

**(1986) 07 BOM CK 0063**

**In the Bombay High Court**

**Case No : Writ Petition No. 1186 of 1982**

Godrej Soaps Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision : 03-07-1986**

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 4

**Citation : (1986) 10 ECC 174 : (1986) 25 ELT 482**

**Hon'ble Judges : M.L. Pendse, J**

**Bench : Single Bench**

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## **Judgement**

1. Petitioner No. 1 Godrej Soaps Limited - is a company registered under the Companies Act and inter alia manufactures various types of soaps. By an agreement dated February 26, 1981 entered into with Reckitt & Colman of India Limited, respondent No. 3, the petitioners agreed to manufacture and sale soaps to Reckitt & Colman. The sales were to be effected on principal to principal basis and the manufacture was according to the specifications set out in the schedule to the agreement and production instructions given by the Reckitt & Colman. The purchaser was to supply soap dyes, while the material like soap paste formulations, chemicals etc. was to be procured by the petitioners. The soap to be manufactured by the petitioners had the brand name "DETTOL". Delivery of the soaps manufactured by the petitioners was on cash basis. It is not in dispute that the petitioner Company and Reckitt & Colman are two different and independent entities and have no interest in the business of each other and the two companies have no financial interest in each other. The agreement between the parties prescribe that Reckitt & Colman could reject the goods if they are not according to the standard fixed and in case of any destruction or damage to the soap the costs was to be borne by the petitioners.

2. The petitioner Company filed price list in Performa-II in respect of manufacture of soaps "Dettol" and showed the assessable value in accordance with the price at which the products were sold by the petitioners to Reckitt &

Colman. On June 6, 1981 a show-cause notice was issued by the Assistant Collector of Central Excise to the petitioners calling upon to explain why the assessable value of Dettol Bath Soap should not be determined on the basis of the wholesale price to any independent buyer in the course of wholesale trade. The notice further calls upon the petitioners to explain why the assessable value should not be inclusive of the costs of packing as the goods are sold by Reckitt & Colman in packed condition. By this show-cause notice the Assistant Collector was desirous of fixing the assessable value by taking into consideration the price of the soaps sold by Reckitt & Colman to its buyers ignoring the price charged by the petitioners for manufacture of soap.

The petitioners filed reply pointing out that the assessable value was fixed in accordance with the price settled by the agreement and deduction claimed is on account of the subsequent or secondary packing, that is corrugated packing and not initial or primary packing. The Assistant Collector by order dated May 4, 1982 came to the conclusion that the price at which the goods are contracted to be supplied by the petitioners to M/s. Reckitt & Colman does not represent wholesale cash price at which these goods can be available to independent buyer. It was further held that the transaction does not satisfy the conditions of normal price u/s 4. The Assistant Collector further held that the packing described as out folding corrugated boxes has to be considered as initial packing and costs of such packing should form part of the assessable value. The order of the Assistant Collector is under challenge.

3. Shri Parikh, learned counsel appearing on behalf of the petitioners, submitted that the conclusion reached by the Assistant Collector that the price at which the goods are supplied by the petitioners to Reckitt & Colman does not represent wholesale cash price is entirely erroneous. The learned counsel urged that the bare perusal of the agreement between the parties would clearly establish that the agreement is arrived at arms length and the transaction between the parties is on principal to principal basis. Shri Parikh submits, and in my judgment with considerable merit, that the decision of the Assistant Collector on this issue cannot stand in view of the dictum laid down by the Supreme Court in the decision reported in 1985 (22) E.L.T. 303 (Union of India & Ors. v. Cibatul Ltd. The facts of the case before the Supreme Court and in the present case are almost identical. As pointed out by the Supreme Court in paragraph 6, the question relevant for determination is whether the goods are manufactured by the seller or manufactured for sale on behalf of the buyer. Taking into consideration the circumstances (i) that the agreement requires the seller to affix the trade mark of the buyer on the manufactured goods; (ii) the trade mark of the buyer is to be affixed only on those goods which are found to confirm the specifications or standards stipulated by the buyer; and (iii) that the seller owns the plant and machinery, the raw materials and the labour are telltale circumstances to establish that the goods are manufactured by the seller and are not manufactured on behalf of the buyer. It is, therefore, obvious that the price at which the goods are supplied by the petitioners to Reckitt & Colman does

represent the wholesale cash price and is the normal price u/s 4 of the Central Excises & Salt Act, and must be accepted as assessable value for the purpose of levy of excise duty.

4. Shri Parikh also submitted that the Assistant Collector was clearly in error in not permitting the deduction of cost of outer folding corrugated boxes from the assessable value. The learned counsel, in support of the submission relied upon the decision of the Supreme Court reported in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., The Supreme Court while considering the case of manufacture of cigarettes held that when number of cartons containing cigarettes are put in corrugated fibre board containers for delivery, then the cost of corrugated fibre board containers cannot be included in the value of cigarettes for the purpose of assessment of excise duty. The Supreme Court pointed out that the corrugated fibre board containers are not necessary for selling the cigarettes, and therefore, the cost of such board containers cannot be included in the assessable value. Identical principle would apply in respect of outer folding corrugated boxes used by the petitioners while giving delivery of Dettol bath soap to Reckitt & Colman Company. The petitioners were perfectly justified to claim deduction of the costs of this outer folding corrugated boxes from the assessable value and the Assistant Collector clearly erred in refusing that claim. In my judgment, the Assistant Collector ought to have approved the price list as filed by the petitioners on March 19, 1981, a copy of which is annexed as Exhibit "B" to the petition.

5. Accordingly, petition succeeds and the rule is made absolute in terms of prayer (c). The bank guarantee furnished by the petitioners in pursuance of the interim order to stand discharged.

In the circumstances of the case, there will be no order as to costs.