(1991) 07 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 1538 of 1981

Patel Aluminium Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-07-1991

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

Citation : (1991) ECR 511 : (1991) 56 ELT 303

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri S.N. Parikh, instructed by M/s Kantial Underkat and Co, for the Appellant; Shri J.P. Deodhar, for the Respondent

Judgement

A.V. Savant, J.—The first petitioner is a company manufacturing some aluminium products namely extruded shapes and sections, slugs etc. falling under Tariff Entry 27. From November 1980 onwards, the petitioner-Company filed the price list claiming deductions on account of certain items alleged to be post manufacturing expenses. Along with that price list they filed their Chartered Account''s certificate specifying the percentage of post-manufacturing expenses. However, the petitioner''s claim was rejected. After filing the appeal, which was dismissed, the petitioners had earlier filed Writ Petition No. 470 of 1981. At the stage of admission of the said writ petition, the impugned orders were set aside with liberty to the assessing authorities to pass fresh orders in accordance with law. In the meanwhile the petitioners were allowed to clear the goods on certain terms.

2. Pursuant to the orders passed on 9th April 1981 in Writ petition No. 470 of 1981, the petitioners were heard again. They filed their fresh price list and claimed deductions on a account of six items as post-manufacturing expenses. The said six items are as under :

(i) Special packing expenses;

(ii) Carriage forward;

(iii) Selling Agency Commission

(iv) Interest on credit to customers;

(v) Ageing expenses;

(vi) Additional Sales Tax.

The claims on account of all the above six items were, however, rejected. The appeal filed by the petitioners having been dismissed, the petitioners filed the present Writ Petition No. 1538 of 1981. This Writ Petition was admitted on 4th November 1981. Subsequently, however, in view of the judgment of the Supreme Court in the case on Union of India and Others v. Bombay Tyre International Ltd. etc. etc. reported in 1983 (14) ELT 1896, the format order was passed by one of us - Pendse J. on 9th December, 1983 directing the assessing authorities to re-determine the question of deductions claimed under the above six headings. The petitioners were permitted to file the amended price list and produce the documentary evidence in support of their claim. Pursuant to the said order passed by Pendse J. on 9th December, 1983 the impugned order has now been passed on 27th April 1984.

3. We have heard Shri Parikh, the learned Counsel appearing on behalf of the petitioners. Out of the six items in respect of which deductions were claimed on the ground of post-manufacturing expenses, the last item namely additional sales tax has been held to be admissible as deduction under the impugned order. Hence what survives for our consideration is the question as to whether the remaining five items are admissible as deductions on account of the same being post-manufacturing expenses.

4. The first item on account of which deduction is claimed is expenses incurred for the alleged special packing. The contention of Shri Parikh is that the goods are normally packed in bundles with strips packing viz. naked bundles with ends tied with strips. The petitioners'' contention, however, is that extruded shapes and sections which are to be put to use as highly sensitive components (such as in Reprographic Machines, Electronic equipments etc.) are required to be sent in a special wooden packing or in hessian packing. The very nature of such extruded shapes and sections being highly vulnerable to damage during handling, storage or in transit, the petitioners'' contention is that it is necessary to provide such a special packing. However, the evidence on record shows that even if the goods are slightly bent or their surfaces get scratches during handling or storage or in transit, they are likely to be rejected by the customers. It is, therefore inevitable that the goods are required to be packed in wooden packing or in hessian packing which, therefore, becomes the normal packing. It is not possible to go into the question of fact in this writ petition as to whether some of the customers had asked for special packing in respect of the goods supplied by the petitioners which were used in components other than highly sensitive

components such as reprographic machines, electronic equipments etc. The findings on record show that in the very nature of things, what the petitioners claim to be a special packing has to be the normal packing in order to avoid any damage to the product. If that be so, it is not possible to accept Shri Parikh''s contention that expenses incurred on account of this special packing are liable to be deducted as post-manufacturing expenses.

5. In respect of the item of Carriage Forward, Shri Parikh submitted that the item refers to the transport cost and that the petitioners have claimed the carriage forward charges in respect of the goods which are delivered from their factory to either at the factory godown of the customers or transporter''s godown for onwards transportation outside Bombay as the case may be Shri Parikh also tried to place reliance on the observations of the Supreme Court in the case of Union of India & Ors. v. Bombay Tyre International Ltd. etc. etc. (supra) in para 49 of the judgment at page 1925 of the report. However, it is not possible to accept the contention of the learned Counsel for more than one reason. The affidavit filed by the second petitioner, who is the Managing Director of the first petitioner company, specifically shows that the price for delivery of the goods has been mentioned as "Ex-works". As distinguished from the facts in the case before the Supreme Court, in the present case, the price list submitted by the assessee shows that the fixation of the price "Ex-works" clearly shows that the deduction on account of cost of transportation from the factory gate onwards cannot be allowed as post-manufacturing expenses. In the facts of the present case it is clear that the sales are at the factory gate and no deduction on account of expenses towards the carriage forward is permissible from "Ex-works" price. We are in agreement with the finding of the Assistant Collector that if the assessee chooses to bear such cost on himself, absorbing the same in the sale price without collecting the same from the customer when he fixed the price as "Ex-works", he cannot then claim any deduction on account of the said carriage forward charges being a post manufacturing expense. There is thus no merit in the contention of Shri Parikh on this count.

6. As far as the claim of selling agency commission is concerned, Shri Parikh has very fairly conceded that there is no merit in the said claim.

7. Shri Parikh next contended that interest on credit to customers was also liable for deduction as post-manufacturing expenditure. The petitioners'' contention is that they sell the goods by giving credit for certain period. The amount of loss of interest suffered by them on the value of the goods cleared on account of late realisation of sale proceeds for the period of credit has, therefore, to be excluded from the sale price to arrive at the correct assessable value. The contention of the petitioners is, to say the least, totally unfounded and imaginary. If the price at which the goods are ordinarily sold at the place of business is known, as in the present case, it is not possible to accept the petitioners'' contention that the interest which they would have earned in case of the prompt recovery of the sale price has to be excluded while determining the assessable value. The petitioners''

argument that there have been borrowings in the normal course of business, has no relevance to the question of deductions claimed on account of interest on credit to the customers. The petitioners have themselves admitted that there are borrowings on other counts also as a result of which the interest is paid to the bankers. It is thus not possible to accept the contention of Shri Parikh for deduction on account of interest to the creditors. Shri Parikh sought to place reliance on the observations of the Supreme Court in the case of collector of Collector of Central Excise, Madras Vs. Indian Oxygen Ltd., where it has been observed that any income either in the shape of interest on deposits notional or real, may be earned on the deposit for the safe return of cylinders would be though ancillary, but would not be the price for the manufacture of gas, accordingly it would not constitute part of the assessable value. The Supreme Court was dealing with the question of the price of the sale of gas. The levy in that case was for manufacture of gases and the excisable goods were gases. In that context the Supreme Court observed that it had to be borne in mind that supply of gas cylinders was ancillary to the supply of gases but it was strictly not incidental thereto because there are classes of persons who can take delivery of these gases without supply of cylinders by the manufacturers and in those cases no question of charging rental would arise. Therefore, rental would be though ancillary but would not be the price for the manufacture, and accordingly would not constitute part of the assessable value of the gas. In our opinion the observations of the Supreme Court can have no bearing on the facts of the present case on the question of deduction on account of interest on credit to customers.

8. Shri Parikh next contended that the cost of ageing is incurred on account of the process of hardening to give better strength to the aluminium extruded sections. It is a process carried on after the aluminium extruded shapes and sections came into existence as commercially known. However, the affidavit of the second petitioner - Managing Director - makes it clear that the process of ageing is carried out as per the customer''s requirement and is a process just prior to packing and forwarding. There can be no dispute that the expenses incurred on account of several factors which have contributed to the value of the articles upto the date of the sale are to be included while determining the assessable value. It is also not possible to dispute the fact that ageing is one of the factors which has contributed to the value of the aluminium extruded shapes and sections sold only after such ageing operations are carried out upto the date of the sale. In view of the facts found on record there is no merit in Shri Parikh''s contention that the expenses incurred on account of ageing are to be deducted.

9. In view of the above, there is no merit in any of the contentions raised by the petitioners. The impugned order dated 27th April 1984 is, therefore, correct and upheld. The petition is, therefore, liable to be dismissed. Rule discharged with costs.

