

(1992) 03 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 3133/91 and 6632/91

D.C.M. Shriram Consolidated Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-03-1992

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (1992) 40 ECC 8 : (1992) 59 ELT 260

Hon'ble Judges : V.S. Dave, J

Bench : Single Bench

Advocate : V. Lakshmi Kumaran, Virendra Lodha and Madhav, for the Appellant;
Sudhir Gupta, for the Respondent

Final Decision : Allowed

Judgement

V.S. Dave, J.—Short question involved in both these writ petitions is as to whether the show cause notices issued by the Superintendent, Central Excise Department, Range Urban-1, Kota, are valid notices whereby it is proposed to include the interest chargeable on overdues for determining the "assessable value" u/s 4 of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act").

2. The petitioners are engaged in manufacture of PVC Resin and PVC Compounds inter alia among other products. The petitioners sell 70% of its goods at wholesale prices at the factory gate to various buyers on cash-cum-carry basis, no interest is either chargeable or charged on the money so collected from such buyers at the time of clearance of goods on the gate. However, in less than 30% cases the dealers do not make cash payment and the goods are delivered on different payment basis where the price is paid subsequently, at times with considerable delay, and on such overdues the petitioners charge normal interest. The Excise Department took the view that the interest charged on deferred payment is included in the assessable value u/s 4 of the Act of 1944. The Department raised this question by means of claim of the refund by the

petitioners and the Assistant Collector, Central Excise on 5th February, 1979, passed an order confirming the payment including the interest charged in the assessable value. Aggrieved by the same, the petitioners had filed an appeal before the Collector, Central Excise (Appeals) which was allowed and the learned Collector had held categorically that the amounts of interest charged are not to be included in the "assessable value". After 7 years of the aforesaid order the Superintendent, Central Excise Department, Range Urban-1, Kota, has issued the impugned demand-cum-show cause notice on 29-4-1991 and 9-9-1991 which are under challenge in these writ petitions.

3. The petitioners' grievance is that the Superintendent had no jurisdiction, express or implied, to issue the impugned notices. It is submitted that once there was an adjudication of the same question by the appellate authority, it could not have been reopened by lower authority. The contention of the petitioners is that against the decision of the higher authority in the hierarchy of the authorities, neither any disregard is permitted nor it can be flouted by the lower authorities otherwise there will be total chaos in the department. It is thus, prayed that the said notices be quashed as unsustainable.

4. The respondents' contention is that no writ petition lies against the show cause notices and that the "assessable value" for the purpose of payment of excise duty on the prices at which the goods are sold by the manufacturers to the buyers in the wholesale trade for the delivery at the time of removal and for this purpose, the sale price is one, at which the goods are ordinarily sold in the course of wholesale trade and the price charged is the sole consideration for sale and buyer is not a related person. According to the respondents, the interest collected on the credit on delayed payment forms part of "assessable value".

5. I have given my earnest consideration to the aforesaid submissions.

6. The excise duty on the goods sold is chargeable in terms of Section 4 of the Act of 1944, the "assessable value" of the excise goods is defined therein to be the price on which the goods are sold in the wholesale trade at the time and place of removal to unrelated buyers. It is admitted between the parties that the Department had taken earlier the same view but notice has been given in view of the fact that the earlier decision was based on the case of Assistant Collector of Central Excise and Ors. v. Madras Rubber Factory Ltd. and Ors. which was decided by Hon'ble Supreme Court and reported in Assistant Collector of Central Excise and Others Vs. Madras Rubber Factory Ltd., it became essential for the Department to issue the show cause notice. It may be stated at the outset that contention raised by the Department had only been advanced to be rejected. The case of Madras Rubber Factory and Ors. (supra) to which reference has been made by learned counsel for the respondents, was absolutely on a different point though, about the interpretation of Section 4 of the Act of 1944. The question related to the interest on receivable (sundry debtors for sales). The case of MRF (supra) was that this cost is in-built in the price and is incurred on account of the time factor between the time the goods are delivered and the time the moneys

are realised. In fact, the decision in MRF case in no way affects the position in the present case, in view of the fact that event of delivery is not deferred in the petitioners' case. The case of the petitioners in fact is covered by series of decisions and even by the clarification which was issued by the Department as Departmental Instructions issued when Section 4 of the Act of 1944 was amended vide Amendment Act 22 of 1973. The instructions which were issued vide MF (DR. 1) F. No.312/1/75-CX-10, dated 8th August, 1975, clearly contained therein that the price mentioned in definition means the amount of money for which the goods are sold. In other words it means cash consideration but mere fact that credit is given for the payment of value of an article would not result in the amount ceasing to be a price. The illustration was also given under the instructions and the illustration reads as under:-

"Assessee A charges Rs. 100/- per unit for his goods if the payment is made at the time of delivery but charges Rs. 102/- per unit if the payment is made after one month of the delivery, Rs. 100/- per unit will be the price of the goods if the extra charge of Rs. 2/- per unit is identifiable as being relatable solely to the time-lag in payment".

7. Besides above, there is no ambiguity in the language used in Section 4. The word "Wholesale cash price" has also been subject matter of judicial interpretation as well, as early as 1973. In A.K. Roy and Another Vs. Voltas Limited, their Lordships held as under:

"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, octroi and other charges involved in the transport of the articles".

8. The Karnataka High Court in Victory Glass and Industries Ltd. Vs. Collector of C. Ex., took note of the fact that their Lordships of Hon"ble Supreme Court have recalled the judgment delivered in the case of MRF (supra) but despite that the court held that the departmental action of proposing to add a sum of Rs. 11 lacs by way of interest and odd cannot be permitted to be done, the court had also considered the arguments advanced in respect of the departmental objections about the court's jurisdiction to interfere at the stage of show cause notice. Relying on various decisions of their Lordships of the Hon"ble Supreme Court to the effect that the High Courts are not debarred from issuing the writ petitions to prevent unnecessary harassment in appropriate cases and should quash the notice in case it comes to the conclusion that it is demonstrated from the facts that the proposed adjudication would be without jurisdiction.

9. I am in respectful agreement with the views expressed by the learned Judge of Karnataka High Court. Besides this, in the instant case the Appellate Authority had already decided inter se parties the question of levy of excise duty on the interest received on 30% goods sold on the basis of deferred payment. It is

regrettable that the lower authority despite the decision of the higher authority in the hierarchy authorities, in identical situation issued the notice. The petitioners have unnecessarily been subjected to harassment more particularly when identical dispute had earlier been adjudicated repeatedly at various stages between the parties. Even when there was a dispute about depositing the excise duty, allegations of "Depot service charges" on the sale of manufactured articles through the various depots of the Companies, the petitioner Companies had to file as many as eight writ petitions, namely, D.B. Civil Writ Petition No. 1849/89, D.C.M. Ltd. v. Union of India and Others, D.B. Civil Writ Petition No. 2039/89, D.C.M. Ltd. v. Union of India and Ors., D.B. Civil Writ Petition No. 2040/89, D.C.M. Ltd. v. U.O.I. and Ors., D.B. Civil Writ Petition No. 2041/89, D.C.M. Ltd. v. U.O.I. and Ors., D.B. Civil Writ Petition No. 2042/89, D.C.M. Ltd. v. U.O.I. and Ors., D.B. Civil Writ Petition No. 2043/89, D.C.M. Ltd. v. U.O.I. and Ors., D.B. Civil Writ Petition No. 2108/89, D.C.M. Ltd. v. U.O.I. and Ors. and D.B. Civil Writ Petition No. 2143/89, D.C.M. Ltd. v. U.O.I. and Ors. despite the decision of the Appellate Authority and the order of the Tribunal. This attitude of the Superintendent, Central Excise, Kota, is an indicator of the fact that mechanically the notices are issued even in cases where there are previous adjudications. The Division Bench of this Court, while deciding the bunch of the aforesaid writ petitions of the petitioners and the respondents, allowed the writ petitions. Even in those writ petitions the court noted the fact that the petitioners have been selling 60 to 70% manufacture of its goods at the factory gate and thus, the factory gate price is ascertainable which will be the normal prices as envisaged u/s 4 of the Act of 1944. It was clearly held that when the factory gate prices are ascertainable the excise duty has to be levied on that price. Thus, no ambiguity has been left and there was no difficulty in coming to the conclusion as to what is the "assessable value" of the goods in respect of the products sold by the petitioner companies. I am clearly of the opinion that the demand-cum-show cause notices dated 29-4-1991 and 9-9-1991 are only calculated to cause unnecessary harassment to the petitioners and in no case is going to advance the cause of justice.

10. A tendency is growing in the Government departments, may be of State Government or of the Union of India, that show cause notices are either mechanically issued or that they are issued for some prospective realisation in expectation of some future judgments of the courts which, in my humble opinion, can never be justified. Besides this such notices unnecessarily drag the parties to litigation adding to the burden of the courts and certainly at the cost of tax payers and the shareholders of the companies. Time, money and energy spent in such cases can better be utilized for the developmental works of the Government or of the labour or for increasing the efficiency of the department or the industry.

11. For all the reasons mentioned above, the writ petitions are allowed and the notices dated 29-4-1991 and 9-9-1991 are quashed. Parties are directed to bear their own cost.