Commissioner Of Central Excise, Delhi vs Maruti Udyog Ltd on 27 February, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1245, 2002 AIR SCW 1039, (2002) 2 JT 469 (SC), 2002 (2) SCALE 405, 2002 (3) SCC 547, 2002 (2) JT 469, 2002 (2) SLT 337, 2002 (4) SRJ 122, (2002) 141 ELT 3, (2002) 2 SUPREME 260, (2002) 2 SCALE 405, (2002) 3 BLJ 249, (2004) 117 ECR 133

Bench: B.N. Kirpal, Shivaraj V. Patil, Bisheshwar Prasad Singh

CASE NO.:
Appeal (civil) 3783 of 2000

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE, DELHI

RESPONDENT:
MARUTI UDYOG LTD.

DATE OF JUDGMENT: 27/02/2002

BENCH:
B.N. KIRPAL & SHIVARAJ V. PATIL & BISHESHWAR PRASAD SINGH

JUDGMENT:

JUDGMENT 2002 (2) SCR 99 The following Orders of the Court was delivered :

The respondent is manufacturing motor vehicles and it had availed of MODVAT credit of the duty paid on inputs under Rule 57A of the Central Excise Rules. As it had not paid any exicse duty on the raw material, it became liable to pay excise duty on the waste and scrap of aluminium and iron and steel which scrap had been sold by the respondent.

The Collector raised a demand of excise duty on the waste and scrap which was sold. The demand was challenged by the respondent who contended that exicse duty was not payable. Having been unsuccessful before the Collector, an appeal was filed before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal by the impugned order came to the conclusion that excise duty was payable on the scrap sold by the respondent. It further came to the conclusion that the price on which the waste and scrap had been sold should be considered to be cum-duty price and the assessable value should be determined after deducting the element of excise duty. It is this part of the decision of the Tribunal which is sought to be challenged by the Revenue in this appeal.

The respondent had sold the scrap and according to it the purchaser was not liable to pay any amount in addition thereto and it is for this reason the Tribunal regarded this transaction as being one of cum-duty price.

Section 4 of the Central Excises and Salt Act, 1944 provides for valuation of excisable goods for purposes of charging of duty of excise. Under Section 4(1), the duty of excise is chargeable on any excisable goods with reference to the value which is deemed to be the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade where the buyer is not a related person and the price is the sole consideration for the sale. Section 4(4)(d)(ii) states that value in relation to any excisable goods does not include the amount of duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount, etc., is also to be allowed as a deduction.

A reading of the aforesaid Section clearly indicates that the wholesale price which a charged is deemed to be the value for the purpose of levy of excise duty, but the element of excise duty, sales tax or other taxes which is included in the wholesale price is to be excluded in arriving at the excisable value. This Section has been so construed by this Court in Asstt. Collector of Central Excise and Ors. v. Bata India Ltd., [1996] 4 SCC 563, and it is thus clear that when cum-duty price is charged, then in arriving at the excisable value of the goods the element of duty which is payable has to be excluded. The Tribunal has, therefore, rightly prceeded on the basis that the amount realised by the respondent from the sale of scrap has to be regarded as a normal wholesale price and in determining the value on which excise duty is payable the element of excise duty which must be regarded as having been incorporated in the sale price, must be excluded. There is nothing to show that once the demand was raised by the Department, the respondent sought to recover the same from the purchaser of scrap. The facts indicate that after the sale transaction was completed, the purchaser was under no obligation to pay any extra amount to the seller, namely, the respondent. In such a transaction, it is the seller who takes on the obligation of paying all taxes on the goods sold and in such a case the said taxes on the goods sold are to be deducted under Section 4(4)(d)(ii) and this is precisely what has been directed by the Tribunal. There is also nothing to show that the sale price was not cum-duty.

It will be useful here to refer to the observations of this Court in Hindustan Sugar Mills v. State of Rajasthan and Ors., [1978] 4 SCC 271, at page 280, as follows:

"Take for example, excise duty payable by a dealer who is a manufacturer. When he sells goods manufactured by him, he always passes on the excise duty to the purchaser. Ordinarily it is not shown as a separate item in the bill, but it is included in the price charged by him. The 'sale price' in such a case could be the entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of the goods. True, the excise duty component of the price

> would not be an addition to the coffers of the dealer, as it would go to re-imburse him in respect of the excise duty already paid by him on the manufacture of the goods. But even so, it would be part of the 'sale price' because it forms a component of the consideration payable by the purchaser to the dealer. It is only as part of the consideration for the sale of the goods that the amount representing excise duty would be payable by the purchase:. There is no other manner of liability, statutory or otherwise, under which the purchaser would be liable to pay the amount of excise duty to the dealer. And, on this reasoning, it would make no difference whether the amount of excise duty is included in the price charged by the dealer or is shown as a separate item in the bill. In either case, it would be part of the 'sale price'....."

The example given in the aforesaid decision is clearly applicable in the present case. The sale price realised by the respondent has to be regarded as the entire price inclusive of excise duty because it is the respondent who has, by necessary implication, taken on the liability to pay all taxes on the goods sold and has not sought to realise any sum in addition to the price obtained by it from the purchaser. The purchaser was under no obligation to pay any amount in excess of what had already been paid as the price of the scarp.

Under the circumstances, the Tribunal was right in directing that the respondent is entitled to the benefit of Section 4(4)(d)(ii) of the Central Excises & Salt Act.

For the aforesaid reasons, this appeal is dismissed. No costs.

C.A. Nos. 660, 3841, 5867-5868/2000, 4082, 4455, 6072, 8455/2001 and 92/2002 For the reasons stated in our order passed today in Civil Appeal No. 3783 of 2000 entitled Commissioner of Central Excise, Delhi v. M/s. Maruti Udyog Ltd., these appeals are dismissed.

After hearing the learned counsel for the parties, we see no reason to interfere with the decision of the Tribunal. Hence, the civil appeal is dismissed.