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Court : Mumbai

Decided On : Jan-22-1992

Reported in : 1992(3)BomCR26; 1992(62)ELT693(Bom)

Judge : B.P. Saraf and;K. Sukumaran, JJ.

Appeal No. : Writ Petition No. 2321 of 1982

Appellant : Gabriel India Ltd.

Respondent : Union of India

Advocate for Def. : Shri M.I. Sethna, Adv.

Advocate for Pet/Ap. : Shri D.B. Shroff, Adv., i/b.,;M/s. Crawford Bayley & Co.

Judgement :

ORDER

K. Sukumaran, J.

1. The petitioners are manufacturers of shock absorbers. They have approached this Court projecting a controversy under the Central Excises and Salt Act, 1944. Though the writ petition as amended, raises very many issues and contentions, only two points had been pressed before us at the time of arguments. The passage of a decade after the filing of the petition gave a quietus to many an acute dispute which initially existed as between the parties.

2. Counsel helpfully indicated the points pursued now, by a statement filed before this Court at the time of arguments. The contentions are brought under the headings, 'freight and octroi on returned goods', 'insurance', 'interest', 'secondary packing', and 'discount to Asia Automotives'. The claims regarding secondary packing and discount to Asia Automotives were the only surviving one. The above claims are dealt with in paragraphs 11 and 12 of the order of the Assistant Collector.

3. In respect of the claim regarding secondary packing, Counsel attempted to demonstrate its origin and evolution. Initially, the petitioners used to despatch the shock absorbers in plastic covers, of attractive colours or corrugated cartons. In respect of that type of packing, no claim for deduction had been made. The petitioners' version is that there were repeated requests from dealers to see that the shock absorbers are despatched in wooden crates, other containers could not stand the stress and strain of long distance transport. The petitioners complied with that request according to them. The cost of secondary packing is permissible in the circumstances, in the light of the authoritative pronouncement of the order of the apex court they contend.

4. It is unnecessary to traverse all the decisions on this point. The principles are now finally set by decisions of the apex court.

5. The Assistant Collector dealt with the claim in the following words :

'It is contended by the party that they are using wooden crates only for upcountry clearances and that too at the instance of customers. However, no documentary evidence has been placed on records. As such it is not possible to treat the packing in wooden crates as a special secondary packing.'

6. As against the above factual finding, the plea of the petitioner in the writ petition made out in paragraph 11(e) is :

'The petitioners submit that this type of packing is generally only for outstations and was done specifically on the request of the dealers. It was at their request that the petitioners commenced placing the corrugated cartons into the wooden crates.'

Adverting to the reasoning of the Assistant Collector, the plea proceeds to submit :

'... the petitioners say and submit that this practice has been evolved for the years and is easily verifiable.'

7. The contention cannot succeed in the light of the factual position. If the customers demanded packing the shock absorbers not merely in plastic covers or corrugated cartons, but also an insulation in wooden crates, there would certainly be the evidentiary correspondence. The necessary correspondence in that case could easily be traced. It is unlikely that a demand of nature would be orally made. Businessmen could not, certainly, be expected to be vague in relation to the specification of their requirements and the stipulation regarding the cost and other essential terms. They are conspicuous in their absence in the present case.

8. A pleading regarding an evolved practice is inconsistent with, and in a sense, contradictory to the earlier plea of specific agreement on the basis of a specific demand made by the dealers. The shifting stand and the starving plea, and the better poverty of substantiating evidence, necessarily disables the petitioner in getting any effective relief from a reasonable revenue authority. The order of the Assistant Collector can not be faulted in the present circumstances. No contention could be, and has been, put forward to demonstrate to any error in the legal plea as stated in the impugned order. In relation to the application of the principle, and the assessment of the evidence and the evaluation of the petitioners' plea no case has been out for invoking our jurisdiction under Article 226 of the Constitution.

9. The second point relates to deduction of discount given to a particular specified dealer, who, according to petitioners, used to lift massive loads of their products.

10. Discounts are admissible as deductions only if they are in the contemplation of both the parties at the time of sale. The Assistant Collector has rightly expressed himself on this aspect :

'The condition of admissibility is 'if established under agreement or under terms of sale or by established practice'.'

11. Here again, poverty of factual material let down the petitioner in running the race successfully. According to the petitioner, the discount invariably hinged on the target set by the company from time to time and the share of goods lifted by Asia Automotives as against such targets. If the agreements or the terms of sale or established practice are available, then it is a matter amenable to an easy verification by the concerned authority. If materials be present, but the authority had erred, a superior authority or a constitutional court could rectify the error and give the deserved relief, if the necessary grounds in that behalf are made out. The paucity of the material is self-evident in the case. The petitioners could not convincingly or effectively demonstrate any error in the assessment of the materials made by the Assistant Collector. A vague plea of 'mutual understanding', and a loose concept of 'incremental sale efforts', would not be an effective substitute for clear terms and the categorical conditions which could be reasonably expected in transactions of this nature. In that view of the matter, this contention too has to fail.

12. In the result, even the attenuated contentions put forward by the petitioner have to be rejected.

The Writ Petition is accordingly dismissed.