

Window Glass Limited Vs. Superintendent, C.E.

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Court : Kolkata

Decided On : Jul-10-1985

Reported in : 1992(38)ECC354,1988(37)ELT544(Cal)

Judge : Suhas Chandra Sen, J.

Acts : Central Excises Act, 1944 - Section 4, 4(1), 4(4)

Appeal No. : Civil Rule No. 1520W of 1976

Appellant : Window Glass Limited

Respondent : Superintendent, C.E.

Advocate for Def. : N.C. Roy Chowdhury and ;Uma Sanyal, Advs.

Advocate for Pet/Ap. : R.N. Bajoria and ;Dilip Dhar, Advs.

Judgement :

Suhas Chandra Sen, J.

1. Window Glass Limited, the petitioner herein, has a factory at Bansberia, District: Hooghly, West Bengal, where it manufactures glass. The excise duty was leviable ad valorem and the petitioner at all material times paid whatever excise duty was levied on the glass manufactured by the petitioner.

2. On 15th September, 1975 the petitioner submitted particulars in respect of goods manufactured by it for approval of the assessable value. In the proforma, the petitioner declared the price at which the various qualities of glass manufactured by the petitioner were sold. The petitioner stated that the price list included the cost of ordinary frame packing but did not include the cost of special packing which was provided at the request of and on account of the buyers for avoiding breakage in transit. The petitioner also declared that forwarding charges and/or charges for providing planks and jam packing were also separately realised but it from the buyers where such services were rendered at the request of and on account of the buyer for the purpose of transportation of the goods. The petitioner claimed that the cost of special packing as well as forwarding and other expenses incurred in connection with transportation of the goods from the factory of the petitioner should not be included in the assessable value.

3. The case of the Respondents is that the petitioner had contravened the provisions of Section 4(1)(a) of the Central Excises and Salt Act, 1944 (hereinafter described as the Act) inasmuch as It charged from its customers, excepting customers at Calcutta, forwarding charges, laffa charges and miscellaneous handling charges at different rates In addition to the prices as declared by it while delivering its products from its place of removal, i.e., the factory gate. It was alleged that the petitioner did not include such charges in the prices as declared by it. The petitioner was asked to show cause why the aforesaid charges should not be taken into consideration for determination of the normal price for the purpose of determining the assessable value of the goods manufactured by the petitioner. The petitioner failed to appear pursuant to the show cause notice. The petitioners prayed for extension of time was refused and an order was passed ex parte in which the various charges on account of special packing and also transportation of the goods were included in the assessable value.

4. The petitioner has now challenged the ex parte order dated January 27,1976 passed by the Respondent No. 2, the Assistant Collector of Central Excise, Chandannagar. The first point urged by the petitioner is that the petitioner was not given a proper hearing. The only extension of time was sought for on the ground that the person who dealt with the excise affairs of the petitioner company, Sri A.N.

Singh, was on long leave due to the death of his father at that time. This was the only adjournment the petitioner had prayed for. In all fairness, this adjournment should have been allowed.

5. On merits, the petitioner's case is that the impugned order was on the face of it erroneous. In that the order was passed on the assumption that all packing charges which are not of durable nature and returnable must be included by virtue of provisions of Section 4(4)(d) of the Act.

6. Section 4 of the Act lays down the method of valuation of excisable goods for the purpose of levying of excise duty. The valuation has to be done under Section 4(4)(d) on the basis of the normal price at which the goods are ordinarily sold by the assessee to a buyer 'in the course of wholesale trade for delivery' at the time and place of removal.

7. The normal price at the time and place of removal, therefore, is the prime consideration for fixation of the assessable value. The case of the petitioner is that the petitioner sold goods to parties at Calcutta. The packing what was provided for sale of such goods is the primary packing and that must be regarded as the normal price at the time of sale at the factory gate where the goods are expected to be removed by the buyers. The goods that are despatched in other parts of the country or in far away places in special packing has to be valued in the same way as the goods that are sold in Calcutta. The petitioner's case, which has not been contradicted on affidavit or in the impugned order passed by the Respondent No. 2, is that the special packing is provided at the request of the outstation buyers and on their account. If that be the case, then such price of such special packing cannot be included in the assessable value. It is true that Section 4(4)(d) of the Act contemplates inclusion of cost of packing except in cases where the packing is of durable nature and is returnable by the buyer to the assessee. There is no controversy that the packing that is provided by the petitioner for selling goods at the factory gate must be included in the assessable value. The petitioner's case is that this is how the goods are sold at the factory gate and to the buyers in Calcutta. But where goods have to be despatched to far away places, special packings are provided at the request of the buyers and on their account. The

special packing that is provided at the request of buyers cannot come within the mischief of Section 4(4)(d) of the Act. In my judgment, there is considerable force in this contention of the petitioner. In the case of Union of India and Ors. v. Bombay Tyre International Limited : 1983ECR653D(SC) the Supreme Court pointed out:

' It seems to us that the degree of secondary packing which is necessary for putting the excisable articles in the condition in which it is generally sold in the wholesale market at the factory gate is the degree of packing whose cost can be included in the 'value' of the article for the purpose of the excise levy...If any special secondary packing is provided by the assessee at the instance of a wholesale buyer, it is not generally provided as a normal feature of the wholesale trade, the cost of such packing shall be deducted from the wholesale cash price.' (pages 443-444)

8. In the light of the Supreme Court judgment and if the contention of the petitioner is true, the special packing is provided by the assessee in the instant case at the request of the wholesale buyers. The normal wholesale charge made by the petitioner at the factory gate is for the primary packing. If the facts, are what has been stated by the petitioner, true, the petitioner is entitled to succeed on this point.

9. In the case of Union of India v. Duphar Interfran Limited (Civil Appeal No. 569 of 1981) - 1987 (27) ELT 599 (SC) it was held by the Supreme Court by a judgment dated 3rd May, 1984 that 5% extra charge levied by the assessee in that case on account of packing had to be excluded from the assessable value. The judgment of the Supreme Court was given on the basis of the finding that the disputed charge of 5% merely represented the cost of additional packing 'if it is so desired by the wholesale dealers and moreover, in such case, the wholesale dealers take delivery of the goods manufactured by the Respondents from the duty paid warehouse situated outside the factory premises.'

10. My attention was also drawn to the judgment of the Bombay High Court in the case of Godrej and Boyce Manufacturing Company Private Limited, Bombay and Anr. v. Union of India and Ors. : 1984(18)ELT172(Bom) where It was held by

Majohor J. that wholesale dealers in India cannot be considered as belonging to different classes simply because they are located in different towns or factories. It was held that refrigerators were sold in the wholesale market at the factory gate in Bombay. The cost of packing, whether primary or secondary, which had to be included in the assessable value was the packing in which the refrigerators were sold in the wholesale market at the factory gate. The packing and also the fitments and also the wooden base provided for transportation and delivery of goods to wholesale dealers outside Bombay was to be treated as a special secondary packing and such costs were not includible in the assessable value.

11. I am in respectful agreement with the views expressed by Manohar J. In my view, if the allegation of facts made by the petitioner is right, then the forwarding charges, Laffa charges, miscellaneous handling charges which were realised from outstation parties by separate bills will form part of selling costs and cannot be included in the assessable value. Similarly, special packing provided at the request of outstation purchaser cannot also form part of the assessable value which has to be determined on the basis of the wholesale price charged at the time and place of removal of the goods from the factory gate.

12. The impugned order passed on 27th January, 1976 by the Respondent No. 2, therefore, must be quashed. The principles of law are quite dear. But since the assertion of facts made by the petitioner has not really been Investigated, the case is remanded to the Assistant Collector of Central Excise to investigate into the facts and pass a fresh order in accordance with law bearing in mind the principles of law as stated hereinabove.

13. The Rule is disposed of finally as above.

14. There will be no order as to costs.