State of Karnataka Vs. Union of India (Uoi) and ors.

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Court : Karnataka

Decided On : Jun-11-1974

Reported in : 1978(2)ELT564(Kar)

Judge : K. Jagannath Shetty, J.

Acts : Central Excises Act, 1944 - Sections 4, 4(1) and 36; Constitution of India - Articles 131, 226 and 227; Government of India Act - Sections 204

Appeal No. : Writ Petition No. 469/73

Appellant : State of Karnataka

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Sri. U.L. Narayana Rao

Disposition : Petition allowed

Judgement :

K. Jagannath Shetty, J.

1. This petition under Articles 226 and 227 of the Constitution, brought on behalf of the State of Karnataka, is directed against the orders made under the Central Excises and Salt Act, 1944, hereinafter referred to as the Act.

2. The facts leading to to the petition are these :

The. Mysore Government Soap Factory at Bangalore is manufacturing all varieties of sanda wood soap. The entire soap manufactured at the Factory is canalised for sale through a sole selling agent called 'Mysore Sales International', with the assistance of five zonal agents who are required to promote the sales of soap in their respective zones. The sales of soap to these agencies are governed by written agreements. In the agreements as between the Government and the sole selling agent it is stated :-

Clause 5 (a)

'All supplies to the Agents by the factory shall be at wholesale rates fixed by the factory from time to time and against cash payment or payments against Railway or Lorry receipts through recognised Banks. AH deliveries will be F.O.R. destination. (nearest Railway Station by goods train) or by Lorry service and the freight charges will by borne by the factory'.

Clause 9 (a)

9. The Agents shall receive by way of remuneration every month :-

(a) A commission of 6% inclusive of 2% the dealers discount shall be allowed on the wholesale value of the products sold in the agency area. The value is being calculated at the wholesale prices fixed by the Principal from time to time.

The deed of agreement with the zonal agents provides for the payment of 3-1/2% agency commission plus 2% dealers discount. From these agreements, It is seen that the sole selling agent, unless it is zonal agent itself, gets only 1/2% discount on the entire sale proceeds and the remaining 5-1/2% is divided as between the Zonal agent and retail dealers; i.e. 3-1/2% agency commission to the zonal agent and 2% as dealers discount to the retailer. But the petitioner has to allow 6% trade discount out of the fixed sale price. It is not in dispute that about 96 to 97 per cent of the soap manufactured at the factory was or is being sold as per the agreements above referred to. The remaining 3 to 4 per cent was sold to the other dealers at the factory . premises wherein the management allowed discount of only 2%. This is evident from the lists Of transactions furnished by the management of the factory under Exts. R-1 and R-2 which are filed by the respondents along with the Statement of Objections in this Petition. For the petitioner it is contended that sale was only to the retail dealers and approved buyers at the direction of the Government and not to the wholesalers. There seems to be a dispute on this question about which I will consider a little later.

3. The sole question involved in this petition is, What exactly the trade discount allowable in terms of the Explanation to Section 4, in determining the wholesale cash price of the soap manufactured by the petitioner.

4. Before I consider the question, I may set out herein the events leading to the petition. For the period 1-3-1964 to 30-6-1969, the Superintendent of Central Excise approved the price lists submitted by the petitioner in which it was shown that the wholesale buyers of the soap products shall be allowed a discount of 6%. On that basis, he made an order of assessment dated 31-3-1969 demanding duties of excise.

5. Thereafter he had a second thought. He called upon the management to submit lists of sales showing the discount allowed to various buyers at the factory premises. The management submitted detailed lists of sales effected at the factory for the period in question. The Superintendent of Central Excise on considering these sales, held that only 2% discount should be allowed while determining the wholesale cash price of the soap/manufactured by the petitioners. Accordingly, by his order dated 23.7.1969, he modified his previous order of assessment. The petitioner appealed against the said order before the Deputy Collector of Central Excise. The Deputy Collector held that here is no wholesale market as the factory premises and therefore the question of determining the wholesale cash price under Section 4(1) of the Act does not arise. But he proceeded on the basis that there was no dispute regarding the wholesale cash price of the soap as the Department has already approved the price lists submitted by the Government He, however, dismissed the appeal/ holding that 2% discount alone should be deducted out of the wholesale price approved by the Department. Against the order of the Deputy Collector, the petitioner approached the Government of India in revision petition, which was dismissed without much discussion on the rival

contentions of the parties.

6. Before I proceed further, I think I must dispose of the preliminary objection raised by Mr. U.L, Narayana Rao, Counsel for the respondents. He argued that the dispute in this petition is a dispute between the State Government and the Central Government and that dispute exclusively falls for determination under Article 131 of the Constitution before the Supreme Court land therefore this petition under Article 226 is not maintainable. In my opinion, there is no substance in the contention. This is not a dispute as between the State of Karnataka and the Central Government. In the State of Bihar v. Union of India (1) AIR 1970 S.C. 1446, the Supreme Court had an occasion to consider the scope of Article 131 and it was observed :

'Although Article 131 does not define the scope of the disputes which this court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find it necessary to do so, this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up.'

Having regard to the facts of the present case, the dispute for decision herein, is not in the context of the Constitution nor between the constituent units of our federal Government. The present dispute relates to the liability of the petitioner to pay duties of excise in respect of the soap manufactured by it. That dispute, in my view, falls to be determined by the authorities constituted under the Act and the correctness of their decision is subject to the controlling jurisdiction of this Court under Articles 226 and 227 of the Constitution. A similar question came up for consideration before this Court is State of Mysore v. Union of India, (2) (1968) 1 Mas L.J. page 178, wherein at page 181 it was observed :

'a considerable part of the arguments surrounded the question as to how we should understand the expression 'legal right' to which this article refers, and, the words 'subject to the provisions of this Constitution' with which it opens.

Further it was observed

'The central Government functioned as a Tribunal when it disposed of the revision petition under Section 36 of the Excise Act, and a Tribunal which disposes of a revision petition in the exercise of power conferred on it cannot be disputant in the dispute which is decided. Tribunal does not decide its own dispute, and as explained by the Supreme Court on at least four occasions, the Central Government is a tribunal when it decides a revision petition or an appeal or an application for review.'

The above observation applies in every respect to the facts of the present case and I therefore reject the preliminary objection.

7. The several findings recorded by the Deputy Collector regarding the non-existence of the wholesale market and other like matters, are not rightly supported by Sri U.L. Narayana Rao, Counsel for the respondents. Much of the controversy involved in this petition does not survive today in view the present decision of the Supreme Court in A.K. Roy v. Voltas Limited [1977 E.L.T (J 177)]. The only question which falls for decision, as I have already stated above, is regarding the percentage of trade discount allowable under the Explanation to Section 4 of the Act. Explanation to Section 4 reads :

'In determining the price of any article under this section, no abatement or deduction shall be allowed except in respect of trade discount and the amount of duty payable at the time of the removal of the Article chargeable with duty from the factory of other premises aforesaid.'

Mr. Narayana Rao for the respondents contended that since 3 to 4 per cent of the soap manufactured at the factory was sold to the various dealers at the factory premises, that sale price and the discount allowed thereon should alone be taken into consideration for determining the wholesale market for the product and its wholesale cash price, and not the sales effected under the agreements with the sole selling agent and the zonal agents.

8. The contention proceeds on the ground that the quantum of goods sold by the petitioner on wholesale basis is entirely irrelevant for determining the wholesale cash price. That in my view also is the correct approach. But to accept the

contention would be to ignore the true facts of the case, and the purpose for which the petitioner has entered into agreements for the distribution and sale of soap manufactured in the factory. The petitioner has entered into agreements with the sole selling agent and zonal agents, with a view to sell the soap on wholesale basis or at the wholesale market rate. The bulk of the soap manufactured by the petitioner was sold as per the terms of the agreements. The respondents have neither denied the execution of those agreements, nor doubted the validity of bona fides of the terms thereof. That being the true position in the case, the terms under which the said sales were made, should be the basis for determining the price of the soap, and not the terms by which a few isolated sales were made apart from the agreements, because the sales effected under the agreements did not cease to be wholesale sales merely because the wholesale dealers have entered into agreements with the petitioner. The decision of the Supreme Court in Volta's case, and in particular the following observation at page 228, is clear on the point.

'So, even if there was no market in the physical sense of the term at or near the place of manufacture where the articles of a like kind and quality are or could be sold, that would not in any way affect the existence of market in the proper sense of the term provided the articles themselves could be sold wholesale to traders, even though the articles are sold to them on the basis of agreements which confer certain commercial advantages upon them.'

It was further observed :

' The sales to the wholesale dealers did not cease to be wholesale sales merely because the wholesale dealers had entered into agreement with the respondent under which certain commercial benefits were conferred upon them in consideration of their undertaking to do service to the articles sold...'

9, Though the above view may be sufficient to dispose of the petition in favour of the petitioner, it is necessary to consider the controversy relating to the nature of the sales made at the factory premises, whereunder the purchasers were allowed 2% trade discount as per the lists Exhibits R-1 and R-2. The petitioner had no reasonable opportunity to explain before the Superintendent of Central Excise why those purchasers were allowed only 2% discount. The Appellate authority has completely misdirected itself on the said question. Before me, it is the case of the petitioner that those sales were only to the retail dealers who, as per the agreements with the sole selling agents were entitled to 2% trade discount.

10. On the material produced along with the reply statement, one cannot escape the conclusion that those few sales were made to the retail dealers who directly sell the products to their consumers. The respondents have denied the above allegations. But mere denial, in may view, would not in any way advance their case. They have not denied the validity of the agreements entered into by the petitioner with the sole selling agent and the zonal agents, much less they have doubted the correctness of the terms therein. The said agreements provide for allowing a total 6% trade discount, out of which 2% is meant to the retail dealers; 31/2% to the zonal agents and the remaining 1/2% to the sole selling agent. The contention 6f the. petitioner, therefore, finds confirmation from the terms of those agreements and the respondents were in error in giving deduction only 2% Wade discount under Explanation to Section 4 of the. Act . Apart from that, it is difficult to hold that the sales made at the factory premises, were wholesale sales.

11. In the result, this petition is allowed, and the orders under Exhibits 'B', 'D' and 'F' are quashed. In the circumstances, no order as to costs.