(1998) 09 DEL CK 0116

In the Delhi High Court

Case No : C.M.P. No. 2068 of 1998 in C.W.P. No. 1216 of 1998

Hindustan Motors Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:
Central Excises and Salt Act, 1944 — Section 37B

Citation : (1999) 66 ECC 542 : (1999) 83 ECR 1 : (2000) 117 ELT 32

Hon'ble Judges : R.C. Lahoti, J;C.K. Mahajan, J

Bench : Division Bench

Advocate : N. Chandrasekharan and C. Hari Shankar, for the Appellant; Mahinder Singh, for the Respondent

Judgement

1. Though a written counter and reply have not been filed in view of a purely legal issue arising for decision in this petition the learned counsel for the parties are heard finally with their consent. The petition is disposed of in terms of the following order :-

Rule D.B.

2. The petitioner is aggrieved by Circular No. 355/71/97-CX, issued by Central Board of Excise and Customs whereby the adjudicating authorities have been directed to see that the value of the provision for rendering PDI and three after-sales services by dealers being on behalf of manufacturer, was includable in assessable value of goods. This circular refers to decided cases of Bombay Tyre International, Philips India Ltd. and M.R.F. cases.

3. The CEGAT has delivered a judgment in M/s. Mahindra & Mahindra Ltd. (Annexure-H) on 13-2-1998 wherein the CEGAT has taken into consideration the entire case law available on the point and also referred to the three decisions set out in the impugned circular. The CEGAT has opined that part of dealers'' margin referable to cost of free after-sales-services cannot be included in the assessable value.

4. The submission of the petitioner is that the Circular which runs in conflict with the view of the law taken by the Tribunal has ceased to be good in the eyes of the law. The Assessing Authorities are bound to follow the circular of the Board in view of the mandate contained in Section 37B of the Central Excises Act, 1944 under which provision the Circular has been issued. It is further submitted by the learned counsel that so long as the circular remains in operation, the orders of adjudication made pursuant thereto would not be in conformity with the view taken by the CEGAT and this conflict is bound to create an anomaly for an order of the CEGAT also binds the adjudicating authorities.

5. In view of the law laid down by the Supreme Court in the case of Orient Paper Mills Ltd. v. Union of India -1978 (2) E.L.T. J 345 and thereafter by the High Courts of Gujarat & Madras in Genest Engineers Pvt. Limited Vs. Union of India, and Lakshmi Machine Work Ltd. Vs. Union of India, , a circular issued by the Board u/s 37B of the Central Excise Act, 1944 cannot interfere with or take away quasi judicial function of the adjudicating authorities.

6. The petition is, Therefore, allowed and disposed of in terms of the following directions :-

1. The Central Board of Excise and Customs may reconsider, if so advised, its impugned Circular in the light of the Judgment of the CEGAT in the case of M/s. Mahindra & Mahindra Ltd. (supra) and such other decisions as are available and have a binding effect on the issue under consideration and may thereafter issue a fresh circular, if required.

2. Till the date of such reconsideration and issuance of fresh circular, if any, the impugned circular dated 19-11-1997 shall not bind the adjudicating authorities while passing the orders of adjudication.

7. The petition is disposed of in the above said terms. No order as to costs.

