(2004) 09 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No. 487 Of 2003

Commissioner of Central Excise, Mumbai — APPELLANT

Vs

Mahindra and Mahindra Ltd. — RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A

Citation : (2005) 179 ELT 21 : (2005) 10 SCC 253

Hon'ble Judges : Y. K. Sabharwal, J;P. K. Balasubramanyan, J;D. M. Dharmadhikari, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. The respondent was called upon to show cause by Collector of Central Excise, Bombay why the duty of central excise of about Rs. 38 lakhs should not be demanded and/or recovered as provided under proviso to subsection (1) of section 11A of the Central Excise Act, 1944 and why penalty should not be imposed on them under Rule 173Q of the Central Excise Rules, 1944. The Commissioner of Central Excise confirmed the duty demand in the sum of more than Rs. 34 lakhs and imposed a penalty of Rs. 5 lakhs on the respondent. The period in dispute is January, 1987 to August, 1988. The aforesaid show cause notice is dated 30th April, 1991.

2. On appeal filed by the respondent, the Customs, Excise and Gold (Control) Appellate Tribunal by the judgment under appeal has set aside the order of Commissioner of Central Excise on the around that the Modvat credit was available to the respondent-assessee and on that basis alone coming to the conclusion that there could be no intention to evade payment of duty and thus the allegation of suppression so as to invoke the larger period of limitation under proviso to aforesaid section 11A would not survive. The order of the Tribunal is under challenge. When the appeal was heard before a Two judge Bench, reliance was placed by learned counsel for the respondent on a judgment of this Court in

Amco Batteries Limited, Bangalore Vs. Collector of Central Excise, Bangalore, to support the impugned judgment. The contention urged on behalf of the appellant before the Bench was that the decision in the case of AMCO was being frequently cited by the assessee before authorities to contend that when a party is entitled to get benefit of Modvat scheme, there could be no suppression by relying upon the observations that 'Further, the appellant was entitled to get the benefit of Modvat scheme, therefore, there was no justifiable reason for the appellant to suppress any fact'. Expressing the view that the contention of the assessee does not appear to be correct, this matter was directed to be referred to a larger bench and that is how the appeal has come up for hearing before us.

3. We have carefully examined the AMCO Batteries decision. The afore-said observations in para 10 have to be read in the context of the facts noticed in paras 7, 8 and 9 of the decision. The AMCO Batteries decision cannot be held to have laid down that in cases where the assessee is entitled to get the benefit of the Modvat scheme, there can be no question of suppression of fact or invocation of the extended period of limitation under proviso to Section 11A. In fact it has not been so held In AMCO Batteries decision. Having regard to the facts and circumstances noticed in the earlier paragraphs 7, 8 and 9 and in addition to the appellant therein being entitled to get the benefit of Modvat scheme it was observed in para 10 that there was no justifiable reason for the appellant to suppress any fact.

4. There can be number of eventualities where extended period of limitation in terms of proviso to section 11A may be available to the Department despite availability of Modvat credit to an assessee. The availability of Modvat credit to an assessee by itself is not conclusive or decisive consideration. It may be one of the relevant consideration. How much weight is to be attached thereto would depend upon the facts of each case.

5. In the present case the Tribunal has not examined any other consideration except the availability of the Modvat credit to the appellant. In this view we set aside the impugned judgment and remit appeal i.e. E/3025/01-Mum. for its fresh decision by the Tribunal in accordance with law. It would be open to the assessee to contend that the extended period of limitation is not available to the Department. Likewise it would be open to the Department to controvert it. The question will be decided on its own merits in accordance with law.

6. The appeal is allowed in the above terms.

