(1973) 12 KAR CK 0001

In the Karnataka High Court

Case No : C.W. No. 1196 of 1971

Bangalore Bottling Co. (Pvt.) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 05-12-1973

Acts Referred:

Central Excise Act, 1944 — Section 4, 4 (a)
Constitution of India, 1950 — Article 226, 227

Citation : (1979) CENCUS 50

Hon'ble Judges : K. Jagannath Setty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Jagannath Setty, J.—The Petitioner is a private limited company, which I shall call as ''the Company''.

2. The Company is manufacturing for sales aerated waters under different trade marks, viz., Gold Spot, Kismet, Rimzim and Parle''s Soda. These sales are effected by the Company either to the customers at its factory premises or at their doors at different places. The bottles are filled by the drinks and corked at the factory and thereafter delivered to the customers. If the customers take the bottles at the factory premises they are not charged with any freight charges. But if the bottles are delivered at the customer''s doors, then Rs. 2/- per case of 24 bottles was charged extra, as freight charges. The respondent said that the said charges should also be included within the wholesale cash price for the purpose of levy of excise duty which the Company resisted.

3. The Superintendent of Excise fixed the assessable value of the goods accordingly and levied the excise duty inclusive of freight charges. The Company preferred an appeal to the Deputy Collector of Central Excise. The appeal has been dismissed on the following two grounds:

(1) That the freight and transport charges cannot be excluded in determining the

wholesale cash price of the articles manufactured by, the company, and ;

(2) that there is no wholesale market in the factory premises as the articles in question are not habitually sold at the factory premises.

4. While challenging the appellate decision, the Petitioner has moved this court under Articles 226 and 227.

5. The question that calls for decision is, whether the freight and handling charges should be excluded from the wholesale cash price, and if so, whether the wholesale market exists at the factory premises of the company.

6. There is no dispute regarding the process of manufacturing and the method of selling articles in question. Therefore, I shall straightaway proceed to consider the question. Section 4 of the Central Excises and Salt Act, 1944 provides:

4. Where under this Act, any article is chargeable with duty at a rate dependent on the value of the article, such value shall be deemed to be-

(a) the wholesale cash price for which an article of the like "kind and quality is sold or is capable of being sold at the time of the removal of the article chargeable with duty from the factory or any other premises of manufacture or production for delivery at the place of manufacture or production, or if a wholesale market does not exist for such article at such place, at the nearest place where such market exists,

or

(b) x x x

The question is whether a wholesale market exists at the factory premises. The company sells about 20% of manufactured articles at the place of manufacture. The Deputy Collector Was stated that having regard to the 20% of the articles being sold therein, it cannot be said that the wholesale market exists at the factory premises. He was of the opinion that there should be a habitual sale of articles by the manufacturer to any body who wishes to make purchases or sales. In my opinion, the view taken by the Deputy Collector was clearly erroneous.

7. In A.K. Roy and Another Vs. Voltas Limited, while considering the concept of wholesale market u/s 4(a) of the Act, this is what was observed therein:

Even if it is assumed that the latter part of Section 4(a) proceeds on the assumption that the former part will apply only if there is a wholesale market at the place of manufacture for articles of a like kind and quality, the question is what exactly is the concept of wholesale market in the context. A wholesale market does not always mean that there should be an actual place where articles are sold and bought on a wholesale basis. These words can also mean the potentiality of the articles being sold on a wholesale basis. So, even if there was no market in the physical sense of the term at or near the place of manufacture where the articles of a like kind and quality are or could be sold that would not in any way affect the existence of market in the proper sense of the term provided the articles themselves could be sold wholesale to traders, even though the articles are sold to them on the basis of agreements which confer certain commercial advantages upon them.

8. It is therefore not necessary that the manufactured articles should be habitually sold at the factory premises. It is sufficient if there is a possibility of the articles being sold on a wholesale basis to traders. The nature of the articles manufactured by the company, are such that they could be sold to the customers on wholesale basis and in fact they were sold to the extent of 20%. It is certainly not necessary that there should be a large number of wholesale sales, in the wholesale market.

9. The next question is whether freight charges should be included within the wholesale price. On this question also, the view taken by the Supreme Court in A.K. Roy''s case, is against the respondents. It was observed:

Section 4 of the Act therefore provides that the real value should be found after deducting the selling cost and selling profits and that the real value can include only the manufacturing cost and the manufacturing profit. The Section makes it clear that excise is levied only on the amount representing the manufacturing cost plus the manufacturing profit and excludes post manufacturing cost and the profit arising from post-manufacturing operation, namely selling profit. The section postulates that the wholesale price should be taken on the basis of cash payment thus eliminating the interest involved in wholesale price which gives credit to the wholesale buyer for a period of time and that the price has to be fixed for delivery at the factory gate thereby eliminating freight, octopi and other charges involved in the transport of the articles.

It is evident, for the purpose of levy of excise duty, only the actual manufacturing cost of the articles and the manufacturing profits will have be taken into consideration and not the post-manufacturing charges. The freight at the rate of Rs. 2/- per case of 24 bottles charged by the company being post-manufacturing charges cannot therefore be included in wholesale cash price of the articles.

10. In the result, the petition is allowed and the impugned orders (Annexure I, II and III) are quashed.

11. If the company has already paid the duty under the impugned demands, it is entitled to a refund of the same.

12. No costs.

Sd/- K. Jagannath Setty Judge

