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RAVINDER RAJ

v.

M/S. COMPETENT MOTORS CO. PVT. LTD. & ANR.  
(Special Leave Petition (Civil) No. 10364 of 2006)

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FEBRUARY 10, 2011

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

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*Sale of Goods Act, 1930 – s.64-A (1)(a) – Enhancement of excise duty prior to delivery of the vehicle – Liability to pay extra price – Customer booked a car with the manufacturer – Customer was asked to complete the modalities for delivery of the car – Indication in the proforma invoice that the price prevailing at the time of billing would be applicable – Billing of the car done a year later – Meanwhile, increase in excise duty resulting in price hike – Deposit of the excess amount by customer under protest – Plea of the customer that since he was not responsible for the delay in the delivery of the vehicle, he was not liable to bear the increase the price – Held: In terms of s. 64-A (1)(a), it is the liability of the customer to pay the extra price when the excise duty had been enhanced prior to the delivery of the vehicle – On facts, no evidence to show that there was any deliberate intention on the part of the manufacturer and the dealer to delay the delivery of the vehicle – Thus, the order passed by the National Commission that the increase in price by way of additional taxes is to be borne by the customer and not by the manufacturer, upheld.*

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*Omprakash vs. Assistant Engineer, Haryana Agro Industries Corpn. Ltd. 1994 (3) SCC 504; Mohinder Pratap Dass vs. Modern Automobiles and Anr. 1995 (3) SCC 581 – distinguished.*

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**Case law reference:**

1994 (3) SCC 504 Distinguished. Para 12

1995 (3) SCC 581 Distinguished. Para 12

CIVIL APPELLATE JURISDICTION : SLP (Civil) No.  
10364 of 2006.

From the Judgment & Order dated 19.07.2005 of the  
National Consumer Disputes Redressal Commission, New  
Delhi in Revision Petition No. 1485 of 2005.

WITH

SLP (C) No. 9739-9740 of 2009.

Petitioner-In-Person.

Nikunj Dayal, Pramod Dayal, Sapna Sinha, Rameshwar  
Prasad Goyal for the Respondent.

The following Order of the Court was delivered

**O R D E R**

1. Two Special Leave Petitions, being SLP(C) Nos.  
10364 of 2006 and 9739-9740 of 2009, have been filed  
against the judgment and order dated 19th July, 2005, passed  
by the National Consumer Disputes Redressal Commission at  
New Delhi in Revision Petition No.1485 of 2005 and the order  
dated 7th August, 2008 passed by the said Commission in  
Revision Petition No.2974 of 2005 filed by the respondent No.1,  
Maruti Udyog Limited and also M.A.No.599 of 2006 in Revision  
Petition 1533 of 2005 filed by the respondent No.2, namely,  
Competent Motors Co.Pvt.Ltd., the dealer.

2. The petitioner, Mr. Ravinder Raj, who is appearing in  
person, applied to Maruti Udyog Ltd.in 1985-1986 for booking  
a Maruti Car-800 and deposited a sum of Rs.10,000/- as initial/  
advance booking payment. On 15th July, 1988, the respondent

A No.2 informed the petitioner by letter of even date that his Maruti Car Allotment No.0802-N-04051 had matured for delivery and requested the petitioner to make payment of the full amount of the price of the car for delivery of the vehicle after completing the necessary formalities. Pursuant to the above letter, the  
B petitioner on 16th February, 1989, paid a total amount of Rs.78,351.05 which covered the price of the vehicle, insurance charges and other minor charges, including registration charges. There is no denial that the petitioner had opted for a cream colour vehicle.

C 3. On 1st March, 1989, there was an increase in the excise duty payable, causing a price hike of about Rs.6710.61. On 18th March, 1989, the petitioner received a letter from the respondent No.2 to deposit the excess amount payable as excise duty, and, accordingly, the petitioner did so under  
D protest on 16th February, 1989.

4. The official billing in respect of the car was done on 5th April, 1989.

E 5. The petitioner has contended that the delay in delivery of the vehicle to him by the respondents was not occasioned by any failure or negligence on his part and the liability to pay the increased amount on account of increase in excise duty, was not that of the petitioner, but of the respondents concerned. The petitioner, therefore, applied to the District Consumer  
F Forum for a direction upon the respondents to bear the increase in excise duty resulting in increase in the price. Such a prayer was rejected by the District Consumer Forum. The petitioner then went to the State Forum which allowed the petitioner's claim. Against the said order, the respondents went  
G before the National Commission, which reversed the order passed by the State Forum. It is against the said order that the petitioner has come to this Court by way of this Special Leave Petition.

H 6. As indicated hereinabove, the main ground urged by the

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petitioner is that since he was not responsible for the delay in the delivery of the vehicle, he should not be made to bear the increase in the price, particularly, when from the documents, as indicated by him, the vehicle of the colour chosen by him was available with the respondents. He, therefore, submitted that the order of the National Forum was erroneous and was liable to be set aside.

7. Appearing for the dealer, M/s.Competent Motors Co.Pvt.Ltd., Ms. Sapna Sinha, learned advocate pointed out that even from the receipt of the amount paid by the petitioner on 16th February, 1989, it will be clear that the amount paid was subject to the price prevailing on the date of the invoice. According to learned counsel, since the bill was dated 5th of April, 1989, it was the petitioner who was required to bear the increase in price on account of the increase in excise duty. Furthermore, she reiterated that the colour which the petitioner had wanted was not available at that point of time, although, from the documents it would appear that the same was available. According to her, the said documents only indicated that these were the colours in which the cars were being manufactured and did not really indicate the fact that such a colour was available on a particular date.

8. According to her, there was no negligence on the part of the dealer since having received intimation about the readiness of the vehicle, the respondent No.2 had immediately informed the petitioner, but unfortunately, in the meantime, the price had risen. According to the learned counsel, the respondent No.2 could not, therefore, be made liable for the increase in the price.

9. Mr. Dayal, appearing for the the Maruti Udyog Limited, while adopting the submissions made by Ms. Sinha, also added that having regard to Section 64A of the Sale of Goods Act, 1930, the burden of any increase in the price by way of additional taxes would have to be borne by the customer and not by the manufacturer. He also reiterated that since there was

A no negligence on the part of the manufacturer in making the vehicle available to the petitioner and since no mala fide intention had been proved, the petitioner would have to bear the increase in the prices.

B 10. Having considered the submissions made, we may refer to the letter of 15th July, 1988, which had been written on behalf of the respondent No.2 to the petitioner indicating that the petitioner's allotment No. had matured for delivery. In the second paragraph of the letter, the respondent No.2 requested the petitioner to complete the modalities for effecting delivery of the car against the allotment number. It was categorically indicated that on receiving payment, delivery would be effected in the sequence of priority. Coupled with the above is the proforma invoice dated 15th July, 1988, where it was further indicated that the price prevailing at the time of billing would be applicable, despite the fact that the details of the price of the vehicle were set out in the said invoice.

E 11. As indicated hereinabove, even in the receipt given to the petitioner for payment of the amount in the proforma invoice, it had been indicated that the prices prevailing on the date of billing would apply.

F 12. In this case, the billing was done on 5th of April, 1989. In the absence of any evidence of any deliberate intention on the part of the respondents to delay delivery of the vehicle, we are unable to agree with the petitioner that the increase in price has to be borne by the respondents. The petitioner had relied on two decisions of this Court in the case of *Omprakash Vs. Assistant Engineer, Haryana Agro Industries Corpn. Ltd.*, 1994(3)SCC 504 and *Mohinder Pratap Dass Vs Modern Automobiles and Anr.* 1995(3)SCC 581, on the same issue. The said two decisions in our view are not applicable to the facts of this case, on account of the fact that in the said two matters patent deficiency in the service had been found by the Court and it was also pointed out that there was no satisfactory

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explanation for the delay in delivery of the goods to the consumers, which is not the case as far as this particular matter is concerned.

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13. Furthermore, having regard to the provisions of Section 64A(1)(a) of the Sale of Goods Act, 1930, it is the liability of the petitioner to pay the extra price when the excise duty had been enhanced prior to the delivery of the vehicle.

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14. In such circumstances, the Special Leave Petition fails and is dismissed.

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15. Consequently, in view of this order, the other Special Leave Petition in which interest on the amount claimed has been prayed for, does not survive and is also dismissed.

16. There will, however, be no orders as to costs in both the matters.

N.J.

Special Leave Petition dismissed.