(1990) 09 BOM CK 0084

In the Bombay High Court

Case No : Special Civil Application No. 1250 of 1978

Koron Business Systems Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-09-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36(1), 4

Citation : (1991) ECR 508 : (1991) 51 ELT 212

Hon'ble Judges : M.L. Pendse, J;E.D.D. Da Silva, J

Bench : Division Bench

Advocate : Mr. Vikram Nankani, instructed by M/s. Crawford Bayley and Co, for the Appellant; Mr. R.V. Desai and Mr. P.N. Menon, for the Respondent

Judgement

Pendse, J.—The petitioners are a limited Company incorporated under the Companies Act, 1956, and are running a factory situate at Kolshet Road in Thane District. The petitioners manufacture photo copying machines known as ''Korestat Copier Machine''. The manufacture of machine is liable to payment of excise duty under Tariff Item No. 33D of the First Schedule to the former Excise Act. The tariff item inter alia prescribes that office machines and a apparatus are liable to payment of twenty per cent. ad valorem duty. The petitioners sold and supplied the machines along with certain accessories like photo conductive plates and black shields. The plates and black shields are not built - in parts of the machine, but are used in the machine in substantially the same manner as a film or plate is used in conventional cameras. The plates used in photo copying machines can be used for a number of exposures after which it is required to be replaced. The petitioners supply each new machine along with certain number of plates and black shields.

2. Prior to 1973, under mistake, the petitioners were paying ad valorem excise duty on the value of photo copying machines, and the accessories. In the year 1974, the petitioners were advised that ad valorem excise duty was payable only on photo copying machine and while assessing the value of the machine, it is not

necessary to include the value of accessories. The petitioners thereupon submitted a refund claim for Rs. 14,411.12 to the Asst. Collector of Central Excise on April 25, 1974, in respect of excise duty paid for the clearance between April 2, 1973 and December 31, 1973. The Asst. Collector by order dated September 27, 1975 upheld the application of the petitioners for refund of duty attributable to certain accessories, but rejected the same insofar as it related to the plates and black shields. The Asst. Collector held that the Plates and black shields being necessary for the functioning of photo copying machine, the same should be treated as part and parcel of the machine.

3. The petitioners carried appeal before the Appellate Collector of Central Excise, Bombay, and the appeal was allowed by order dated February 16, 1976. The Appellate authority held that though the plates and black shields are essential for working of the machine, the essentiality cannot be the test for inclusion of these items under Tariff Item No. 33D. The appellate authority held that even without the plates and black shields, the photo copying machine is a complete machine and the plates and black shields can be purchased separately by customers as and when need arises. The Appellate Collector as a consequence of the finding directed that consequential relief shall be granted by the Asst. Collector to the petitioners.

The decision of the appellate authority was reviewed by the Government of India, Department of Revenue & Banking and by order dated June 30, 1977 it was held that as the petitioners supply the plates and black shields along with photo-copying machine and the price of the machine is inclusive of the cost of plates and black shields, it must be concluded that the plates and black shields are essential parts of the machine. The Government of India thereupon in exercise of powers under sub-section (2) of Section 36 of the Central Excises and Salt Act, 1944 reversed the order of the appellate authority and restored that of the Asst. Collector. The order of the reviewing authority has given rise to the filing of the present filing of the present petition under Article 226 of the Constitution.

4. Mr. Nankani, learned counsel appearing on behalf of the petitioners, submitted that the order on the review application is entirely unsustainable. It was urged that essentiality cannot be the test for inclusion of the item while determining the assessable value of photo-copying machine under Tariff Item No. 33D of the First Schedule. The learned counsel urged that the photo-copying machine become a saleable commodity in the market without the plates an black shields. The plates and black shields are required for obtaining results from the machine, but the plates and black shield cannot be treated as part and parcel of the machine. We find considerable merit in the submission of the learned counsel. Tariff Item No. 33D provides for payment of excise duty on office machines and, therefore, while determining the assessable value, what must be taken into consideration is only the value of the machine. It is not permissible to take into consideration the accessories like plates and black shields while determining the assessable value of the machine. It is undoubtedly true that the plates and black

shields are required for working of the machine, but that by no stretch of imagination can lead to the conclusion that plates and black shields are part and parcel of the machine. For illustration, film or roll is required for functioning of a camera, or petrol is required for running of car, or ribbon is required for functioning of a typewriter, but neither the film not petrol nor ribbon can be considered a part and parcel of camera, car or typewriter. The appellate authority has recorded a clearcut finding that even without plates and black shields, the photo-copying machine is a complete machine and liable for payment of excise duty under Tariff Item No. 33D. The appellate authority has also recorded a finding that supply of plates and black shields are not dependent upon a particular machine, but are supplied in accordance with the needs of the customers. The appellate authority further recorded a finding that customers can purchase plates and black shields separately as and when need arises. These findings of facts are not disturbed by the reviewing authority and in our judgment, on strength of these findings, the conclusion is inescapable that the value of the plates and black shields cannot be included while determining the assessable value of photo-copying machine.

5. The reliance placed on the decision of this Court in Kosan Metal Products Pvt. Ltd. Vs. Union of India and others, and the decision of the Supreme Court in State of Uttar Pradesh and Another Vs. Kores (India) Ltd., , by the learned Counsel for the petitioners is very appropriate. Mr. Desai for the department relied upon the decision of the Andhra Pradesh High Court in Jay Engineering Works Ltd. Vs. Government of India and Others, , but in our judgment, the said decision does not carry the case of the Department any further. In our judgment, the order of reviewing authority cannot be sustained.

6. Accordingly, rule is made absolute and the order dated June 30, 1977 passed by the joint Secretary to the Government of India, Department of Revenue & Banking, in Review No. 1262 of 1977 and copy of which is annexed as exhibit ''J'' to the petition is set aside and that passed by the Appellate Collector of Central Excise, Bombay, on February 16, 1976 in Appeal No. I-90/76 and copy of which is annexed as exhibit ''G'' to the petition is restored. The bank guarantee furnished by the petitioners to stand discharge. In the circumstances of the case, there will be no order as to costs.

