

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 59084 of 2013

[Arising out of Order-in-Appeal No. 555/CE/App/Ldh/2011 dated 08.05.2013 passed by the Commissioner (Appeals), Chandigarh]

M/s Hero Cycle Ltd

(New Cycle Division), Phase-Viii, focal Point, Ludhiana,
Punjab

.....Appellant

VERSUS

Commissioner of CGST, Ludhiana

House F Block, Rishi Nagar, Ludhiana, Punjab 141001

.....Respondent

APPEARANCE:

Present for the Appellant: Shri Poojan Malhotra, Advocate

Present for the Respondent: Shri Raman Mittal, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60707/2023

DATE OF HEARING:04.09.2023

DATE OF DECISION:11.12.2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 08.05.2013 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) confirmed the demand of Automobile Cess on the ground of value addition but further held that there is a need to work out the Automobile Cess on the value addition and accordingly the matter will require fresh computation to re-look but did not impose any penalty and demand interest on the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in manufacture of E-bike and parts thereof falling under heading 8711 & 8714 respectively of Central Excise Tariff act, 1985. They imported E-Bikes parts & E-bike in CKD condition falling under heading 8714 & 8711 of Central Excise Tariff Act respectively. The E-Bikes were chargeable to duty as per section 4 of Central Excise Act and E-Bike parts on MRP basis as per section 4A of Central Excise Act. A show cause notice dated 19.11.2010 was issued to the appellant alleging that appellant imported E-Bike parts and E-Bikes in CKD condition. The E-Bike were granted full exemption from payment of duty vide notification 25/2008-CE dt. 29.04.2008 and that appellant were required to show production and clearance of E-Bikes in the relevant columns of ER-1's. The E-Bike manufactured and cleared by appellant attracts automobile cess at the @ 1/8% Adv. Leviable under Notification no. S.O. No. 247(E) dt. 22.03.1990 as amended, issued by the Ministry of Industries, Department of industrial development. Further, the allegation against the appellant is that they did not file any mandatory return in the format prescribed under the Automobile Cess Rules, 1984 and suppressed the production, clearance and value of E-Bikes from the department with intent to evade payment of automobile cess. The appellant filed detailed reply to the show cause notice and submitted that they imported E-Bike in CKD condition and E-Bike parts falling under heading 8711 & 8714 respectively. They assembled E-Bike from E-Bike parts imported and also assembled E-Bikes imported in CKD condition. They further stated that they started importing E-Bikes parts in 2007 and 1st consignment was imported vide bill of entry no. 208 & 209 both dated 17.02.2007. They are also clearing E-Bike

Since March 2007. The E-Bikes were made exempt vide notification no. 25/2008-CE dated 29.04.2008. The E-Bikes imported in CKD condition, after assembling cleared without payment of central excise duty as goods imported and cleared from factory premises falling under the sub-heading and the processes undertaken does not amount to manufacture as per section 2(f) of Central Excise Act being no new/distinct product came into existence. Moreover, clearance of E-bike imported in CKD condition were not reflected in ER-1 return as there were no manufacturing activity involved. The demand of automobile cess again are incorrect as the same have already been discharged at the time of importation of E-Bike in CKD condition. The classification at the time of importation and at the time of clearance for home consumption are same. After following the due process, the additional commissioner vide his order dated 30.05.2011 demanded the automobile cess of Rs. 13,15,692/- under section 11A by invoking the extended period of limitation along with interest under Section 11AB and also imposed equal penalty under Section 11AC of the Act. Aggrieved by the said order, the appellant filed the appeal before the Commissioner who held that there is need to work out automobile cess on amount of value addition accordingly the matter will require a fresh computation to re-look, no finding with regard to the interest and penalty. Hence, the present appeal.

3. Heard both the parties and perused the record.

4. Ld. Counsel appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without appreciating the facts of the case and the law, further the impugned order is beyond the allegation in the show cause

notice. He further submits that the appellant at the time of import of E-bike in CKD condition paid the automobile cess and there is no need to pay the automobile cess again because E-bike imported in CKD condition after assembling cleared without payment of Central Excise duty as goods imported and cleared from the factory premises falling under same sub-heading and the processes undertaken does not amount to manufacture as per Section 2(f) of Central Excise Act being no new/distinct product came into existence.

5. He further submits that E-bike imported in CKD condition and cleared were not reflected in ER-1 return being neither manufacturing activity carried out and no duty was payable thereon. He further submits that the production and clearance of E-Bike as referred in para 1 of the show cause notice is same that reflected in ER-1 return filed during relevant period. He further submits that the details regarding E-Bike i.e. sub-heading quantity cleared duty paid etc. were reflected in ER-1 returns submitted to the department periodically and no objection regarding non deposit of automobile cess was raised. He further submitted that the entire demand is time barred and the department has confirmed the demand by invoking the extended period of limitation whereas the appellant has not suppressed any facts from the department with intent to evade payment of automobile cess. In support of his submissions, he relied upon the following decisions as held under:

(i) Collector of Central Excise Vs. Malleable Iron & Steel Casting Co. Pvt. Ltd. 1998 (100) ELT 8 (SC).

***(ii) Cosmic Dye Chemical Vs. Collector of Central Excise
Bombay 1995 (75) ELT 721 (SC).***

***(iii) Pushpam Pharmaceutical company Vs. Collector
1995 (78) ELT 401 (SC).***

6. On the other hand, Ld. AR reiterated the findings of the impugned order.

7. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant imported E-bike in CKD condition and E-Bike parts falling under heading 8711 & 8714 respectively. The appellant assembled E-Bike imported in CKD condition and cleared the same without payment of duty as E-bike were exempt vide notification No. 25/2008-CE dated 29.04.2008. Further, I find that E-bike imported in CKD condition after assembling were cleared without payment of duty as the goods were imported and cleared fall under the same sub-heading and processes undertaken does not amount to manufacture as per section 2(f) of the Central Excise Act being no new/distinct product came into existence. Further, I find that the classification at the time of importation and at the time of clearance for home consumption are the same. Further, I find that the appellant has paid the automobile cess at the time of custom clearance which is reflected in the Bill of entry 531 dated 11.07.2008 produced at page 33 of the appeal paper book showing payment of automobile cess on E-Bike in CKD condition. Therefore, I hold that the appellant is not required to pay automobile cess because he has already paid the same at the time of

import which has been shown in the Bill of entry 531 dated 11.07.2008.

8. Further, I find that the entire information regarding the clearance of E-bike were reflected in ER-1 return submitted to the department periodically and the department never raised any objection regarding non deposit of automobile cess which clearly shows that automobile cess were paid as per concurrence of the department. Further, I find that entire demand in this case is time barred because for the period September, 2006 to September, 2008 show cause notice was issued on 19.11.2010 which is beyond the normal period of limitation. The department has invoked the extended period of limitation without showing that the ingredients for invoking the extended period of limitation is present in the case.

9. In view of this, I hold that the demand is barred by limitation. In result, I set aside the impugned order on merit as well as on limitation by allowing the appeal of the appellant.

(Order pronounced in the open court on 11.12.2023)

(S. S. GARG)
MEMBER (JUDICIAL)