

2013 (1) ECS (45) (Tri-Del)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
COURT-III

Maruti Suzuki India Limited

Vs.

Commissioner of Central Excise, New Delhi III

Date of hearing: 8.1.2013

Date of pronouncement: 14.1.2013

Stay Application No. 4966, 4967 of 2012 in

Excise Appeal No. 3946, 3947 of 2012

Maruti Suzuki India Limited .. Appellant/applicant

Vs.

C.C.E., New Delhi III .. Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the appellants
Ms. Ranjana Jha, AR. (Jt CDR) for the Revenue

CORAM:

Hon'ble Mrs. Archana Wadhwa, Judicial Member

Hon'ble Mr. Sahab Singh, Technical Member

STAY ORDER NO. 55422-55423/2013-EX [DB] dated 14.1.2013

“As such, we do not find favour with the argument of the Id. Advocate that order decisions, declaring law to the contrary should be followed and stay petition should be allowed. We further note that through the appeal filed by the appellant stands admitted by the Hon'ble Supreme Court but stay petition filed by them stands dismissed. The dismissal of the stay petition amounts to as if a declaration of the law by the Larger Bench still holds the field., inasmuch as the appellant's request for

staying operation of the same has not been accepted by the Hon'ble Supreme Court. If that be so, the Larger Bench decision read with subsequent order of remand is operative and the Commissioner was bound to follow the same.”[Para 6]

Per Mrs. Archana Wadhwa:

1. Both the stay petitions – one filed by Gurgaon Factory of the appellant and the other by Manesar factory are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner vide which he has confirmed the Central excise duty of Rs.18,28,52,585/-.
2. After hearing both the sides we find that the impugned order stands passed by the Commissioner in remand proceeding when the matter was remanded by the Bench vide its final order No. 393/2011- Ex dated 20.4.2011. It is seen that final order was passed in terms of the Larger Bench decision of the Tribunal in the same appellant's own case reported as 2010 (257) ELT 226 (Tri-LB). the matter was referred to the Larger Bench in the said case for deciding the issue as to whether the charges towards pre-delivery inspection and after sales service by the dealers from the buyers of the cars are to be included in the assessable valued of the cars or not. The Larger Bench answered the referred issue against the appellant and sent the matter back to the referral Bench for passing of the order. Referral Bench vide its final order dated 20.4.2011 referred (supra) observed as under:

“5. In the result, the appeal is disposed of in terms of the order by the Larger Bench as stated above while setting aside the penalty and the matter is remanded to the adjudicating authority to re-quantify the duty liability along with interest payable by the appellants bearing in mind the decision of Larger Bench on the above issue. The appeal accordingly stands disposed of.”

3. The impugned order stands passed by the Commissioner in terms of the said remand order by the Tribunal for re-quantification of the demand. Ld. Advocate appearing for the appellants fairly agrees that they are not aggrieved with re-quantification which has been correctly done.
4. However, the contention of the Id. Advocate is that the said final order has been challenged by them before the Hon'ble Supreme Court and the appeal stands admitted vide order dated 6.1.2012. However, he fairly agrees that vide a subsequent order dated 26.11.2012, the Hon'ble Supreme Court has rejected the application for stay of the impugned order. The contention of the Id. Advocate is that all the developments were

taken note of by the Tribunal in a subsequent stay order in their own case reported as 2010 (285) ELT 546 (Tri.-Del.) and by holding that prima facie expenses of post-delivery inspection and free after sales service to the ultimate customers provided by the car dealer is not required to be included in the assessable value, unconditional stay was granted. He submits that Bench while granting stay, took note of the Larger Bench decision in appellant's own case but did not agree with the same. Ld. Advocate also draws our attention to subsequent decision of the Hon'ble Bombay High Court in the case of Tata Motors Ltd. vs. UOI – 2012 (286) ELT 161 (Bom) wherein after taking note of the Larger Bench of the Tribunal in appellant's own case, the High Court did not agree with the same and also quashed the Board's Circular No. 634/34/2002-CX dated 1.7.2002. The Hon'ble High Court observed that pre-delivery inspection and free after sales services are incurred by the dealer as part of their responsibility under dealership agreement and as they do not go to the car manufacturer, the same cannot be added in the assessable value of the cars. Accordingly, the ld. Advocate for the appellants prays for unconditional stay.

5. Countering the above submissions, ld. Jt. CDR Ms. Ranjana Jha appearing for Revenue submits that by his impugned order Commissioner has not decided the issue of valuation which already stands decided by remand order but has simplicitor quantified the duty demand in terms of the Large Bench decision and the subsequent decision of the Bench remanding the matter with the directions to quantify. Inasmuch as, the appellant has no quarrel with the quantification of demand, they should be directed to deposit the entire amount of duty.
6. After carefully considering the submissions made by both the sides, we note that Larger Bench of the Tribunal has decided the issue in the present matter against the appellant and the matter was sent back to regular Bench for passing of order who rejected the appeal but remanded the matter to Commissioner for re-quantification of the demand. The Commissioner has done re-quantification in term of the remand order. As such, we do not find favour with the argument of the ld. Advocate that order decisions, declaring law to the contrary should be followed and stay petition should be allowed. We further note that through the appeal filed by the appellant stands admitted by the Hon'ble Supreme Court but stay petition filed by them stands dismissed. The dismissal of the stay petition amounts to as if a declaration of the law by the Larger Bench still holds the field., inasmuch as the appellant's request for staying operation of the same has not been accepted by the Hon'ble Supreme Court. If that be so, the Larger Bench decision read with subsequent order of remand is operative and the Commissioner was bound to follow the same. Accordingly, he has quantified the duty demand in terms of remand order. The stay order referred and relied upon decision by the ld. Advocate in their own case deals with an independent appeal and has arrived at independent decision. Inasmuch as the present matter stems out of the earlier proceeding which have not been stayed by the Hon'ble Supreme Court we find no reason to grant dispensation with the condition of pre-deposit of dues.

7. At this stage, on being specially asked the Id. Advocate fairly agrees that there is no financial difficulty faced by the appellants in depositing the amount in question. In view of the same, we direct both the appellants/applicants to deposit the entire amount of duty confirmed against them within ten weeks from the date of order and report compliance on 26.4.2013.

(Pronounced in the open Court on 14.1.2013)