(1991) 11 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 473 of 1983

Koron Business Systems Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:
Central Excises and Salt Act, 1944 — Section 4

Citation : (1992) 58 ELT 48

Hon'ble Judges : N.D. Vyas, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Shri D.B. Shroff and Mr. P.D. Shah, for the Appellant; Shri R.V. Desai and Shri P.N. Menon, for the Respondent

Judgement

Pendse. J.

1. The petitioner is a Public Limited Company and manufactures photo-copying machines at their factory located at Thane. The photo-copying machines are assessable to payment of excise duty under Tariff Item 33D of the Central Excise Tariff. The photo-copying machine consists of two main units, document copier and a processor unit. The document copier consists of a camera, a stand on which the camera is mounted and other attachments like timer, lens, screen, lamp holders, etc. The camera consists of bellows and the metal frame with racks and gears. The petitioner claims that the timer and lens required for the camera are purchased from the open market. The entire photo-copying machine consisting of the document copier and the processor unit was assembled at the factory. The petitioner claims that as the timer and the lens were purchased from open market and in respect of which excise duty was already paid, while determining the value of the photo-copying machine, it is not permissible to take into consideration the value of the lens and the timer. The contention did not find favour with the Assistant Collector of Central Excise, Bombay who by order dated January 31, 1977 held that the cost of lens timer should also be included in the cost of camera for assessment under Tariff Item 33D. The decision of the

Assistant Collector, Central Excise was confirmed in appeal by the Appellate Collector of Customs and Central Excise by order dated September 15, 1977 and finally by Government of India, Ministry of Finance by order dated April 16, 1982 passed in revisional jurisdiction. The orders of the three authorities below are under challenge in this petition filed under Article 227 of the Constitution of India.

2. Shri Shah, learned counsel appearing on behalf of the petitioners, submitted that the decision recorded by the authorities below holding that the value of the timer and the lens of the camera should be included while determining assessable value for the purpose of payment of excise duty is not correct. The submission cannot be accepted for more than one reason. In the first instance, the findings recorded by the three authorities below that the timer and the lens are the main components of the camera is a pure finding of fact and cannot be disturbed in exercise of writ jurisdiction. Secondly, the process set out by the authorities while manufacturing what is known as document copier clearly establishes that the document copier machine is not complete without a camera and there cannot be a camera without a timer and the lens. The petitioners are clearing the camera consisting of bellows and a frame and other attachments of document copier separately and these attachments and the camera are then assembled into the document copier at the site where the photo-copying machine is to be installed. The camera when assembled into the document copier includes the timer and lens and without the timer and lens, the camera will not function and without camera the copying machine is useless and will not be sold in the market. Indeed, the camera is the main component of the copying machine. Once, this aspect is clear, then it is obvious that while determining the assessable value of the copier machine, the value of the timer and the lens, even if the petitioner purchased the same in the market is required to be included. The items though purchased in the market are assembled while manufacturing the copier machine and, therefore, the process of assembling amounts to manufacture. In our judgment, the conclusion recorded by the three authorities below is correct and does not suffer from the infirmity.

3. Shri Shah submitted with reference to decision of CEGAT reported in 1988 (15) ECR 57 , that even in cases where essential parts of the machine be not manufactured by the petitioners but are merely fitted before clearance, the value of the parts cannot be included while determining the assessable value. Shri Shah submitted that the decision of CEGAT was challenged before the Supreme Court in an appeal preferred by the Excise authorities but the appeal was dismissed. Shri Shah very fairly pointed out that the order of the Supreme Court does not deal with the finding of the Tribunal that the value of the essential parts when not manufactured should not be included in the assessable value of the final article. The decision of the Supreme Court only refers to the inclusion of interest on delayed payments. In our judgment, the decision of the Tribunal that the value of the essential parts should not be included while determining the assessable value cannot be accepted as a correct proposition. The three authorities below have correctly held that the value of the timer and lens even

though purchased from the market is required to be included in the assessable value and requires no interference in writ jurisdiction.

4. Accordingly, petition fails and rule is discharged with costs.