

Collector of Central Excise Vs. Subramanyan and Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-27-1994

Reported in : (1994)(52)LC387Tri(Delhi)

Judge : H Chander, R T Lajja

Appellant : Collector of Central Excise

Respondent : Subramanyan and Co.

Judgement :

1. The Collector of Central Excise, Vadodara had filed this appeal feeling aggrieved by the Order dt. 7.2.1986, passed by the Collector of Central Excise (Appeals), Bombay.
2. M/s. Subrahmanyam and Company (the respondents) were engaged in the manufacture of Mono Block pre-stressed concrete sleepers, falling under Item No. 68 of the erstwhile schedule to the Central Excises & Salt Act, 1944 (the old Tariff). In the manufacture of such sleepers, they were using malleable cast iron inserts, which were supplied to them free of cost by the Railways, for whom the said sleepers were being manufactured. The respondents were availing of the exemption under Notification No. 120/75-CE dt. 30.4.1975, under which the Central Excise duty in excess of the duty calculated on the basis of the invoice price, subject to certain conditions, was exempted. The respondents had not taken into account the cost of free supplies of malleable cast iron inserts, while charging the price from the Railways, for the sale of such sleepers and for payment of

Central Excise duty under Item No. 68 under invoice value assessment.

3. The matter was posted for hearing on 8.12.1993 when Shri A.K.Singhal, JDR appeared for the appellants (Revenue). The respondent (Assessee) were represented by Shri Willingdon Christian, Advocate.

4. Shri A.K. Singhal, the learned JDR submitted that the facts of the case were different from the facts in the case of Texmaco Limited v. Collector of Central Excise 1991 (37) ECR 369 (SC). There was no mention of 'inserts' in the invoices, and such 'inserts' were part and parcel of the sleepers. The learned JDR relied upon the Supreme Court decision in the case of Burn Standard Co. Ltd., v. Union of India 1991 (35) ECR 289 (SC), wherein it has been held that under Section 4 of the Central Excises & Salt Act, 1944 (the 'Act') the value of free supply items was to be included in the invoice value of the final product.

5. Shri Willingdon Christian, the learned Advocate replied that the matter was entirely covered by the Supreme Court decision in the case of Texmaco Limited v. Collector of Central Excise 1991 (37) ECR 369 (SC), wherein it has been held that for the purposes of Notification No. 120/75-CE dated 30.4.1975, the value of 'wheel sets' supplied free by Railways was not to be added to the invoice price of wagon bodies.

The learned Advocate submitted that the law declared by the Hon'ble Supreme Court was binding. In this connection he referred to the Supreme Court decision in the case of Ballabhdas Mathuradas Lakhani v. Municipal Committee Malkapur , and the Bombay High Court decision in the case of Ramesh Occhaulal Shah v. Union of India 1993 (44) ECR 44 (Bombay).

6. We have carefully gone through the facts and circumstances of the case, and have given our due thought and consideration to the submissions made by both the sides.

7. The sleepers were manufactured by the assessee as per specific drawing of the Railways under their particulars and tender conditions, as accepted by the assessee. The inserts were supplied free of cost by the Railways, and their cost

did not enter into the invoice raised by the assessee on the Railways. The sleepers were falling under item No.68 of the old Tariff, and for goods falling under item No. 68, a special exemption under Notification No. 120/75-CE dated 30.4.1975 was provided. The Notification No. 120/75-CE dated 30.4.1975 is extracted below: In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excises & Salt Act, 1944 1 to (sic)1944 cleared from the factory of manufacture, on sale, from so much of the duty of excise leviable thereon as in excess of the duty calculated on the basis of the invoice price (excluding duty and local taxes, if any, included in such price) charged by the manufacturer for the sale of such goods: (i) the manufacturer files with the Superintendent of Central Excise having jurisdiction a written declaration to the effect that he opts to avail of the said exemption; (ii) the manufacturer avails of the said exemption uniformly in respect of all goods, sold by him, which fall under the item aforesaid; (iii) the manufacturer certifies that the price referred to in the invoice represents the price actually charged by him for the relevant sale and that the price is the sole consideration for the sale; (iv) the invoice price is not influenced by any commercial, financial or (sic) other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the manufacturer and the person associated in business with the buyer other than the relationship created by sale of the aforesaid goods; (v) no part of the proceeds of the subsequent sale, or disposal of such goods accrues either directly or indirectly to or for the benefit of the manufacturer or any person associated in business with him.

Provided further that a manufacturer shall be entitled to withdraw his option referred to in clause (i) of the preceding proviso after giving to the Superintendent of Central Excise having jurisdiction a prior notice in writing of at least 7 days and where the manufacturer has withdrawn his option he shall, unless otherwise directed by the Central Board of Excise & Customs, be precluded from availing of the aforesaid exemption during the remaining period of the relevant financial year.

8. In respect of the goods falling under item No. 68 of the old Tariff it is thus seen that a special exemption was provided, and for the goods/manufacturers in respect

of which the provisions of Notification No. 120/75-CE, were applicable, the valuation provisions under Section 4 of the Act were not relevant.

9. Railways are a Public Sector Undertaking and the assessee, except the relationship created by the sale of sleepers to them, could have no other relationship with such a public sector undertaking.

10. We find that the matter is entirely covered by the Supreme Court decision in the case of Texmaco Limited v. Collector of Central Excise 1991 (37) ECR 369 (SC). Paras 8, 9 and 10 of the Judgment of the Hon.

Supreme Court in that case, are reproduced below: (8) On a consideration of the matter we are afraid the Tribunal fell into an error in its understanding of the notification. The Notification posits and predicates the possibility that the "invoice-value" could be lesser than the "assessable-value" and, taking into account the need to mitigate the hardship on the manufacturer of being called upon to pay duty on the value in excess of the invoice value, seeks to exempt the manufacturer from payment of duty "in excess of the duty" calculated on the basis of the "invoice-price". There is no dispute in this case that the invoice price represented the value of the wagons, less the value of the "wheel-sets" supplied by the Railways. The invoice-price could not be required to include the value of the "wheel sets". But the "assessable value" would take into account the full commercial value including that of the "wheel-sets". It is in order to mitigate the hardship that may arise by requiring the manufacturer to pay duty on this difference in such cases that the Notification No. 120/75 came to be promulgated. There is nothing in Clause (iv) which enjoins upon the appellant to include the value of the "wheel-sets". The contract between the parties does not also require this. The way in which the Tribunal looked at the notification is neither good sense nor good law. Such construction would make the notification and the exemption contemplated thereunder meaningless. The need for the exemption arose in view of the fact that "assessable value" was higher than the "invoice value". Requiring the former and the latter to be the same as something compelled by Clause (iv) is really to construe the notification against itself.

(9) Shri Subba Rao placed strong reliance on the pronouncement of this Court in *M/s Burn Standard Co. Ltd. and Anr. v. Union of India and Ors.* 1991 (3) *Judgements Today* 108 - 1991 (35) ECR 289 (SC). On the contentions raised and argued in that case the judgement, if we may say so with great respect, is correct. The question of the effect of the exemption Notification No. 120/75-CE was not raised and argued in that case. That apart, the exemption Notification itself makes it clear that it does not apply or is attached to every case automatically, but that the manufacturer should expressly opt for the benefit of the Notification. Since no such claim was made in that case, the decision therein is of no assistance to the revenue.

(10) We accordingly allow these appeals; set aside the order of the authorities as well the affirming order of the authorities as well as the affirming order of the Tribunal under appeal and hold that the appellant was entitled under the said Notification No. 120/75-CE, to exemption from that part of the duty as was in excess of the invoice-price which, we hold, was not required to include the value of "wheel-sets" 11. Before we conclude, it may be mentioned that in an identical matter, in the case of *Collector of Central Excise v. Mani Bhai and Brothers*, the Tribunal had come to a finding that the value of the malleable cast iron (MCI) inserts and fasteners supplied free of charge by the Railways, was to be included in the value of the concrete sleepers. The Tribunal had observed that if the respondents had been using their own inputs, the price of the concrete sleepers with MCI inserts would have been definitely different and higher than what is now at present when it has been supplied free of charge by the Railways.

13. In a subsequent order, dated 21.8.1990, the Tribunal has again taken a similar view in the case of *Taxmaco Ltd. v. Collector of Central Excise, Calcutta*, 1991 (34) ECR 563 (CEGAT-SB 'A'). In para 6 of that decision the Tribunal did not agree with the arguments of the appellants' Counsel that "assessable value of the article is different from the consideration received by the appellants to claim benefit under Notification No. 120/75." 14. This decision of the Tribunal has been set aside by the Hon'ble Supreme Court as discussed in para 10 above. *Collector of Central Excise v. Mani Bhai and Brothers* 16. As a result, we reject the appeal of the Revenue, with consequential relief, if any, to the respondent.

