
(1987) 02 DEL CK 0029
In the Delhi High Court
Case No : C.W.P. No. 1784/80

Gillanders Arbuthnot and Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-02-1987

Acts Referred:

Citation : (1989) 43 ELT 418

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

B.N. Kirpal, J.—The challenge in this writ petition is to the order of the Appellate Collector who has held that the assessable value of the goods manufactured by petitioner No. 2 would be the price at which they are sold by petitioner No. 1.

2. Briefly stated, the facts are that petitioner No. 2 manufactures paints, varnishes, enamels etc. and those goods are sold to petitioner No. 1. The goods are branded with the brand name of petitioner No. 1.

3. In June, 1977 the Excise Authorities asked petitioner No. 2 to intimate to them the price list at which the goods are sold by petitioner No. 1. In reply it was contended that the assessable values had to be one which is charged by petitioner No. 2 from petitioner No. 1 and not which is charged by petitioner No. 1 from its customers.

4. By order dated 24 December, 1977 the Deputy Collector came to the conclusion that petitioner No. 1 must be deemed to be the manufacturer of the goods in question and the price at which the said petitioner sells the goods should be the normal price within the meaning of Section 4 of the Central Excises and Salt Act.

5. Being aggrieved an appeal was filed u/s 35 of the Central Excises and Salt Act before the Appellate Collector. The Appellate Collector by her order dated 21st June, 1980 proceeded on the basis that the transaction between the two

petitioners was at arms length and in the ordinary course of wholesale trade. It was, however, held that wholesale cash price was not ascertainable because the entire produce of the specification/kind and quality was sold only to petitioner No. 1. The Appellate Collector, accordingly, held that the assessable value can only be that as determined with reference to the price at which the petitioner No. 1 was selling its goods in wholesale to other independent dealers. It is this decision which is challenged in the present writ petition.

6. A similar question had come up for consideration before the Supreme Court in the case of Union of India (UOI) and Others Vs. Cibatul Limited, . In that case Cibatul was the company manufacturing goods which were sold. The Excise Authorities contended that the buyer must be regarded as being the person engaged in the production of the goods and Cibatul merely manufactured them on behalf of the buyer. The Excise Authorities in that case had sought to levy excise duty on the wholesale price as charged by the buyer and not the price which was charged by Cibatul. Dealing with this question, the Supreme Court examined the relevant material on record, including the agreements between the parties, and observed as follows :

"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 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 on 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 agreements 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 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."

The learned Counsel for the petitioner has also drawn my attention to the decisions of the Supreme Court in the cases of Joint Secretary to the Joint Secretary to the Government of India and Others Vs. Food Specialities Ltd., and Sidhosons and Others Vs. Union of India (UOI) and Others, .

7. In the present case, the agreement which was entered into between the petitioners inter se was not examined by the Excise Authorities. The Excise Authorities obviously did not have the benefit of the observations of the Supreme Court in the aforesaid cases. The principles of law are now well settled. The question which arises, however, is the application of those principles to the facts of a case. This is firstly to be done by the authorities constituted under the Act. The respondents, in the present case, have proceeded on arms length. That by itself may not be the sole criterion for coming to the conclusion that the petitioner No. 1 is not to be regarded as a manufacturer. All the facts have to be taken into consideration and only thereafter it can be found as to whether the two petitioners are related persons or not and secondly whether petitioner No. 1 can be regarded as a manufacturer or not. In the counter-affidavit it has been stated by the respondents that the entire production of petitioner No. 2 is lifted by petitioner No. 1. What is the effect of this is something which will have to be gone into by the authorities concerned. In the present case, this aspect has not been looked into by the Excise Authorities.

8. It will not be proper for the writ court to investigate such facts and then determine whether petitioner No. 1 is to be regarded as a manufacturer or not. The Appellate Collector has, by the impugned order dated 21st June, 1980, set aside the order of the Deputy Collector and directed it to pass a fresh order in the light of the instructions issued by her. At the present moment, Therefore, there is no order of assessment against the petitioners. The grievance of the petitioners is that the direction has been issued by the impugned order to the effect that the Deputy Collector will dispose of the case in the light of the observations made in the order of the Appellate Collector. While the order setting aside the decision of the Deputy Collector will dispose of the case in the light of the observations made in the order of the Appellate Collector, while the order setting aside the decision of the Deputy Collector does not call for my interference, I would, however, direct the Deputy Collector to pass a fresh order in the light of the decisions of the Supreme Court referred to hereinabove. No further orders are called for in this case except that the fresh order will be

passed by the Deputy Collector within a period of six months from today.

9. The writ petition is disposed of in the aforesaid terms. Parties to bear their own costs.