

CASE NO.:
Appeal (civil) 1907-1909 of 2002

PETITIONER:
M/s. Swaraj Mazda Ltd

RESPONDENT:
Commissioner of Central Excise, Chandigarh

DATE OF JUDGMENT: 23/01/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI & P. SATHASIVAM

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NOS.1907-1909 OF 2002
W I T H
C.A.NOS.5092-5094 OF 2002

C.A.NOS.1907-1909 OF 2002

These appeals had come up before this Court on 12th December 2007 and at the request of learned senior counsel appearing for the Department, the same were adjourned for six weeks to enable him to get instructions as to whether the clarification issued by the

Department under Notification No.463/86-CE dated 09th December 1986 would be applicable to Exemption Notification No.462/86-CE dated 09th December 1986. The order passed on 12th December 2007 reads as under :

"The question for consideration in the present appeals is 'Whether the chassis fitted with engines manufactured and cleared by the appellants for further manufacture of buses are eligible for the concessional rate of excise duty under exemption Notification No.462/86-CE dated 9.12.1986 or not'.

Notifications similar to notification No.462/86 have been issued by the department from time to time. One such exemption notification is Notification No.463/86-CE.

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The Department of Excise and Customs issued a general clarification dated 17th September, 1987 clarifying that the chassis for the LCVs (Light Motor Vehicles like the one manufactured by the appellant) is included in the motor vehicles and thus entitled to the concessional rate of excise duty in terms of notification No. 463/86. It may be mentioned here that notification No. 463/86 is similar to the notification No. 462/86. The order reads:

'I am directed to refer to your letter F.No.V.Ch.87(30)/17/TD/87/394 dated 13.8.87 on the above subject and to say that the concessional rate of excise duty prescribed under Notification No.463/86-CE dated 9.12.1986 is applicable also to the chassis for the LCVs specified in the said notification.'

M/s. Ashok Leyland Limited which is also manufacturing LCVs had filed an application seeking clarification as to whether motor vehicles would include the chassis of LCVs as well.

The Department of Industrial Development, Ministry of Industry vide

its order dated 5th May, 1992 clarified that chassis of LCVs would be included in the motor vehicles.

Clarifications issued by the Department of Excise & Customs as well as the Ministry of Industry were produced before the appellate Tribunal but the Tribunal refused to give any finding on the same.

Mr. Shetty, learned senior counsel appearing for the department seeks time to get clarification from the Central Board of Excise & Customs as to whether the clarification issued by the department under notification No. 463/86-Ce would be applicable to the exemption Notification No. 462/86-Ce dated 9.12.1986 as well.

Adjourned by six weeks."

Mr. Shetty, learned senior counsel appearing for the Department fairly concedes that although the briefing counsel

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had sought the clarification in the light of the aforesaid order by intimating the Central Agency, no instructions have been received.

We find that the point in issue raised before us was also raised before the Tribunal (refer to para 3.2 of the impugned order), but, the Tribunal has not recorded any finding on the same.

Mr. Shetty prays that the impugned order be set aside and the case be remitted to the Tribunal for a fresh decision on all the points raised in the appeal in accordance with law.

Ordered accordingly.

All contentions are left open. The Tribunal is directed to record its findings on the point which had been raised by the appellants including the applicability of the clarification issued by the Department with regard to Notification No.463/86-CE dated 09th December 1986 to Notification No.462/86-CE dated 09th December 1986.

The appeals are allowed accordingly.

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In the light of the order passed in C.A.Nos.1907-1909 of 2002 these appeals are also allowed as the question of re-computation of duty and penalty will depend upon the applicability of the clarification issued by the Department

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with regard to Notification No.463/86-CE dated 09th December 1986 to Notification No.462/86-CE dated 09th December 1986.