

Union of India and ors. Vs. S.S.M. Bros. Pvt. Ltd. and anr.

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Court : Chennai

Decided On : Mar-08-1985

Reported in : 1985(5)ECC173; 1985(22)ELT766(Mad)

Judge : M.A. Sathar Sayeed and ;Ramanujam, JJ.

Acts : Central Eexcise ACT, 1944 - Sections 3 and 4; Central Excise Rules, 1944 - Rules 96J and 173C; ;[Central Excise Act, 1944](#) - Sections 4

Appeal No. : Write Appeal Nos. 435/1978, 554/1978, 259/1980 and 559/1981 against W.P. Nos. 1114/76, 1123/76, 2135

Appellant : Union of India and ors.

Respondent : S.S.M. Bros. Pvt. Ltd. and anr.

Advocate for Def. : Thiru C. Natarajan, Adv.

Advocate for Pet/Ap. : Thiru T. Somasundarm, Additional Central Government Senior Counsel

Judgement :

ORDER

Ramanujam, J.

1. In all these appeals, the common question that arises for consideration is, as to whether the respondent in each of these appeals is entitled to exclude the trade discount as well as cash discount in the determination of the manufacturing cost of articles for purposes of levy of excise duty.

2. Since the facts in all these writ appeals are similar, it is sufficient to refer to the facts in one case. viz. W.Ap. No. 435 of 1978. The respondent in each of these appeals is manufacturer of embroidered cotton fabrics. They are assessable to excise duty under Item 19-II of the First Schedule to the Central Excises and Salt Act, 1944, hereinafter referred to as the Act. Upto 30th November 1973, the respondents were paying Central Excise duty at ad valorem basis. From 1-12-1973, they opted to pay duty at compounded rates under Rule 96-J of the Central Excise Rules. Under Section 4(a) of the Act, before its amendment the value of an article is the wholesale cash price of which an article of the like kind and quality is sold or is capable of being sold at the time of removal of the article from the factory or any other premises of manufacture or production for delivery at the place of manufacture, or if a wholesale market does not exist for such articles at such places, at the nearest place where such market exists. The said section contained an explanation which provided that for determining the price of any article, no abatement or deduction shall be allowed except in respect of trade discount and the amount of duty payable at the time of removal of the article from the factory or other premises aforesaid. For the purpose of assessment of duty of the embroidered fabrics manufactured by the respondents, they had submitted price lists as required by Rule 173-C of the Central Excise Rules excluding the trade discount which they were allowing. However, the concerned Assistant Collector of Central Excise allowed a trade discount of 4 per cent to all purchasers in all States and another cash discount of 3 per cent towards prompt cash subject to the condition that it is established in each case of clearance that the discounts were allowed uniformly to all purchasers. However, on the ground that the discount allowed is not uniform, a demand was issued under Rules 10-A of the Central Excise Rules, 1944, under which the respondents were called upon to show cause and not satisfied with the explanation given by them the Assistant Collector of Central Excise held that the respondents are not eligible for any trade discount.

3. Aggrieved by the order of the Assistant Collector, the respondents preferred an appeal to the Appellate Collector. However, the said appeal was rejected on 12-12-1973. Thereafter, a revision was filed before the Government of India, who by their order dated 29-8-1975 rejected the same. It is at that stage the respondents have come before this Court seeking to quash the order of the Government of India affirming the orders passed by the authorities below. The ground on which the trade discount which was originally allowed was withdrawn by the authorities is only on the basis that the trade discount has not been uniformly allowed to all the purchasers. One further ground that was urged at the stage of the writ petition on behalf of the Department is that the trade discount can be allowed only if it is given at the time of the sale of the goods, that is at the time of the removal of the goods and not long afterwards. Mohan, J. dealing with these two reasons for withholding the allowance given for trade and cash discount held that there is no requirement for the application of the explanation to Section 4 that the trade discount must be uniform and that trade discount which were in fact allowed cannot be ignored merely because it was allowed under credit notes. As there is no requirement under the law that such a discount must be given at the time of sales, and it matters very little whether the trade discount is given at the time of the sales or on subsequent dates so long as such a discount has been given with reference to the sales. The question is whether the view taken by the learned Judge could be taken exception to.

4. Excise duty is charged under Section 4 of the Act on the actual wholesale price of the manufacturer and not the list price which is generally the retail price at which the manufactured article is sold. As a matter of fact, the difference between the list price and the actual wholesale price does not go into the pocket of the manufacturer, and, therefore, it is in the nature of a post-manufacturing expenses. Therefore, the deduction from the list price has to be made so as to arrive at the actual wholesale price. Section 4 provides for payment of the trade discount from the list price. The words 'trade discount' are not defined in the Act. But Corpus Juris Secundum Volume 26-A, page 974, contains a definition of 'trade discount' as under :-

'The term 'trade discount' means the difference between the seller's list price and the price at which he actually sells goods to the trade; a percentage deduction from the regular list or catalogue price of goods.'

The Supreme Court in the case of *Voltas Ltd.*, 1977 E.L.T. J 177 has held that trade discount is a percentage deduction from the regular list or catalogue price of goods. Thus trade discount normally means a deduction or reduction from the catalogue price of goods allowed by the wholesalers to retailers in the trade. The Supreme Court has held in the above case that trade need not be uniform and that even if the different rates of trade discount are allowed by the manufacturer, a deduction could be permitted in relation to such different rates of trade discounts if they are not determined on any extra commercial considerations. In this case though the authorities proceed to deny the benefit of the deduction of trade discount from the list price merely because they are not uniform and they have not given any finding that the different rates of trade discount had been adopted on extra commercial considerations. Therefore, in view of the said decision of the Supreme Court, trade discount has to be allowed even if the rates are not uniform.

5. In *Bombay Tyres case*, 1984 17 E.L.T. 329, the Supreme Court has held that if by the terms of the sale or by established practice the allowance and nature of the trade discount is known to the purchaser prior to the removal of the goods, the deduction of such discount cannot be disallowed merely because they are not payable at the time of each invoice or deducted from the invoice price and the relevant observations of the Supreme Court are these :-

'Trade discount : Discounts allowed in the Trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of discount being known at or prior to the removal of the goods. Such Trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.'

The above decision is a clear authority for the proposition that the case discount cannot be disallowed merely on the basis that the discount is not allowed at the

time of the sale of the articles but at a later point of time as has been done by the authorities below.

6. Coming to the question as to whether the appellants are right in making a distinction between a trade discount and cash discount, it is seen that the Supreme Court proceeded on the basis that the trade discount, by whatever name it is described, should be deducted from the sale price if such discount was known to the purchaser prior to the purchase. It is not in dispute that in this case the cash discount has been notified in the price list. Normally, cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed or it is a discount allowed in consideration of the expeditious payment and, therefore, it should also be a discount admissible under Section 4. In *Jenson and Nicholson's case*, : 1984(17)ELT4(Bom) , the Bombay High Court has held that if certain trade discount, by whatever name it is called, is allowed by the manufacturer to its customers under the terms of sale or agreement, the amount has got to be deducted from the sale price before arriving at the assessable value of the product provided the allowance and the nature of the discount should be known at or prior to the removal of the goods. In the present case, the price list prepared by the respondent discloses that a particular percentage of the total price will be allowed as discount if the payment is made in cash or within certain time and, therefore, it should be taken that the purchasers are aware of the said discount allowed depending upon when the payment of the price is made. Therefore, cash discount is also admissible irrespective of whether each customer avails of the said discount or not.

7. Thus all the contentions advanced on behalf of the appellants fail and the writ appeals are, therefore, dismissed. There will, however, be no order as to costs.