

(1987) 06 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 1412 of 1980

Queens Chemists

APPELLANT

Vs

B.K. Agarwal, Collector of Central Excise and Customs,
Bombay and others

RESPONDENT

Date of Decision : 12-06-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (1987) 31 ELT 889

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners are the manufacturers of medicinal or pharmaceutical products or preparations and they have their factory at 386, Veer Savarkar Marg, Prabhadevi, Bombay - 400 025. The products of the petitioners are ordinarily sold by the petitioners in the course of wholesale trade at fixed prices to the petitioners' sole selling agents by name Messrs Bhogilal Premchand & Co. (hereinafter referred to as the "said Agents") - The said Agents sold the said products after adding to the prices for the said products charged by the petitioners to the said Agents, various other things including their profits etc.

2. It appears that earlier the petitioners had to file certain writ petitions with regard to the assessment of their products under the provisions of Section 3 and 4 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the "said Act") read with Item No. 14-E of the first schedule to the said Act. In that it has been held that the petitioners have made bona fide sales to the distributors and those sales were not for extra commercial considerations, and, therefore, the basis of the excise duty on the said products should be on the basis of the prices fixed by the petitioners ex-factory to the said Agents and not on the basis of the prices at which the said Agents would sell the products in the market.

3. In an about June 1974 the petitioners had submitted to the Superintendent of Central Excise and by his letter dated June 23, 1974, addressed to the

petitioners the Superintendent of Central Excise had also approved on and with effect from June 22, 1974, the petitioners' price list for and in respect of the said products showing the petitioners' fixed prices for sale of the said products by the petitioners to the said Agents. It appears on or about October 1, 1975, Section 4 of the said Act was amended and the Superintendent of Central Excise relying on the said amendment called upon the petitioners to submit their price list showing the wholesale prices of the said products charged by the said Agents. The petitioners accordingly submitted the said price list by a letter dated September 15, 1975. But at the same time by their letter dated September 15, 1975 the petitioners pointed out that the Central Excise duty may be calculated on the basis of the prices charged by them to their wholesale Agents under the said Act and not on the basis of the prices at which the said Agents sell the products in the market, and therefore, they sought clarification in that behalf. Thereafter the petitioners paid the excise duty under protest inasmuch as the duty had been charged on the basis of the prices charged at which the said Agents were selling the products and not on the basis of the ex-factory prices fixed by the petitioners when they sold their products to the said Agents. Then they claimed refund of the said excise duty paid by them under protest and in all they have claimed three refunds which they have set out in para 7 of the petition and in all they claimed a total of Rs. 1,85,241.15 paise from the respondents. The Assistant Collector of Central Excise, however, rejected all such applications for refund on the basis that the claim was not tenable as the petitioners were following the procedure and have filed a price list on their own and have not disputed the price list at any time. Against such rejection the petitioners filed an appeal before the appellate Collector of Central Excise. This appeal was also rejected by the appellate Collector by his order dated October 14, 1980. The petitioners, therefore, filed the present petition impugning the said orders and the said decisions taken by the respondents.

4. Mr. Rana appearing for the petitioners has pointed out that in the earlier order as also in the judgment of the Supreme Court in the case of A.K. Roy and Another Vs. Voltas Limited, , it has been clearly held that in the case of bona fide sales by the manufacturers the excise duty should be leviable at the ex-factory price of the manufacturers and there is no question of levying a duty on the basis of the price charged by the sole selling Agents. The department has clearly misconstrued the amended provisions of Section 4 and, therefore, compelled the petitioners to file a separate price list on the basis of the prices charged by the sole selling Agents. But, as soon as they filed the price list they had protested and pointed out that the price was not to be taken into account at the basis of the prices charged by the sole selling Agents. Thereafter they paid the amount. They paid it under protest. In fact, in the case of Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, , it has been clearly stated that as far as the scheme of the Act is concerned, there is no difference between the earlier provisions of Section 4 as also the amended provision which came into effect from October 1, 1975. Therefore, there is no justification whatsoever for

the department to insist upon the list of prices charged by the sole selling Agents.

5. Apart from this, the appellate Collector has clearly gone on a wrong basis that he referred to the notification dated October 8, 1966 which has only relevance to the extent of the prices charged by the petitioners and has no relevance whatsoever with regard to the prices charged by the sole selling Agents. In other words the petitioners were liable to pay, whatever duty they had to pay, only on the basis of the ex-factory prices charged by them and not on the basis of the prices charged by the sole selling Agents.

6. If that is so the petitioners are entitled to succeed in this petition and, therefore, their refund application should not have been rejected.

7. However, I make it clear that it is open to the respondents to assess, if they have not assessed earlier, the excise duty payable by the petitioners, but that shall be on the basis of the ex-factory prices of the products as fixed by the petitioners and not on the basis of the prices charged by the sole selling Agents. In the result, I pass the following order :

The impugned orders as contained in Ex. C, C1, C2 and also in Ex. F stand quashed and set aside. I direct that the respondents should consider the refund applications on the basis of the excise duty payable at the prices fixed by the petitioners ex-factory. The respondents must complete the assessment as per the directions given here and must pay the amount which the petitioners are entitled to on such assessment, within a period of three months from the date of the service of this order.

The petitioners are also entitled to the costs of this petition.