

Ruby Mills Ltd. Vs. Union of India (Uoi)

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Court : Mumbai

Decided On : Nov-23-1990

Reported in : 1991(1)BomCR610

Judge : A.A. Cazi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 80

Appeal No. : Suit No. 1655 of 1981

Appellant : Ruby Mills Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : C.K. Jaishinghani ;and Neeta V. Masurkar, Adv.

Advocate for Pet/Ap. : F.N.J. Taleyarkhan, Adv., i/b., H.C. Dalal & Co.

Judgement :

A.A. Cazi, J.

1. This is a suit to recover from the defendants a certain sum of money which, according to the plaintiffs, was excess payment due to incorrect conversion rate of Belgium Francs into Rupee equivalent.

2. The plaintiffs held import licence dated 27th May, 1977 for import from Belgium certain machinery under Belgium credit subject to the conditions contained in

Public Notice No. 186-ITC (PN) 74 dated 9th December 1974. The plaintiffs furnished a Bank Guarantee from Bank of India, Bombay for depositing an amount of Rs. 48,70,000/- towards the price of the machinery which the plaintiffs desired to import from their Belgium Suppliers. On 22nd February 1978 the defendants issued a letter of authority for the import of machinery of the value of Belgium Francs (B.F.) 19,387,701. On or about 20th July 1978 the plaintiffs imported machinery of the value of Belgium Francs 18,381.864. The Bank of India deposited with the defendant a sum of Rs. 50,42,648.89 which was calculated as follows :-

1. Belgium Franc = Re. 0.27

Belgium Francs 18,381.864 = Rs. 49,63,103.28

Interest from 1-6-1978 to

1-7-1978 (30 days) at 9% = Rs. 36,713.36

Interest from 2-7-1978 to

22-7-1978 (21 days) at 15% = Rs. 42,832.26

Total Rs. 50,42,648.89

According to the plaintiffs the exact equivalent of 1 Belgium Franc was Rs. 0.2609 at the relevant date and the calculation should be done accordingly and not by rounding off 0.2609 to 0.27. The rupee equivalent of Belgium Francs 18,381.864 at the conversion rate of 1 Belgium Franc = Re. 0.2609 works out to Rs. 47,96,734.80. Thus there is a difference of Rs. 1,66,368.48 (Rs. 49,63,103.23 inus Rs. 47,96,734.80) which the plaintiffs are seeking to recover. There was correspondence exchanged in this regard between the plaintiffs and the defendants but the defendants refused to refund the difference to the plaintiffs. The defendants subsequently issued Public Notice being Public Notice No. 26-

ITC/(PN)80 dated 10th July 1980 for calculation of the rupee equivalent of the Belgium Franc to 4 decimal places and then rounding off at the 3rd decimal place to the next higher integer. The plaintiffs therefore, asked for calculating the conversion according to this notice but the defendants refused to do so stating that the notice did not have any retrospective effect. The plaintiffs then served a notice under section 80 of the Civil Procedure Code dated 8th July 1981 and have filed the present suit for recovering the amount of Rs. 2,45,393.50 consisting of the abovesaid difference of Rs. 1,66,368.48 plus interest of Rs. 79,025.02 upto the date of filing of the suit.

3. The defence of the defendants is as follows :

The conversion rate of 1 Belgium Franc = Re. 0.27 is the proper rate applicable in the case of the suit transaction. The Public Notice dated 10th July 1970 does not have any retrospective effect.

4. The Issues are as follows :-

(i) Whether the correct rate of conversion was to be 1 B.F. = Rs. 0.27 or Re. 0.2609?

(ii) If the rate is held to be Re. 0.2609, whether defendants have wrongly rounded off the rupee equivalent @ 0.27?

(iii) Whether the sum of Rs. 1,66,368.48 was wrongfully and illegally recovered by the defendants?

(iv) Whether the defendants have otherwise applied the rate of Re.

0.27 correctly as contended in paragraph 5 of the Written Statement?

My answers are as follows :

(i) The Correct rate of conversion would be 1 B.F. = Re. 0.261.

(ii) The rounding off at Re. 0.27 is wrong in view of answer to Issue No. (i).

(iii) The plaintiffs are entitled to recover Rs. 1,55,766.39 plus interest of Rs. 46,729.89 i.e. an aggregate sum of Rs. 2,02,496.28.

(iv) No.

5. The terms regarding conversion were governed by Notification dated 9th December 1974, (Page 9 of the Compilation). The relevant provision is at Page-23 of the Compilation). It says as follows:-

'Within 10 days of the receipt of shipping and other documents from the National Bank of Belgium, Brussels the importers' Bank shall arrange to deposit into Government account as indicated in para 9, below, the rupee equivalent of the amount disbursed to the suppliers together with interest at 6% p.a. for the period from the date of payment to the Belgian Suppliers upto the date on which rupees equivalents are deposited. For this purpose the Belgian Francs payments will have to be converted into Rupees as per instructions contained in Ministry of Commerce Public Notice No. 15-ITC(PN)/72 dated 28-1-72 and Public Notice No. 108-ITC(PN)/72 dated 21-7-72. Any change in this rate of conversion will be notified through Public Notice as and when necessary. The importer should furnish a bank guarantee from an approved schedule bank in the form in Annexure-II agreeing to deposit the amount. The rate of exchange to be adopted for working out the amount of the Bank guarantee should be the same as indicated on the import licence. The foot-note under the bank guarantee form should be noted for strict compliance. It will be the responsibility of the bankers to ensure that the amount due are correctly deposited into Government Account before the import documents are handed over to the parties. The importer should also ensure that the amounts are correctly deposited into Government account before taking delivery of the documents from their bankers.'

6. It would be noticed that the above Notification of 1974 refers to two Notifications, one of 28th January 1972 and the other of 21st of July 1972. There is no dispute that calculations have been done by the defendants according to these two Notifications except that there has been rounding off of the rupee equivalent of Re. 0.2609 to Re. 0.27. According to the defendants, they are entitled to do such rounding off by virtue of the Notification dated 17th January 1976. That Notification

is at Page-36 of the Compilation. The provision there is that : '.....the resultant figure will be rounded off at the second decimal place to the next higher integer, in respect of all currencies except Japanese Yen and Italian Lira, for which the rounding off will be to the next higher integer at the third decimal place.' According to the defendants the transactions having taken place after 1976, the Notification of 1976 would be applicable and on that basis the rounding off is done in the manner stated above.

7. Now, except for rounding off, the defendants cannot require the plaintiffs to pay anything more than what works out by conversion according to the rates prevailing in the market and according to the methods for arriving at those rates as provided in the Notifications of 28th January 1972 and 21st July 1972 and as further provided by the Notification of 1974. For certain incidental expenses they are already charging 1% amount more. Rounding off is done for the purpose of easy accounting. But this is only in respect of a small amount which may be required to be added or discarded. Since the defendants are merely interveners in the payment made by Indian purchasers to foreign sellers they would not 'discard' any small amount to be received in rupees and therefore, the provision for rounding off is always by adding a small amount. However, if the additional amount by way of rounding off is not a small amount, then this is not 'rounding off'. Prima facie it would appear that rounding off of four decimal places into two by taking the second decimal places into two by taking the second decimal place to the next higher integer would mean additional amount being of the most one hundredth of the amount otherwise payable. In other words the paying party would, by such rounding off, be required to pay a maximum of close to one percent more than if payment is made by exact equivalent. However, this can also be misleading. For example, where the value of a currency is Re. 0.0101 then applying this method of rounding off as provided in the Notification of 17th January 1976 payment would have to be made at Re. 0.02 and the additional amount payable due to rounding off would be about 99% of the amount otherwise payable. Certainly this will not be 'rounding off'. and cannot be allowed by terming it 'rounding off'. Therefore, for the Japanese Yen and Italian Lira where the unit value was low, the rounding off was done at the third decimal place by raising it to the next higher integer. Since the value of one Belgium Franc was only Re. 0.2609, by rounding off in the manner

provided by the Notification of 17th January 1976, there would be an increased additional amount payable at 3.47%. It would be noticed that the defendants themselves were charging 1% more which may be by way of commission or otherwise for services or incidental expenses. Therefore, the rounding off cannot be at a rate higher than 1%. It appears that the defendants themselves realised the mistake and therefore, they made a correction by the Notification dated 10th July 1980 which is at Page-81 of the Compilation. This Notification says : 'The question of applying the method of rounding off at the 3rd decimal place in the case of Belgium Francs has been under consideration for some time in view of low unit value of this currency. It has now been decided that in partial modification of the provisions contained in the aforesaid public notice dated 17-1-1976, the composite rate in the case of Belgian Franc should also be calculated upto 4 decimal places and the rounding off done at the 3rd decimal place to the next higher integer.' By doing the rounding off according to the Notification of 10th July 1980 the exact equivalent of the Belgium Francs at Re. 0.2609 would have to be rounded off to Re. 0.261. I have, therefore, answered Issue No. (i) accordingly.

8. It was also urged by Mr. Taleyarkhan that the Notification of 17th January 1976 for rounding off cannot apply to the present case as the parties were working only by Notification of 1974 which made applicable two Notifications of 1972. He urged that the only change that was permissible in the Notification of 1974 : 'Any change in this rate of conversion will be notified through Public Notice as and when necessary', meaning thereby that only the rate of conversion would be applicable and there is no change in the rate of conversion and rounding off is not such a change as is covered by the Notification of 1974. I do not agree with Mr. Taleyarkhan. The method of arriving at the conversion rate is provided in the two Notifications of 1972. As stated earlier, it is for the easier accounting that smaller amounts are either added or discarded by resorting to 'rounding off' and this would be a method that will not be hit by any prohibitions contained in the Notification of 1974. Even Re. 0.2609 may not have been the exact equivalent of One Belgium Franc for this was calculated only upto 4 decimal places. Limiting the calculation to a specified decimal place also is 'rounding off'.

9. Taking the conversion rate at 1 Belgium Franc = Re. 0.261 the rupee equivalent of Belgium Francs 18,381.864 would work out to Rs. 47,97,666.50 but there would have to be added interest at 9% per annum from 1-6-1978 to 1-7-1978 and that works out to Rs. 35,982.07. There would be further interest at the rate of 15% per annum from 2-7-1978 to 22-7-1978 amounting to Rs. 41,404.51. The plaintiffs having made the payment on 27-7-1978 there would be further interest from 22-7-1978 to 27-7-1978 which at the rate of 15% per annum works out to Rs. 11,829.84. The total amount payable by the plaintiffs should have been Rs. 48,86,882.50. Instead of this they have paid Rs. 50,42,648.89. Thus they have over paid Rs. 1,55,766.39. They are entitled to get a refund of this amount on which I am allowing interest at the rate of 10% per annum from 27-7-1978 till the date of suit. The suit was filed in a little over three years after the deposit was made on 27-7-1978. The plaintiffs are thus entitled to get interest of Rs. 46,729.89 as per calculations made above. There would, therefore, be a decree for a sum of Rs. 2,02,496.28. Hence, I pass the following order :-

ORDER

Decree in favour of the plaintiffs and against the defendants for Rs. 2,02,496.28 plus interest on Rs. 1,55,766.39 at the rate of 10% per annum from the date of the suit till the date of this judgment and at the rate of 6% per annum from the date of this judgment till payment plus proportionate costs of the suit.