

(1977) 01 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 435, 436 and 437 of 1976

Geep Flashlight Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-1977

Acts Referred:

Central Excise Rules, 1944 — Rule 10

Central Excises and Salt Act, 1944 — Section 2, 3(1), 3(2), 4, 4(4)

Constitution of India, 1950 — Article 226

Citation : (1979) 4 ELT 391

Hon'ble Judges : R.W. Sahai, J;D.M. ChandrasheKhar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.M. Chandrashekhar, J.—In these petitions under Article 226 of the Constitution the short question that arises for determination is whether the cost of packing dry cell batteries should be treated as a part of the assessable value of those goods for the purpose of levy of Central Excise duty.

2. The petitioner is common in these three petitions. It is a public limited company engaged in manufacture, inter alia, of dry cell batteries. While approving the wholesale price list of the petitioner, the Assistant Collector had accepted the claim of the petitioner that the cost of packing materials in which dry cell batteries are packed, should be excluded in determining the assessable value of those goods for levy of excise duty. But, later he initiated proceedings under Rule 10 of the Central Excise Rules, 1944, to recover extra excise duty representing the cost of packing dry cell batteries and raised additional demands on the petitioner. His decision was affirmed by the Deputy Collector, Central Excise, Allahabad, and the Appellate Collector Central Excise, New Delhi, in the appeals preferred by the petitioner. The revision applications preferred by the petitioner against the above orders were also dismissed by the Government of India. In these petitions the petitioner has impugned the orders of the Central

Excise authorities. These three petitions relate to three different periods, 4-2-1969 to 18-9-1969, 1-10-1969 to 30-4-1970 and 1-5-1970 to 17-6-1971.

The petitioner's case is briefly as follows :

The finished dry cell batteries are packed in card-board boxes or cartons, each box or carton containing about two dozen cells. About a dozen boxes or cartons are then packed in a wooden case, lined inside with water proof paper to protect dry cells from damage by water, moisture, rain etc., in the course of transport or storage. The wooden cases are nailed, strapped and sealed for convenient handling to provide adequate safeguard against pilferage or breakage in transit. Although dry cell batteries are thus sent to dealers in cartons or boxes, ultimately they are sold by dealers to consumers after testing the potency of the cells in the presence of consumers. The petitioner's wholesale price of batteries includes, inter alia, the cost of packing materials which on an average worked out to 4.5 per cent of such wholesale selling price. In determining the assessable value of these goods for levy of excise duty, such cost of packing should be deducted from the petitioner's wholesale price.

3. In the counter-affidavit filed on behalf of the Central Excise authorities, the case of the authorities is briefly as follows: Excise duty is not levied on the cost of manufacturing only. On completion of manufacturing processes, the goods do not become marketable until they are in a packed form. Hence the cost of packing should be included in the price at which the goods are sold in the wholesale market. The packing preserves the dry cell batteries and make them marketable. They are sold in the wholesale market only in a properly packed form and not in a loose form. The assessable value of goods for the purpose of levy of central excise duty is the price charged by the manufacturers for the sale of goods in wholesale market. We shall now set out the relevant provisions of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) and the rules thereunder. Clause (f) of Section 2 of the Act defines "manufacture" as including "any process incidental or ancillary to the completion of a manufactured product".

Separate definitions of "manufacture" in sub-clauses (i) to (iv) of that clause with reference to certain goods like tobacco, salt and patent or proprietary medicines, have no application to the article with which we are concerned.

4. Sub-Section (1) of Section 3 of the Act provides, inter alia, that duties of Excise shall be levied and collected on all excisable goods produced or manufactured in India in such manner as may be prescribed and at the rates set forth in the First Schedule to the Act. Sub-section (2) of Section 3 provides that such duties of excise may be specific or ad valorem.

5. Item No. 3(1) of the First Schedule to the Act, is Dry Battery and the duty is ad valorem.

6. Section 4 of the Act provides for determination of value of articles for the

purpose of duty. During the period of the disputed assessments the relevant portions of Section 4 read as follows :

"4, Determination of value for the purpose of duty - Whereunder this Act, any article is chargeable with duty at a rate dependent on the value of the article, such value be deemed to be -

(a) the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold at the time of the removal of the article chargeable with duty from the factory or any other premises of manufacture or production, for delivery at the place of manufacture or production, or if a wholesale market does not exist for such article at such place, at the nearest place where such market exists, or the price at which an article of the like kind and quality is sold or is capable of being sold by the manufacturer or producer or his agent, at the time of the removal of the article chargeable with duty from such factory or other premises for delivery at the place of manufacture or production or such article is not sold or is not capable of being sold at such place, at any other place nearest thereto.

"Explanation - In determining the price of any article under this Section no abatement or deduction shall be allowed, except in respect of trade discount and amount of duty payable at the time of the removal of the article chargeable with duty from the factory or other premises aforesaid."

7. For Section 4 of the Act, a new section was substituted by the Central Excises and Salt (Amendment) Act, 1973. The relevant portions of Sub-section (4) of new Section 4 read :

"4(4). For the purpose of this section, - (a) ...

(b)...

(c)...

(d) "value", in relation to any excisable goods, -

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation - In this sub-clause "packing" means the wrapper, container, bobbin, porn, spool, reel or warp, beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii)...

(e)...

The assessments in dispute were long prior to substitution of Section 4 by a new Section. Hence neither Sub-clause (i) of Clause (d) nor the Explanation to that sub-clause of new Section 4 has any application to these petitions. We have to

construe old Section 4 to determine whether the value of excisable goods would or would not include the cost of packing.

8. In *Atic Industries Ltd. Vs. H.H. Dewa, Asstt. Collector of Central Excise and Others*, , Bhagwati J. who spoke for the Court, after referring to elucidation of the value of excisable goods in *A.K. Roy and Another Vs. Voltas Limited*, , said thus :

"The value of goods for the purpose of excise must take into account only the manufacturing cost and the manufacturing profit and it must not be loaded with post-manufacturing cost or profit arising from post-manufacturing operations."

Shri M.A. Ansari, learned counsel for the petitioner, contended that the manufacturer of dry cell batteries cannot be said to be incomplete until they are packed in card board boxes or cartons and such boxes or cartons are again packed in wooden cases and that manufacture of this article is complete before it is so packed in card board boxes or cartons and wooden cases.

9. In support of his contention Shri Ansari relied on two unreported decisions of the High Courts of Maharashtra and Karnataka. In Writ Petitions Nos. 548 and 3436 of 1970 (*Alembic Glass Industries Ltd., v. Union of India*,) the question that arose for determination was whether the cost of packing empty glass bottles in card-board cartons should or should not be included in the assessable value of glassware for levy of excise duty. Upholding the claim of the assessed company for excluding such packing cost, a Division Bench of Karnataka High Court observed that glass bottles are capable of being sold at the time of removal from the factory without card-board box or carton packing and that in fact the assessee company had sold bottles in such condition to many purchasers.

"In Special Civil Application No. 1295 of 1973 (*Ogale Glass Works Ltd., v. Union of India*) the articles in question were also glasswares like tumblers, jars, bottles and glass, bricks. Upholding the claim of the assessee for excluding the cost of packing of glassware in determining the assessable value of glassware for levy of excise duty, a Division Bench of the High Court of Maharashtra observed thus :

"There can be no doubt that packing a glass tumbler or a glass globe can never change its nature as a glass tumbler or a glass globe. This packing is clearly done as a matter of convenience and to facilitate the delivery and removal of a product from the factory gate....The glass and glassware manufactured by the petitioners in this petition could just as well be taken delivery of in the buyer's own packing materials like baskets or boxes or even vehicles....

10. In my view, the method or manner of marketing or delivery or transporting excisable goods which have been fully manufactured can never itself determine the assessable value of such excisable goods u/s 4 of the Act. Once it can be said that the manufacture of the excisable goods is complete, before they are packed, then that would be the end of the matter."

The above observation of their Lordships of Maharashtra High Court are, in our

opinion, equally applicable to the facts of the present petitions. A prospective buyer of dry cell batteries can take delivery thereof in his own containers like cardboard boxes, cartons or wooden cases and the manufacture of that article is complete before it is packed in cardboard cartons or wooden cases.

However, the learned Chief Standing Counsel for the Central Government who appeared for the respondents, contended that mere physical possibility of dry cell batteries being sold in wholesale market before they are packed in cardboard boxes and cartons is not decisive and that the real test should be whether that article is ordinarily sold in the wholesale market with or without such packing. He maintained that normally that article is not sold in the wholesale market in a loose condition but will be sold only in a packed condition and that hence the process of manufacture of that article cannot be said to be complete until it is put in a condition in which it is generally sold in the wholesale market at the gate of the factory.

11. There is considerable force in the above contention of the learned Chief Standing Counsel. But, in a taxing statute if two interpretations of its charging provision are reasonably possible, it is well settled that the \ construction favourable to the subject should be preferred. Moreover, the Central Excise Act is an All India statute and is desirable that the interpretation of its provisions is uniform throughout the country. As stated earlier, two High Courts have interpreted the charging provisions of this Act in a manner favourable to the subject and there is no contrary interpretation by any other High Court. As that interpretation cannot be said to be unreasonable, we think we should follow it especially when this question is no longer of continuing importance on account of substitution of Section 4 by a new Section which expressly provides what category of packing charges should be included in determining the assessable value of articles for purposes of levy of excise duty. In the result, we allow these petitions and quash the additional demand for excise duty made on the petitioner company towards the value of packing charges of dry cell batteries during the period 4-2-1960 to 18-9-1969 to 18-9-1971. The respondents are directed to refund to the petitioner company any amounts recovered from it towards such additional demand.

12. In the circumstances of the case, we direct the parties to bear their own costs.