

(1992) 11 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 654 of 1989

Bislery Beverages Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 173C
Central Excises and Salt Act, 1944 — Section 4(1)

Citation : (1993) 64 ELT 393

Hon'ble Judges : M.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; Shishir Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner Sri A.P. Mathur and Sri Shishir Kumar, appearing for respondent-Union of India.

2. Petitioner has sought for quashing orders dated 24th February, 1988, 12th January, 1989 passed by Assistant Collector, Central Excise, Noida and Collector of Central Excise (Appeals), New Delhi - respondent No. 4 and 2 respectively and further to direct the respondents not to impleadment the directions contained in letter dated 17th April, 1989, of the Superintendent, Central Excise, Noida and further to approve the price list submitted by the petitioner for the purpose of assessment of duty u/s 4(1)(a)(i) of the Central Excises and Salt Act, 1944. The petitioner was given a show cause notice earlier in respect of sales to different units engaged in bottling of its product in terms of Rule 173C of Central Excise Rules, 1944.

3. According to the case of respondents and as per said show cause notice the price list so filed by the petitioner in para 2 are for different manufacturers of the same class engaged in manufacturing the same product. Such customers are of the same class of buyers and as such the price list in part 2 are not applicable.

The case on behalf of the respondents is that this is not applicable since provisions of Section 4(1)(a)(i) of the Act is simply not attested and petitioner should have filed the price list in part I u/s 4(1)(a)(i) of the Act. The show cause notice supports the price at which the goods are ordinarily sold, the highest price taken by the department by which the petitioner sold to different customers of a different region. The petitioner urged that u/s 4(1)(a)(i) even by the uses of words "...wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to existence of other circumstances specified in clause (a) be deemed to be a normal price would not affect the petitioner's case. Petitioner's case is that even if the prices are different for the same goods, the petitioner's sale in a different region then persons of that region to whom the goods are sold would classify to be a separate class by itself, thus, would be entitled for the benefit under the said proviso. We find the present case that there is nothing on the records on the basis of which such inference could be drawn. If the petitioner desires to prove this, he has to lead evidence to substantiate it.

4. In this case the appellate authority has finally dismissed the appeal of the petitioner. We have scrutinised the reasoning given by the appellate authority. It is not in dispute in this case that the petitioner was selling the non-alcoholic beverage base including Gold Spot base, Limca base, Thums Up base, Rim Zim base and Maaza Mango base and the price in respect of each such base varied in the price list from one customer to another. For instance Gold Spot base varied in its prices from Rs. 1510/- per unit container to M/s. Jammu Bottling Company Private Ltd. to Rs. 1155/- per unit for M/s. Gan-gasagar Bottling Company, Gangasagar. Such variation existed in respect of other bases also. The Assistant Collector disputed this abnormal difference in prices and did not agree with the plea of the petitioner that their prices are contracted prices and they have contracted different prices keeping in view the various factors like location of different industrial consumers, market potential of the concerned industrial consumer local tries etc. The Assistant Collector instead chose the highest prices in respect of each base. In appeal facts recorded by the appellate authority is that the appellant in appeal contended that the prices are contracted prices and are in accordance with the trade practice which never infringed basic valuation rules of the Central Excise Laws. While contracting prices they have kept the business and trade practice in view and that the same product was given away against low price to the customers, on account of certain factors like location of the customers, his demand for particular quantity, the area of his sale, the extent of competition faced by the petitioner, burden of octroi and freight etc. The appellate authority recorded the following findings :-

"Although the appellants have claimed that the prices declared by them are contract prices, they have not submitted any copies of the contract which they are supposed to have entered into with their industrial consumers. All that has been submitted are simply price quotation addressed to various parties. 1 find

that these cannot be termed as contracts which are entered into between the buyers and customers with detailed terms and conditions of sale and vice versa. Documents submitted by them are instead their quotation of prices to each customers without any terms of delivery or any other condition laid therein."

5. The aforesaid observation is a foundation of rejecting the claim of the petitioner as the appellate authority recorded a finding that the quoted prices are not based on contracts as such, but these are the prices which should invariably be taken in the normal sale of their products and does not attract the provisions contained in Section 4(1)(a)(i) of the aforesaid Act. It is not necessary for us to go into the other question adverted to by the appellate authority.

6. Perusing the show cause notice we find that the respondent authorities prima facie did not dispute the price list submitted by the petitioner, but the show cause notice stated that the price list given by the petitioner could be the normal price as the goods are sold in wholesale trade and these price lists would fall under part I. In this case the appellate authority found that the price list submitted by the appellant was only quotation price and in the absence of contract it could not be accepted. The proper course open to the said authority was to have given an opportunity to the petitioner for filing any such contract or establishing existence of such a contract before taking any view contrary against the petitioner. We further find that even the original order passed by the Assistant Collector does not raise this point and has been taken only by the appellate authority. In view of this the impugned order passed by the appellate authority-respondent No. 2 by means of order dated 12th January, 1989 is not sustainable in the eyes of law and is hereby quashed. The case is remanded back before the Collector of Central Excise (Appeals), New Delhi for deciding the appeal afresh after giving opportunity to the petitioner for adducing evidence regarding the contract as aforesaid and deciding all the issues raised by the petitioner in the appeal itself including the legal issues in accordance with law.

7. Accordingly the writ petition is allowed. The impugned order dated 12th January, 1989 is quashed. The authority below will proceed in accordance with the observations made by us as above. We are further cautious about the fact that the appeal lies even as against the appellate order, but in view of the fact that the matter being pending in this court for such a long period and further since additional evidence is to be considered in case the petitioner files, we are directing respondent No. 2 to decide the appeal afresh.