

Southern Bottlers Private Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-26-1985

Reported in : (1989)(43)ELT427TriDel

Appellant : Southern Bottlers Private Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. This is an appeal preferred against the Order in Review passed by the Collector, Central Excise, Madras, dated 24-9-1983.
2. The appellants are a private company engaged in the manufacture of aerated waters covered under Item ID of the First Schedule. They were covered under Chapter VIIA. They filed price lists No. 1/79, dated 17-3-1979, 1/80 and 2/80 both dated 2-4-1980, 1/80 and 2/80 dated 19-6-1980 and 1/81 dated 16-4-1981 declaring therein the assessable value of their various products as the normal price at which their product was ordinarily sold in wholesale lots at the time of removal from the place of manufacture. The price lists were provisionally approved by the Assistant Collector under Rule 9B of the Central Excise Rules. The transport charges collected by the assessee were not included in the assessable value.
3. In these price lists so provisionally approved the Assistant Collector in his order dated 18-9-1981 observed that the price charged for the sale at the factory gate constituted normal price Under Section 4 of the Central Excises & Salt Act, and

that the transport charges were to be excluded in the assessable value.

4. The Collector of Central Excise issued a show cause notice Under Section 35A of the Act for review of the said order. The appellants sent a reply to the show cause notice for review and ultimately the Collector passed the impugned order in review on 18-9-1981. He held that the sales were not at arm's length, that there was no sale of the goods between the assesseees and their buyers who were only commission agents and that the alleged stockists were also merely commission agents. In other words, he held the buyers to be related persons. The Collector directed the Assistant Collector to finalise the price list concerned on the basis of the prices at which the stockists sold the goods by including in the assessable value with commission paid to the stockists and the amounts recredited by them.

5. Shri P.S. Bedi, consultant, appearing for the appellants relied on the decision reported in 1983 E.L.T. 1896 (S.C.) (Union of India and Ors. etc. etc. v. Bombay Tyre International Limited etc. etc.]. He stated that only the distributor who is a relative of the assessee or a person who is so associated with the assessee and having an interest directly or indirectly in the business of each other could be called a related person. The learned consultant stated that a portion of the sales being effected at the factory gate should be taken as assessable value Under Section 4(a) irrespective of the quantum of such sales. He placed reliance on this proposition on the decision of the Madras High Court reported in 1979 E.L.T. J 117 [Nagpal Petro Chemicals Ltd. v. Assistant Collector of C. Ex.].

6. Shri A.K. Jain, Senior Departmental Representative for the Department, reiterated the findings of the Appellate Collector and stated that the sale was to related person. He also submitted that the inclusion of transport charges was justified.

(i) Whether the lower authorities were right in holding that the sales to the distributors should be considered as sales to the related persons; and (ii) What is the correct assessable value for the clearances. It is well stated that the appellants are selling their goods to several distributors. The assessee had, admittedly, 24 distributors covering the whole of Tamil Nadu and a part of Andhra Pradesh. The Supreme Court had occasion to consider the scope of sales to related persons in

its recent decision reported as 1983 E.L.T. 1896 (Union of India and Ors. etc. etc. v. Bombay Tyre International Limited etc. etc.). The Supreme Court has stated in paragraph 46 as follows :- "On a proper interpretation of the definition of 'related person' in Sub-section (4) (c) of Section 4, the words 'a relative and a distributor of the assessee' do not refer to any, distributor but they are limited only to a distributor who is a relative of the assessee within the meaning of the Companies Act, 1956." 8. Both the lower authorities have proceeded on the basis that the sales were to "related persons". In the facts and circumstances of the case and in the light of the Supreme Court judgment, it is clear that it has not been shown by the Department that the distributors are associated with the assessees or that they have any interest direct or indirect in the business of each other. Therefore the appellants' sales to them cannot be considered as sales to "related persons".

9. On the question of determination of value including the transport charges, the admitted facts of the case disclose that a portion of the appellants' sales are effected at the factory gate. The distributors clear the goods at the factory gate and transport them in their own vehicles. On some occasions, the goods are delivered to the respective parties, and for this service, the assessee is collecting by way of transport charges the sums of Rs. 3.05, Rs. 3.17 and Rs. 3.29 per crate for three different zones of delivery. The lower authorities have rejected the contentions of the appellants for the exclusion of these amounts on the ground that the appellants are having 3 equalised freights depending on the distances and therefore these freights were in the nature of equalised freights and not the actual transportation charges. It is well stated that if there are sales at the factory gate even though they may be few, the rate at which the sales have been effected at the factory gate could be taken into consideration. The decision is reported in [1979 E.L.T. J 117 (Mad. H.C.), cited supra].

It is stated in the judgment as follows:- "Inasmuch as the petitioner effects a few sales at wholesale market rate at the factory gate itself, it is that rate which has to be taken as the normal price of the products, especially when the respondents have not shown that such sales have not taken place or that such sales were to related persons or that the sales were effected on other considerations than of price alone." 10. In the light of the above decision, it is clear that the Collector's

order did not follow the correct legal position. The impugned order therefore cannot be sustained.

11. In the result, we accept this appeal and set aside the impugned order.

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