

(2015) 09 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 4757 of 2006.

**Commissioner of Central Excise, Delhi-III - Appellant @HASH Hitkari
Fibres Ltd.**

Date of Decision : 03-09-2015

Acts Referred:

Citation : (2015) 324 ELT 24 : (2016) 15 SCC 76

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

Bench : Division Bench

Advocate : S/Shri A.K. Sanghi, Sr. Advocate, Tara Chandra Sharma, Nischal Kumar Neeraj and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

1. The respondent-assessee is engaged in the manufacture of non-woven carpets which fall under Chapter sub-Heading 5703.90 of the Central Excise Tariff Act, 1985. Main customer of the respondent was M/s. Maruti Udyog Limited, Gurgaon, (hereinafter referred to as M/s. Maruti) to whom the assessee had been supplying these non-wooven carpets. The aforesaid product is exigible to excise duty and the assessee was clearing the product on the payment of excise duty as per the invoices raised on sale of this product to M/s. Maruti.

2. It so transpired that the assessee received additional amount on account of price escalation during the period 1996-1997 to 2000-2001. However, this was not intimated to the Department nor any duty paid on the same. On coming to know of the aforesaid fact, the Department issued summons to the Director of the assessee to appear before the authorities and explain the nature of the aforesaid additional amount by way of price escalation received by the assessee. In spite of repeated summons followed by reminders, nobody appeared on behalf of the assessee. In these circumstances, the Department inquired from M/s. Maruti to furnish the details of additional amount paid to the respondent-assessee on account of price escalation. As per M/s. Maruti, a sum of Rs. 55,48,971.75/- was paid to the assessee during the period from 1996-1997 to 2000-2001 under the aforesaid Heading. It has resulted in the issuance of Show

Cause Notice dated 4-1-2002 by the Adjudicating Authority, viz., Additional Commissioner of Central Excise (Anti Evasion), Delhi-III to the assessee under Section 11A of the Central Excise Act (hereinafter referred to as the "Act") and proviso to this provision was also invoked to avail the extended period of limitation. No reply was filed and in these circumstances, the demand contained in the Show Cause Notice in the sum of Rs. 13,73,048/- was confirmed. A penalty of an equal amount on the assessee-company and personal penalty of Rs. 3 lakhs on the Director of the assessee-company was also imposed.

3. The assessee challenged the aforesaid order before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") contending that as per the provision of Section 11A of the Act, the ex-factory price at the time when the goods were cleared would be the transaction value and therefore, excise duty was rightly paid. In other words, what was contended was that the escalation price which was received subsequently could not be taken into consideration. The CESTAT has accepted the aforesaid plea of the assessee and in the process relied upon the judgment of this Court in "MRF Limited v. CCE, Madras [1997 (92) E.L.T. 309 (S.C.)]. Against this order of the CESTAT, the present appeal is preferred.

4. Though the notice of this appeal is duly served upon the respondent, nobody has put in any appearance on behalf of the respondent.

5. In these circumstances, we have heard Mr. A.K. Sanghi, learned senior counsel appearing for the Revenue, and have gone through the records.

6. Submission of Mr. Sanghi is that the judgment in the case of MRF Limited (supra) has wrongly been applied by the CESTAT. He has relied upon another judgment of this Court in "Commissioner of Central Excise v. International Auto Ltd. [2010 (250) E.L.T. 3 (S.C.)] wherein the judgment in the case of MRF Limited (supra) was taken note of and discussed. It is argued that this Court in the said case has categorically held that after the amendment in Section 11A of the Act, the MRF Limited (supra) will have no application.

7. We have gone through the judgment in International Auto Ltd. (supra). In that case, the issue was whether the interest was not leviable under Section 11AB of the Act particularly in view of the fact that the price indicated in the purchase orders were final during the period of supply of goods. It is in that context, the entire discussion takes place in the judgment and on that basis, the Court remarked that the MRF Limited's case (supra) has no application to the facts of that case. It is nowhere stated that MRF Limited's case (supra) is not a good law.

8. On the other hand, we have compared the provisions of unamended Section 11A and amended Section 11A of the Act. Even after the amendment, it is clear that the demand of excise duty at ex-factory stage is retained under the amended provision as well. Likewise, the duty is payable even as per the provision of new Section at the place, price and time of clearance of goods.

9. In the present case, it is not in doubt that the time when the goods were cleared, the price which was charged from M/s. Maruti and the duty was paid on the said price. No doubt, some additional amount is received thereafter, on account of price escalation. However, it is not coming on record as to under what circumstances such price escalation was given. No such case was set up by the Revenue that the price was understated or depressed at the time of clearance of the goods and the additional amount was received subsequently, by a suspicious kind of arrangement. Even when the inquiries were made, we are conscious of the fact that the respondent-assessee had not appeared when summons were issued to clarify the position. However, in any case, the inquiries were made from M/s. Maruti and therefore, the concerned officer could find out from M/s. Maruti as to under what circumstances, price escalation was given and whether that was a factor contributing to the depression of price at the time of clearance of the goods.

10. In the absence of any such facts, it is difficult to hold that the aforesaid additional amount received at a subsequent stage was to be added for the purpose of arriving at the transaction value.

11. We, on the facts of this case, therefore, do not find any error in the order of the CESTAT. The appeal is, accordingly, dismissed.