
(2016) 04 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal Nos.7251-7302 of 2000

M/s Tata Chemicals Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

General Sales Tax Act — Section 4

Citation : (2016) 334 ELT 580 : (2016) 3 RecentApexJudgments(RAJ) 202 :
(2016) 4 Scale 23

Hon'ble Judges : Ranjan Gogoi;Arun Mishra;Prafulla C. Pant, JJ.

Bench : Full Bench

Advocate : K. Radhakrishna, Sr. Adv,Rupesh Kumar, Arijit Prasad, Jitin Singhal,
B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The claim of the appellant is that there was an arrangement between the appellant (Manufacturers/sellers) and the buyers of soda ash to the effect that sales made in the gunny bags supplied by the appellant can be returned and upon such return the value thereof will be refunded to the buyers. The inclusion of the value of the gunny bags in the above situation for determination of the assessable value of the manufactured goods has been considered by this Court in Mahalakshmi Glass Works (P) Ltd. v. Collector of Central Excise, Bombay 1988 (Supp) SCC 601 and Triveni Glass Ltd. v. Union of India and Ors. (2005) 3 SCC 484.

2. Paragraphs 5 and 6 of Mahalakshmi Glass Works (P) Ltd.(supra) may be conveniently extracted herein under:

"5. The Tribunal noted that the appellant manufactured glass bottles. It delivered these in two types of packing, namely, in open crates and in cartons and gunny bags. So far as the crates were concerned, the same belonged to the appellant. The customer was billed for the cost of glass bottles only. The crates were

returnable to the appellant within 30 days. The revenue has not included the cost of such crates in the assessable value. The revenue has also not included the cost of packing, if any, supplied by the customer himself. There was no dispute about these packings. So far as the packings in cartons and gunny bags were concerned, it was noted by the Tribunal, that these belonged to the appellant but their cost was realised from the customer along with the cost of glass bottles. The appellant's case was that these packings were also returnable and in many cases they were actually returned and reused by the appellant. There was no evidence about the durability of the cartons and gunny bags but nothing to show that these were returnable. The position seems to be as follows: The Tribunal has rightly applied the returnability test. In *K. Radha Krishnaiah v. Inspector of Central Excise* this Court observed that it cannot be said that the packing is returnable by the buyer to the assessee unless there is an arrangement between them that it shall be returned. Therefore, such arrangement has been established. Actual return or extent of return is not relevant. What is necessary is that if the buyer chooses to return the packing, the seller should be obliged to accept it and refund the stipulated amount. In this case after examining the facts, the Tribunal found that there was no clause about returnability of the cartons and gunny bags. The appellant invited the attention of the Tribunal to the following clause in their standard contract. It read as follows:

"6. All packing cases, other than such as may be supplied or paid for by buyer, shall be returnable in good order and condition within 30 days after receipt."

6. The Tribunal was of the view that the above clause related to "cases". It could have meant only the crates which belonged to the appellant and for which the customers had not paid anything. The property in the crates having remained with the appellant all along, the buyers were naturally obliged to return them to their rightful owners. But that was not the case with the cartons and gunny bags. The buyers pay for these and the property in these pass on to the buyers. They could be asked to return them to the appellant only under a term of sale and on payment of the agreed amount and not for the free. No such contract or agreement was forthcoming. The Tribunal was not convinced that in the normal course of business anyone could be asked to part with his property, and in addition incur return freight therefor too for nothing. In those circumstances, the Tribunal held that the cartons and gunny bags were not returnable in the accepted sense of the term. The Tribunal further noted that since the statute insisted on the packing being returnable, in addition to being durable, the authorities are bound to see whether the transaction fulfilled the tests of returnability as per the Supreme Court and High Court judgments."

3. Paragraphs 12 and 17 of the judgment in *Triveni Glass Ltd.* (supra) may also be noted :

"12. Reliance is also placed upon the case of *Mahalakshmi Glass Works (P) Ltd. v. CCE* wherein it has been held that under Section 4(4)(d)(i) of the Act the cost of packing which is of durable and returnable nature is to be excluded. It is held

that there must be an arrangement between the buyer and the assessee that the packing be returned to the assessee. It is held that it is not the physical capability of the packing to be returned which is the determining factor but the condition that if the buyer chooses to return the packing the seller is obliged to accept it and refund the stipulated amount. It is held that the question whether the packing is actually returned or not has no relevance.

17. We have considered the submission of the parties. In our view, the law laid down by this Court in Mahalakshmi Glass Works (P) Ltd. is the correct law. There is no necessity that the crates must be actually returned. So long as there is an obligation on the seller to take back the crates, if the buyer chooses to return them, it is sufficient. The term in the contract, set out above, imposes an obligation on the appellants to take back the wooden crates and to pay the stipulated amount to the buyer if the buyer chooses to return them. Wooden crates merely consist of planks of wood which are nailed together. Therefore, even if they are dismantled by the buyer and the planks are returned to the appellants, the appellants would be in a position to use them again. In our view, the High Court was wrong in holding that the wooden crates are not durable or returnable. The answer to the second question therefore has to be in favour of the appellants. It is held that, in view of the specific term in the bills/invoices, the wooden crates are durable and returnable packing whose cost is not to be included in the value of glass sheets."

4. From the above what transpires is that if an arrangement exists between the seller and the buyer of excisable goods for return of the packing materials by the buyer to the seller, carrying an obligation on the seller to return the value of the packing materials to the buyer on such return, such value is not liable to be included in the assessable value of the finished product. Furthermore, if such an arrangement exists, the question of actual return is not relevant.

5. The materials placed before us do not enable us to come to the conclusion that the appellant has succeeded in establishing, on the basis of the materials so placed, that such an arrangement of return of the packing materials of the gunny bags with the obligation on the part of the seller to refund the value thereof existed between the parties so as to enable us to hold that in the present case the law laid down in Mahalakshmi Glass Works (P) Ltd. (supra) and Triveni Glass Ltd.(supra) would apply.

6. Specifically we may mention here that we do not find any obligation taken by the appellant to refund the value of the gunny bags to the Buyer in terms of any arrangement between the parties. If the arrangement required in terms of the decisions of this Court in Mahalakshmi Glass Works (P) Ltd. (supra) and Triveni Glass Ltd.(supra) do not exist, we do not see there can be any remand of the appeal for further consideration.

7. The further question raised on behalf of the appellant i.e. that the matter ought to be remanded at least for the consideration of the question of inclusion

of the value of the gunny bags supplied/made available by the buyer and the exclusion of the duty element levied on such basis can hardly be appreciated. Though there is no doubt that the value of such gunny bags supplied by the buyer is not liable to be included in the determination of the assessable value of the soda ash, we do not find any factual foundation in support of the essential primary facts in this regard. This is, perhaps, why the issue was not dealt with in either of the orders on the basis of which this appeal has been referred to us. The aforesaid prayer, therefore, cannot be allowed.

8. For the reasons indicated, we dismiss the present appeals however without any order as to cost.