

Spencer Consumer Products and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-22-1996

Reported in : (1996)(87)ELT663TriDel

Appellant : Spencer Consumer Products and

Respondent : C.C.E.

Judgement :

1. These are two appeals filed by M/s. Spencer Consumer Products and Services Ltd. (herein after referred to as SCP) being aggrieved with two separate orders-in-appeal both passed by the Collector of Central Excise (Appeals), Madras. Both these appeals relate to common questions and they were heard together and are being disposed of by a common order.

2. The matter was heard on 22-5-1996, when Shri G. Shiva Dass, the learned Advocate briefly stated the facts. There is no dispute that SCP and M/s. Spencer and Company Ltd. (herein referred as SCL) were related persons for the purposes of Section 4 of the Central Excises and Salt Act, 1944 (the Act). SCP were engaged in the manufacture of various products including Squashes and Syrups and the goods were assessed at the price at which SCL were selling the products in the wholesale market. The learned Advocate stated that the specially designed printed cardboard cartons for stacking 12 bottles in each cartons were supplied by SCL free to them and that its costs should not be included in the assessable value. He referred to the Tribunal's decision in the case of Universal Glass Ltd. v. Collector of Central Excise, Meerut - Order Nos. 656 and 657/1987-A wherein it

had been held that the cost of cardboard cartons supplied free of cost by the consumer was not includible in the assessable value i.e. empty bottles in that case. He further submitted that this decision of the Tribunal has been confirmed by the Hon'ble Supreme Court in Civil Appeal Nos. 105 and 106 of 1988, dated 2-2-1995. He also referred to the Supreme Court's decision in the case of Hindustan Polymers Ltd. v. Collector of Central Excise - 1989 (43) E.L.T. 165 (SC), wherein the Supreme Court had held that when no cost was incurred for packing by the manufacturer then the cost of packing was not includible in the assessable value.

3. In reply Shri G.D. Sharma, the learned JDR has submitted that both SCP and SCL were related persons; SCL was a holding company and SCP was a subsidiary company. The factory which was earlier run by the holding company was given to the subsidiary company and admittedly the assessable value were determined on the basis of prices of the holding company. He further submitted that in the case of Universal Glass Ltd. relied upon by the learned Advocate, the matter did not relate to related persons. In the case of Hindustan Polymers Ltd. the containers were durable and returnable. He submitted that in the facts and circumstances of the case, there is no question of any deduction of the cardboard packing which was a secondary packing and has held by the Hon'ble Supreme Court in the case of Bombay Tyre International Ltd. was includible in the assessable value.

4. We have carefully considered the matter. There is no dispute that SCL was a holding company and SCP was a subsidiary company. In fact, both had the same registered office-769 Anna Salai, Post Box No. 301, Madras-600002; same telex No. same Telephone No., same Telegraphic address, and the same codes. From the letter dated 1-4-1982 of the SCL addressed to SCP, it is seen that earlier they were manufacturing Squashes and Syrups at Mangalagiri where as per agreement between the holding company and the subsidiary company, the SCP started manufacturing the squashes and syrups on behalf of SCL. The relevant portions from the letter are given below ; - "We retain our right to sell Squashes and Syrups which we were hither to manufacture the squashes and synthetic syrups in your factory at Mangalagiri on our behalf and the entire stock has to be sold to us for further marketing the product by us and you are forbidden to sell the above

product at any time to your dealer from your dealer from your factory." 5. Under Section 4 of the Act where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person was to be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal to dealers (not being related persons) or where such goods are not sold to such dealers to dealers (being related persons) who sell such goods in retail. Thus, the value for the purpose of Section 4 of the Act in the circumstances of this case was to be determined on the basis of the price at which they were sold by SCL. SCL were selling the excisable goods duly packed in the specially designed printed cardboard cartons and each carton stacked 12 bottles. It has been explained in Section 4(4)(d)(i) that where the goods are delivered at the time of removal in a packed condition then, the value in relation to any excisable goods includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee. In this case there is no dispute that the cardboard packing was not a returnable packing and was not of a durable nature.

6. The learned Advocate had submitted that they had not incurred any cost with regard to such packing and therefore, this cost did not enter into their manufacturing cost. The Hon'ble Supreme Court in the case of Union of India v. Bombay Tyre International - 1983 (14) E.L.T. 1896 (SC) in Para 40 of their decision had held that the excise levy could not be confined to the manufacturing cost and the manufacturing profit in respect of the article. They held "This brings to a close in these cases the question whether the value of an article for the purposes of excise levy must be confined to the manufacturing cost and the manufacturing profit in respect of the article. In our judgment, the question has to be answered in the negative." 7. The goods were entering the stream of trade only when they were removed at the hands of SCL. The price relevant for assessment will be the price when the goods first enter the stream of trade in this case by SCL. The Hon'ble Supreme Court in the case of Bombay Tyre International (supra) had held in Para 22 as under :- "The only relevant price for assessment of value of the goods for the purpose of excise in such a case would be wholesale cash price

which the manufacturer receives from sale to the first wholesale dealer, i.e. when the goods first enter the stream of trade." In this case the goods enter the stream of trade not when they were supplied by SCP to SCL, but when SCL sold them further to their wholesale dealers.

8. In the case of Squashes and Syrups the primary packing is that of the bottles. The cardboard carton packing is the secondary packing and this secondary packing was necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market and its cost is includible in the value of the article for the purpose of excise duty. In Para 51 of their decision in the case of Bombay Tyre International (supra) the Hon'ble Supreme Court had held "It seems to us that degree of secondary packing which is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market at the factory gate is the degree of packing whose goods can be included in the 'value' of the article for the purpose of the excise levy. To that extent the cost of secondary packing cannot be deducted from the wholesale cash price of the excisable article at the factory gate". In this case, there is no sale as stipulated in Section 4 at the factory gate and the goods were sold in the wholesale trade only when so sold by SCL, and SCL sold the goods duly packed in the cardboard cartons. Similar view has been expressed by the Hon'ble Supreme Court in the case of Geep Industrial Syndicates Ltd. v. Union of India "There is no doubt that packing in polythine bags and cardboard cartons is includible in the determination of the value of batteries and toupches for the purpose of levy of excise duty." 9. The learned Advocate had relied upon the Tribunal's decision in the case of Universal Glass Ltd. referred to above. In that case the goods involved were empty glass bottles and jars. These empty glass bottles and jars were supplied to the customers. The customer was using these glass bottles and jars for packing the goods manufactured by them. In other words, there was no sale as such of the empty glass bottles and jars by the customers. In the matters before us the price at which the excisable goods were sold by the holding company has been adopted for determining the assessable value. In the circumstances, we do not find any similarity in the matters before us with the issue before the Tribunal in the case of Universal Glass Ltd. 10. The learned Advocate had also referred to the Hon'ble Supreme Court's decision in the case of Hindustan Polymers v. Collector of

Central Excise - 1989 (43) E.L.T. 165 (SC). In that case before the Hon'ble Supreme Court the goods involved were fusil oil/styrene monomer and they were marketable without being packed or contained in the drums or containers. The Hon'ble Supreme Court had held in that case that packing was not necessary for completion of manufacture of excisable goods. The Hon'ble Supreme Court had held that the cost referred to in Section 4(4)(d)(i) was not cost which was incurred by the assessee i.e.

the seller. Further they have referred to the scheme of the Section whereunder durable packing returnable by the buyer has to be excluded.

They have held "It would create an absurd situation if durable packing supplied by the assessee and returnable to the assessee is not to be includible in the assessable value but a durable packing supplied by the buyer to the assessee and returnable to the buyer is made a part of the assessable vlaue". In the proceedings before us it is not the case of the appellants that the cardboard containers were durable and returnable. The Squashes and Syrups would not be sold loose in the wholesale market. They had to be packed in packing which in this case was a cardboard carton for stacking 12 bottles in each carton. These were specific to the goods with name of the product and other necessary details to identify the product and the producer were imprinted.

11. Taking all the relevant considerations into account, we find no merit in both these appeals and the same are rejected.

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