

Hindustan Lever Ltd. Vs. C.C.E.

Hindustan Lever Ltd. Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/8935

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-29-1995

Reported in : (1997)(89)ELT720TriDel

Appellant : Hindustan Lever Ltd.

Respondent : C.C.E.

Judgement :

1. The various issues involved in these appeals relating to determination of assessable value of excisable goods under Section 4 of the Central Excises and Salt Act, 1944 are broadly summarised in the chart as given below :
Item of Appeal No. 5432/92 2089 & 2271/93 abatement Freight Collector (Appeals) allowed
Allowed by Asstt.

equalised freight after Collector Handling Disallowed by Collector Disallowed by Collector charges (Appeals) on the basis of (Appeals) as these BTI Para 49 expenses upto the date of delivery cannot be excluded C&FA Re- Disallowed by Collector Disallowed as these remuneration (Appeals) on the ground that expenses are part & parcel expenses go into the value of the of marketing and selling goods.

organisations Turnover Disallowed - prohibition of Allowed by ACTax recovery of TOT in Karnataka Interest on Disallowed on the MRF decision Disallowed on the ground Receivables recalled that expenses upto date of delivery cannot be Interest on Disallowed on the MRF decision - do - finished recalled Bank charges Allowed by Collector (Appeals) - do - Special second - Disallowed on the ground of Disallowed

as unit of sale durable packing being normal packing is carton Quantity discount Disallowed as no evidence led Disallowed as discount not known prior to sale of goods Discount for Disallowed as extent of damage Disallowed as discount not damages not known at the time of known prior to sale of clearance goods Durable and Allowed by Collector (Appeals) Not raised returnable Item of abatement Appeal No. 1147/93 Freight Allowed by Asstt. Collector Handling charges Allowed on the basis on 27-4-1992 order C & FA remuneration Allowed on the basis of TIL & Guljag Turnover Tax Allowed by AC Interest on receivables Allowed on the basis of Guljag Interest on finished goods Allowed on the basis of 27-4-1992 order Bank charges Allowed on the basis of Guljag Special secondary packing Disallowed as goods are generally sold in carton Quantity discount Allowed on the basis of 27-4-1992 order Discount for damages Allowed on the basis of TIL and Guljag Durable and returnable packing Not raised Appeal No. 1429/94-A arises out of assessment of RT12 by the Superintendent on the basis of AC's order. The AC's order is in appeal 2089/93-A and, therefore, two appeals are interlinked.

Appeal No. 1117/93-A filed by the Department is linked to appeal No. 1147/93 and arises as a result of various deductions allowed by the Collector (Appeals).

2. Learned Counsel Shri C.S. Lodha appeared for the appellants, M/s Hindustan Lever Ltd. He submitted that out of the items for which deduction from assessable value has claimed are listed above. In respect of freight, the law is now settled that this element is not to form part of the assessable value which has already been laid down by the Supreme Court in the case of Bombay Tyres International and again reiterated in the recent judgement of the Supreme Court in the case of Government of India v. MRF reported in [1995 (77) E.L.T. 433]. The learned Counsel further submitted that the appellants, M/s Hindustan Lever are also not pressing the issues regarding includibility of C & F Agents Remuneration and interest on finished goods as well as special secondary packing because of the law having already been laid down in the MRF of the Supreme Court (supra) wherein the findings of the Supreme Court are against the appellants, the Supreme Court having held that these elements are includible in the assessable value.

Turn-over Tax: As regards turnover tax, the learned Counsel referred to para 14 of the MRF judgment in which the Supreme Court had quoted relevant para of the clarificatory judgment of the Bombay Tyres International in which it has been clearly laid down that additional sales tax, surcharge on sales tax and turnover tax should be allowed to be deducted from the wholesale price in order to arrive at the assessable value. Similarly, learned Counsel submitted that in para 66 of the MRF judgment, the Supreme Court has held that interest on receivables will not fall within the ambit of any of the expenses held to be includible in the Bombay Tyres International case and is clearly excluded as it is only collected in view of the time taken in making the payment by up-country wholesale buyers. We find this contention acceptable.

Bank Charges: Learned Counsel also submitted that in respect of bank charges the nature of these charges is akin to that of interest on receivables. The Tribunal had occasion to consider the includibility or otherwise of these charges and in its decision in the case of M/s.

Guljag Chemicals and Plastics P. Ltd. reported in [1993 (63) E.L.T.710]. The Tribunal has held that these are admittedly post manufacturing expenditure, and are not includible in the assessable value of the excisable goods. Learned Counsel submitted that the ratio in respect of interest on receivables contained in para 66 of the MRF judgment already noted above will clearly apply to the facts of this case also and therefore, bank charges are not to be included in the assessable value. On a perusal of the judgment cited supra we are inclined to agree with the submissions made by the learned Counsel.

Quantity Discount: As regards the element of quantity discount, the learned Counsel referred to paras 55 and 58 of the MRF judgment. The ratio is that the discount even if not shown in the invoice, yet if the scheme of such discount is known at the time of removal, this is to be allowed to be deducted from the assessable value though the actual quantum of such discount may be determined later, say/after an interval of six months.

In such cases, the fact that such discount is not quantified and invoiced at the time of removal will not be a ground for denial in applying the ratio of the MRF judgment

of the Supreme Court. The learned Counsel in this regard also referred to the decision of the Bombay High Court in the case of M/s. Goodlass Nerolac Paints Ltd. v. Union of India reported in 1993 (65) E.L.T. 186 wherein on similar grounds, the Bombay High Court held that a bonus discount extended to the customers though not known at the time of removal is still admissible for the same reason as above. This decision of the Bombay High Court, learned Counsel pointed out, has been subsequently challenged by the Revenue and the Supreme Court had dismissed the SLP on merits.

3. On a careful consideration, we are inclined to agree with these submissions on these lines made by the learned Counsel. But we would observe that this is ultimately a question of fact as to the nature of the turnover discount offered by the appellants, Hindustan Lever and the quantification thereof and as to whether the factual situation is such that the Jurisdictional Assistant Collector is satisfied that the scheme as such is known to the buyers in advance.

In respect of this element, the learned Counsel submitted that the Tribunal had occasion to consider such a discount in its decision in the case of Tungbhadra Industries Ltd. v. Collector of Central Excise reported in 1992 (60) E.L.T. 512 (Tribunal). On a perusal of the decision, we find that in para 19 thereof, the Tribunal has followed the precedent decision in the case of Assam Valley (P) Ltd. v. CCE reported in 1989 (43) E.L.T. 360 (Tribunal) according to which varying discount reduction depending upon the nature and extent of damage in each case is admissible. In the Tribunal decision in the Assam Valley case, the Tribunal had held that the discount reduction actually allowed from case to case in such a situation may be accepted after necessary verification by the authority. While on the subject, learned DR Shri Singhal pointed out that arrangements in this regard regarding transit insurance is that the buyer bears the insurance and for any damage he claims from the Carrier, and the learned Counsel on the other hand says that as a matter of fact neither party is insuring the goods in transit. But the Counsel submits that the appellants, Hindustan Lever have a scheme by which on report of any damage by a customer, the discount they extend to him as a concession by way of proportionate discount. In such circumstances, the determination of the question of adding this element in the assessable value will

have to depend on the ground situation of facts and we hold that the Assistant Collector may examine this factual aspect and decide the issue case by case as has been laid down by the Tribunal in the Assam Valley case.

In regard to handling charges, the learned Counsel again relied upon the MRF judgment. Learned Counsel urged that the Supreme Court has held that freight and insurance charges from the place of removal to the place of delivery is to be excluded. The appellants, Hindustan Lever are not including handling charges incurred within the factory and the claim is only with reference to the handling charges incurred on the transport of the goods from the factory to their depots and upto the point of sale. Learned Counsel argued that these handling charges are also in the nature of adjunct to the transport charges which are held to be excludible by the Supreme Court judgment in Bombay Tyre International as well as the MRF case. The learned Counsel further made a reference to the the Supreme Court judgment in the case of Indian Oxygen v. Collector of Central Excise reported in 1988 (36) E.L.T. 723 in which the Supreme Court inter alia has observed that the loading expenses incurred outside the factory gate was excludible and applying this principle, it is clear that handling expenses incurred in the transport of the goods outside the factory gate to their depots would also have to be excluded. This also would follow, according to the learned Counsel from Section 4(2) of the Central Excises and Salt Act which refers to the factory as place of removal and also that the place delivery and the total cost of transport from factory i.e. place of removal to the place of delivery which would include journey of the goods between the factory gate to their depots also. Learned DR, Shri A.K. Singhal in this regard pointed out that the sale pattern of the goods in this case is that there are no factory gate sales at all and all their sales take place from their depots. In such a situation, handling charges as are incurred by the appellants, are to be considered at par with such charges included at the factory gate and in such a view of the matter they have to be included in the assessable value. Learned DR would urge that it is handling charges incurred in this regard on subsequent removal of the goods from their depots to their customers, they could claim their expenses. We have carefully considered the rival submissions on this point. We find that in the case of Bombay Tyres International, the Supreme Court had observed that the expenses incurred on account of several factors which have

contributed to the value of the goods upto the date of sale which apparently would be the date of delivery are liable to be included.

Consequently where the sale is effected at the factory gate, expenses incurred by the assessee upto the date of delivery on account of storage charges, outward handling charges, interest on inventories, charges for other services after delivery to the buyers viz. after-sale service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. The Supreme Court further observed therein that where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place outside the factory gate, the expenses incurred by the assessee upto the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the Supreme Court pointed out that the assessee will be entitled to a deduction on account of the cost of transportation of the excisable articles from the factory gate to the place or places where it is sold. The cost of transportation the SC laid down will include the cost of insurance and freight for transportation of the goods from the factory gate to the place or places of delivery. Having noted the decisions of the Supreme Court as above, we further note the subsequent MRF decision. In this decision in para 27, the Supreme Court has held that in cases where the goods are sold in the course of wholesale trade at place or places outside the place of removal i.e. at depots, the expenses incurred in maintaining and running the said depots may not be deducted from the price but the cost of transportation along with the cost of insurance on freight can be deducted as held in *Bombay Tyre International*. The Supreme Court made these observations on over-ruling the submissions of the learned Counsel of the MRF which inter alia was that the storage charges and several other charges are also incurred at the depots and that all these charges are incurred subsequent to the removal of the goods from the factory gate and that since they are all post-removal expenses, the learned Counsel had submitted that they must necessarily be deducted from the price charged at the depot for ascertaining the price charged at the place of removal for wholesale trade. This submission was over-ruled and it was held that the expenses incurred in maintaining and running the depots cannot be deducted. We are inclined to accept the view that handling charges would form part of the other charges referred to in the maintenance of the depots because we note that even in

the earlier Bombay Tyre International decision of the Supreme Court, the Supreme Court had held that handling charges if incurred in a sale pattern of the sale from the depot will not be deducted. In such a view of the matter, we hold that handling charges would be a adjunct rather of the depot maintenance expenses than that of transport cost. In such a view of the matter, the handling charges would be included in the assessable value. However, here too the question of factual situation would have to be verified by the Jurisdictional Assistant Collector to finally determine the quantification of the addition to the value on this account.

6. In the light of the above discussions on the various elements of cost involved in all these appeals, we direct that where the appellant, Hindustan Lever is eligible for the deduction of certain elements of cost on factual verification by the Jurisdictional Assistant Collector of Central Excise and the assessable value may be redetermined on such verification and in the light of the observations referred above as also on the ratio of the Supreme Court in the MRF case referred to supra. In so redetermining the value the Assistant Commissioner will give an opportunity of hearing to the appellant, Hindustan Lever and permit them to adduce evidence as they may have in the matter and may decide redetermination in accordance with law.

7. In the light of the above observations and our findings, the Department's appeals are also consequently disposed in the above terms.

8. On hearing the learned Counsel and the learned DR, we find that in the case of the appellant, M/s. Allied Processors the same elements of cost' and the same submissions are made. Therefore, we dispose of this appeal also of M/s. Allied Processors in the terms as above for a redetermination of the assessable value in accordance with law and after giving the appellant an opportunity to put forth their case.