(1994) 04 MAD CK 0050

In the Madras High Court

Case No : Writ Petitions No''s. 11725 and 11726 of 1983

Chennai Bottling Company Pvt. Ltd. — APPELLANT

Vs

Asstt. Collr. C.Ex., Madras-IV — RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Citation : (1994) 74 ELT 222

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Mr. N. Venkataraman, for the Appellant; Mr. K. Jayachandran, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. These two Writ Petitions may be considered and dealt with together, since they involve for determination common issues and the parties are

also one and the same and counsel appearing on either side are also the same.

2. W.P. No. 11725 of 1983 has been filed for a writ of certiorari to call for the records of the third-respondent and quash the order dated 8-8-

1983, confirming the order of the second-respondent dated 21-8-1981. Under the orders of the Collector of Central Excise dated 21-8-1981,

the excess refund of a sum of Rs. 1,31,250/- earlier made, was directed to be remitted back to the State. Aggrieved, the petitioner has

approached the Central Government and with the constitution of the Tribunal, the matter has been placed before the Tribunal. The Tribunal held

that the correct assessable value is Rs. 12/- per crate of 24 bottles and not Rs. 9.60 per crate, as claimed by the petitioner.

3. So far as W.P. No. 11726 of 1983 is concerned, the same has been filed for a writ of certiorari to call for a quash the proceedings of the third-

respondent dated 8-8-1983, confirming the orders of the second-respondent dated 21-8-1981. Under the orders dated 21-8-1981, the petitioner

was called upon to remit back the sum of Rs. 73,629.66 being the excess refund granted to the petitioner. The excess refund came to be made on

a misunderstanding of the actual version to be taken into account for purposes of assessment of duty. The impugned order directing the petitioner

to remit back the excess refund made was on the view that a difference between the duty actually collected by the appellant from the customers

and the duty actually paid by them to the Government was in the nature of duty retained by them and this amount should be correctly added to the

assessable value for collection of duty purposes. The Tribunal also concurred with the views of the authorities below. Aggrieved, the petitioners

have filed the above writ petitions.

4. Mr. Venkataraman, learned counsel for the petitioner, reiterated the challenge in this Court also by contending that the refund ordered earlier

could not be said to be excessive at all and that at any rate the second-respondent has no power to direct the payment back of the amount. Mr. K.

Jayachandran, learned counsel for the respondents, while reiterating the stand taken in the counter-affidavit, relied upon the decision reported in

Union of India Vs. Alembic Glass Industries Ltd., , which was by a Full Bench of the Karnataka High Court and an order of mine dated 17-11-

1992 in W.P. No. 567 of 1984, as completely answering the challenge on both the grounds raised before this Court. Learned counsel for the

petitioner cannot dispute the position that the ratio of the decision of the Full Bench of the Karnataka High Court and my earlier decision squarely

cover both the issues raised in these Writ Petitions. On going through the decision of the Full Bench of the Karnataka High Court, I am in

respectful agreement with the views expressed by the learned Judges of the Full Bench and in my view, conclusion numbers 1 and 2, set out

hereinafter, squarely govern the issues against the petitioner :

(1) As per the second part of the explanation to Section 4(4)(d)(ii) of the Act, the effective rate of duty has to be deducted not only from the

normal price but also from any amount charged and collected as excise duty, but subsequently refunded, if the benefit of refund has not been

passed on to the buyer.

(2) As per clause (ii) of the second part of the explanation to Section 4(4)(d)(ii) of the Act, in cases where the higher rate of duty is initially

assessed and collected from the customers by a manufacturer and paid to the Government and subsequently on a proper computation, the excise

duty gets reduced and becomes refundable to the manufacturer, excise duty on the amount so becoming refundable is leviable, if the benefit of such

refund is not passed on to the buyer.

5. As noticed earlier, so far as the competency of the second-respondent is concerned, I have in my order dated 17-11-1992 in W.P. No. 567 of

1984 sustained the power in the respondent-department. Consequently, applying the ratio of the above two decisions, these Writ Petitions shall

stand dismissed. There will be no order as to costs.