

(2002) 04 DEL CK 0130
In the Delhi High Court
Case No : CWP 187 of 1981

Gabriel India Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Citation : (2003) 155 ELT 236

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Pravin Bahadur and Punit Bhardwaj, for the Appellant; NEMO, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—Trade Notices issued to the petitioner purported to be by way of conveying a decision of the Collector Central Excise that firms or companies who have no factory of their own and who get excisable goods manufactured according to their own specification and/or under their own brand names or trade names should be required to be licensed under the Central Excise Law, are the subject matters of this writ petition.

2. The petitioner is a company registered and incorporated under the Companies Act. It is carrying on the business of manufacturing and selling thin walled bearings. It sells majority of its goods in the replacement market through independent wholesale dealers. The petitioner has received an order from India Motor Parts and Accessories Limited for manufacture of bearings under its trade name IMPAL on the outer cartons.

3. According to the petitioner, those who purchase goods in bulk and sell the same in their own brand name, cannot be treated as a manufacturers and, thus, are not liable to pay excise duty.

4. The question fell for consideration before a Division Bench of the court in *Nelco v. UOI* in CW 1405/84 disposed of on 29th January 1986 wherein it has

been held:

"The question involved in this writ petition are covered by three decisions of this Court namely, Zenon Electronics Private Limited and Ors. v. Union of India and Ors. 1982 ELT 454; Sylvania & Laxman Ltd. and Anr. v. Union of India and Ors. 1982 ELT 463; and Poona Bottling Co. Ltd. and Anr. v. Union of India and Ors. 1981 ELT 389, and two decisions of the Supreme Court reported as Union of India and Ors. v. Cibatul Limited 1985 ELT 302; and Joint Secretary to Govt. of India v. Food Specialities Ltd. 1985 ELT 324. In the former case decided by the Supreme Court Pathak, J., speaking for the Supreme Court observed as under:

"The entire question before us is whether the goods are manufactured by the seller or are manufactured by the seller on behalf of the buyer. The relevant provisions of the agreements and the other material on the record show that the manufacturing programme is drawn up jointly by the buyer and the seller and not merely by the buyer, and that the buyer is obliged to purchase the manufactured product from the seller only if it conforms to the buyer's standard. For this purpose the buyer is entitled to test a sample of each batch of the manufactured product and it is only an approval by him that the product is released for sale by the seller to the buyer. In other words, the buyer has the right to reject the goods if he does not approve of them. If the manufactured goods are not in accordance with the buyer's standard, they are either reprocessed to bring them up to the requisite quality, or if that is not possible the goods are sold to the buyer for a different purpose if they are compatible with the specifications of some other product and provided that the buyer has a need for that product, or the goods are sold to others in the market as sub-standard goods at a lower price or the goods are destroyed. It is significant to note that the buyer is not obliged to purchase the goods manufactured by the seller regardless of their quality, and that in the event of rejection by the buyer the alternatives present before the seller extend to the sale of the manufactured goods to others or even to the very destruction of the goods. It is apparent that the seller cannot be said to manufacture the goods on behalf of the buyer.

The appellant relies also on the circumstance that under the arguments the seller is required to affix the trade marks of the buyer on the manufactured goods and, it is said, that indicates that the goods belong to the buyer. It seems to us clear from the record that the trade marks of the buyer are to be affixed on those goods only which are found to conform to the specifications or standard stipulated by the buyer. All goods not approved by the buyer cannot bear those trade marks and are disposed of by the sellers without the advantage of those trade-marks. The trade-marks are affixed only after the goods have been approved by the buyer for sale by the seller to the buyer. The seller owns the plant and machinery, the raw material and the labour and manufactures the goods and under the agreements, affixes the trade marks on the goods. The goods are manufactured by the seller on its own account and the seller sells the goods with the trade marks affixed on them to the buyer."

5. The said decision of the Division Bench was followed by another Division Bench in Purolator India Limited v. Union of India and Ors., CWP 578/1981 disposed of on 30th May 1986.

6. In view of the afore-mentioned Division Bench decisions of this court, this writ petition is also allowed. However, in the facts and circumstances of this case, there shall be no orders as to costs.