(1990) 10 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 3051 of 1982

Ceam Electronics Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 01-10-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 4(1), 4(4)(c)

Citation : (1990) ECR 586 : (1991) 51 ELT 309

Hon'ble Judges : M.L. Pendse, J;E.D.D. Da Silva, J

Bench : Division Bench

Advocate : Shri B.D. Shroff, instructed by Crawford Bayley and Co, for the Appellant; Shri R.V. Desai and Shri P.N. Menon, for the Respondent

Judgement

Pendse, J.—Petitioner No. 1, a proprietary firm at the time of filing of the petition and during pendency of the petition, was registered as Private Limited Company under the Companies Act. The petitioner Company is a small scale Industry and investment in plant and machinery in the factory situated at Thana was less than Rs. 10 lakhs. The petitioner Company manufactures wireless receiving sets (transistor radios) falling under Tariff Item 33A(2) of the First Schedule to the Central Excises and Salt Act, 1944. On April 14, 1982 M/s. Peico Electronics & Electricals Ltd. placed an order for manufacture and supply of 3000 transistor radios according to the specifications given. The petitioners manufactured transistors by using their own raw material and labour and sold it to Peico Electronics after affixing the brand name at the agreed prices. The petitioners then filed the classification list and the price list and the Assistant Collector of Central Excise, Division VI Bombay II by impugned order dated August 28, 1982 held that the petitioner should file fresh price list in Part IV as required u/s 4(1)(a) Proviso (iii) of the Act. The Assistant Collector also held that the excise duty shall be recovered u/s 11A of the Act on the basis of value charged by M/s. Peico Electronics to their purchasers. The order of the Assistant Collector is under challenge in this petition filed under Articles 226 and 227 of the Constitution of India.

2. Hari Shroff, learned Counsel appearing on behalf of the petitioners, submitted that the order of the Assistant Collector cannot be sustained in view of the decisions of the Supreme Court Union of India (UOI) and Others Vs. Playworld Electronics Pvt. Ltd. and Another, . Union of India v. Play World Electronics Pvt. Ltd. The submission of the learned counsel is correct and deserves acceptance. It is not in dispute that M/s. Peico Electronics had placed order for supply of 3000 pieces of two band portable transistors with the petitioners and the price fixed for each piece was Rs. 125/- plus taxes as applicable. The Assistant Collector felt that as the sale was not effected at the factory gate but the transistors are supplied to M/s. Peico Electronics for onward sale to their dealers, the price at which the sets were supplied by the petitioners cannot be considered as normal price of the goods at the factory gate. The Assistant Collector felt that the normal price should be one at which the transistors were sold by M/s. Peico Electronics in the course of Wholesale trade. The conclusion of the Assistant Collector cannot be sustained. It is obvious that the petitioners manufactured the goods chargeable to excise duty and sold it to M/s. Peico Electronics at the fixed price. Merely because the entire manufacture is sold to M/s. Peico Electronics it cannot lead to the conclusion that the sale by the petitioners is to a related person as contemplated u/s 4(4)(c) of the Act. The expression "related person" means person who is so associated with the assessees that they have interest, directly or indirectly in the business of each other. It is impossible to suggest that the petitioners have interest directly or indirectly in the business of M/s. Peico Electronics or vice versa. The issue has been considered exhaustively by the Supreme Court and it is obvious that the order of the Assistant Collector cannot be sustained.

3. Accordingly, rule is made absolute and the impugned order passed by the Assistant Collector on August 28, 1982 is set aside and it is declared that the assessable value shall be determined with reference to the price at which the two band portable transistor radio sets were sold by the petitioners to M/s. Peico Electronics Limited. The Assistant Collector is directed to approve the price lists and the classification lists as filed by the petitioners. There will be no order as to costs.

4. The bank guarantees furnished by the petitioners in pursuance of the interim order to stand discharged.

