that the huge amount of customers' booking advances were used to meet their working capital requirements as well as were partly invested in deposits/securities. On that basis, he concluded that the interest, dividends and capital gains from such investment enabled them to meet the working capital requirements which resulted in lowering their capital borrowings.

4. The Tribunal, after re-examining the entire material that was produced before it by the Assessee, noted that the overall effect of the deposit on the financial position of the company or its profitability had no direct relevance to the dispute. It found that for excise valuation, the relevant consideration was as to whether the deposits had the effect of lowering the sale prices of the motorcycles or whether the sale prices were normal sale prices unaffected by the deposits. After going through the material that was produced, it answered the aforesaid question in the negative which is manifest in the following order:

"15. From the materials on record and the analysis provided by the costing expert, we are clear in our mind that deposits were not a relevant factor in the pricing of the motorcycles. The average sales realization and average cost at annexure II of the report show that there is considerable gap between sales realization and manufacturing cost of the motorcycles. This gap also varies vastly from year to year. From the highest per motorcycle loss of Rs. 771.21 in 1988-89 the highest profit of Rs. 1122.00 in 1990-91. This is despite the rise of the sale price of a motorcycle from about Rs. 10,000/- to about Rs. 19,000/- during the relevant period. The year to year position is also not any different. The price was revised upwards by about Rs. 900 in 1986-87; but its effect was entirely negative on the bottom line. From a profit of about Rs. 184 in 1985-86 per motorcycle, there was a loss of about Rs. 460 per motorcycle in 1986-87. An upward price revision of over Rs. 1600/- in 1989-90 only helped reduce the loss by Rs. 587/- and could not yield a positive margin. From these, it is clear that company did not follow a cost-plus profit approach while pricing the motorcycles. This also confirms the submission of the learned Senior Counsel that the prices were market driven and motorcycle manufacturers could not follow a cost of production plus reasonable profit pricing policy."

5. It is clear from the above that each and every aspect of the issue is examined, on the basis of which finding is arrived at that the price of the motorcycle

manufactured by it were market driven and it did not follow a cost of production plus reasonable profit pricing policy. These are finding of facts which are arrived on the analysis of the evidence produced before it and do not call for any interference. The appeal lacks any merit and is, accordingly, dismissed.