
(1991) 07 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 844 of 1981

Rallis India Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Citation : (1991) 07 BOM CK 0081

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

Bench : Division Bench

Judgement

Savant, J.—By this Petition, the Petitioners are challenging the legality and validity of the order dated 4th August 1984 passed by the Assistant Collector, Central Excise, Bombay, under which the petitioners' claim for certain deductions on account of the same being post manufacturing expenses has been rejected. Since, however, the matter has now to be sent back to the Assistant Collector, only a few facts may be stated as under :-

2. The First Petitioner Company manufactures table fans. In respect of the said articles of manufacture, they had submitted certain price-lists. In the light of the Judgments of the Supreme Court, the Petitioner Company submitted the amended price-lists and claimed deduction for the period commencing from 1st September 1971. The deductions claimed were on account of :

- (i) Marketing and Distribution;
- (ii) Advertising attributable to selling activity;
- (iii) Freight; and
- (iv) Interest.

In March 1977, the Petitioner Company submitted a further price-list claiming deduction on account of the expenses incurred for packing. In July 1977, the Superintendent refused to accept the price-list and directed the petitioners to file

a fresh price-list strictly in accordance with the provisions of Section 4 of the Central Excises and Salt Act, 1944. The petitioner Company thereupon filed a fresh price-list without claiming deduction on account of post manufacturing expenses, but under protest. The petitioners claimed refunds subsequently. Under three different orders passed in March, April and May 1981 the petitioners' claim for refund was rejected.

3. This writ petition was filed in June, 1981. At the stage of admission, certain ad-interim orders were passed. Subsequently, in the light of the Supreme Court Judgment in the case of Union of India and Others etc. v. Bombay Tyres International Ltd. etc. 1983 (14) ELT 1896 (S.C.). Pendse J. passed an order on 14th December 1983 directing the Assessing Authority to permit the petitioners to submit their statements of deductions and amendments in respect of the price-lists already filed. The Assessing Authorities were directed to consider the Petitioners' claim for deductions under the Headings :-

- (i) Interest on Book Debts;
- (ii) Averaged Freight;
- (iii) Discount and Commission; and
- (iv) Packing

together with other and further claim of deductions admissible in view of the Supreme Court Judgment in the said case of Union of India v. Bombay Tyre International. Under the said order dated 14th December 1983, the authorities were directed to finalise the price-list and determine the admissibility under different heads claimed in respect of all the refund applications.

4. Pursuant to this order passed on 14th December 1983, the Assistant Collector has passed the impugned order on 4th August 1984. In view of the order dated 14th December 1983, the first petitioner/Company produced the necessary material in support of its claim under the various heads enumerated above. However, the Assistant Collector has observed in Para 9 of his order that the claim for deductions under the headings : (1) Commission; (2) Cost of packing; and (3) Interest on Book Debts was, for the present, withdrawn without prejudice to their right to claim the same in the event of the Supreme Court allowing any of these claims of deductions.

5. We have heard Mr. Bharucha and Mr. Sethna, the learned Counsel for the rival parties. At the outset, Mr. Bharucha has contended that the observations appearing in Para 9 of the impugned order that the first petitioner Company was prepared to withdraw the claim of deductions under the headings : (i) Commission; (ii) Cost of Packing; and (iii) Interest on Book Debts were erroneous. Our attention has been invited to the record of the personal hearing appearing at Exh."Y" to the Petition. What has been recorded there is as follows :-

"For other claims viz. "Commission", "Cost of packing" and "interest on book debts", he stated that, at the moment, they would like to keep the claim in abeyance without prejudice to their right to claim these heads in the event of the Supreme Court allowing any of these heads when the PME Case will be decided finally and also without prejudice to their rights and contentions in their writ petition in the Bombay High Court." In view of this position, it is not possible for us to accept the finding of the Assistant Collector that the first Petitioner/ Company was prepared to withdrawn the claim of deduction under the said headings of Commission, Cost of Packing and Interest on Book Debts. The said findings is wholly erroneous. It is, therefore, necessary to direct the Assessing Authority to consider the case of the Petitioner Company for deduction on account of the said three items.

6. Apart from the above three items, deduction was also claimed on account of :-

- (i) Averaged Freight;
- (ii) Cash Discount; and
- (iii) Quantity/Target Discount.

As far as the claim of deduction on account of averaged freight is concerned, the Assistant Collector has accepted the said claim. As far as the claim of deduction on account of cash discount and quantity/target discount is concerned, the Assistant Collector has rejected both these claims. In respect of cash discount given for prompt payment, the Assistant Collector has observed as under :-

In view of the law laid down by the Hon"ble Supreme Court, I find that the cash discount is admissible, subject to the limitation period prescribed under the Central Excise Law. Accordingly, since cash discount for prompt payment was claimed for the first time on 9-1-1984, I allow it for the period from 10-7-1983 and onwards." The Assistant Collector presumably had in mind the provisions of Rule 11 and Section 11B of the said 1944 Act. In our Judgment, it is not possible to accept the said findings of the Assistant Collector, rejecting the deductions on account of cash discount beyond the period of 6 months prior to 9th January 1984. Mr. Bharucha on behalf of the petitioners has invited our attention to the Judgment of this Court in Shalimar Textile Mfg. Pvt. Limited Vs. Union of India and others, . On consideration of Section 11B of the Central Excises and Salt Act, 1944, and the provisions of Article 265 of the Constitution of India, the view taken by one of us (Pendse, J.) is that it was not possible to accept the contention on behalf of the Revenue that it was not permissible to grant refund for a period beyond 3 years prior to the date of the knowledge of mistake of law. The recovery made by the Department was illegal and without any authority of law. Article 265 of the Constitution prescribes that no tax shall be levied or collected except by authority of law and in case any tax is levied and collected without any authority of law, then it would not be permissible for the Department to refuse refund of such amount on the specious ground that the claim for refund was made belatedly. An authority which recovers the tax without jurisdiction

cannot be permitted to retain the amount merely because the tax payer was not aware that the recovery was without jurisdiction.

7. Our attention has also been invited by Mr. Bharucha to another Judgment of this Court in Devidayal Electronics and Wires Ltd. Vs. Union of India and others, R. A. Jahagirdar, J. on consideration of the Supreme Court Judgment in the case of Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, and the provisions of Section 11B came to the conclusion that there the High Court was exercising its powers under Article 226 of the Constitution, it was permissible to treat the petition as one for the purpose of compelling the respondents to refund to the petitioner the amount of excise duty paid by it, which the petitioner was found to have paid under a mistake of law. In such a case, the dismissal of the claim by the Assistant Collector on the ground of limitation mentioned under Rule 11 or Section 11B cannot present any hurdle in the exercise of the powers of this court under Article 226 of the Constitution. We may also make a reference to a Division Bench Judgment of this Court in the case of Sandoz (India) Ltd. Vs. Union of India, to which one of us, Pendse, J. is a party. The Division Bench has taken a similar view of the powers of the High Court under Section 226 of the constitution of India despite the bar of Rule 11 and Section 11B of the said 1944 Act.

8. In view of the above three Judgments, it is not possible for us to accept the conclusion of the Assistant Collector that in respect of the claim of cash discount beyond 10th July 1983, the same was barred by limitation. At any rate, as far as this Court is concerned, we direct the Assistant Collector to consider the claims of the petitioners for deduction on account of cash discount as claimed by the petitioners for the period 01-09-1971 onwards. As stated earlier, the petitioner Company has been filing the revised price-list and had been agitating the claim for refund right from 1976. Accordingly, the Assistant Collector is directed to reconsider the case of the petitioner company in respect of the deduction on account of the cash discount claimed from the period from 1st September 1971 onwards.

9. As far as the last item of quantity/target discount is concerned, the Assistant Collector has observed in Para 15 of the Order as under :-

"The quantity discount/target discounts are claimed by the Company on the basis of various amounts paid by them to the dealers which vary from region to region and within the same region from dealer to dealer." After having observed this, the Assistant Collector proceeded to reject the claim by observing thus :-

"The quantum of discounts have to be uniform to all dealers (within the region) for achieving a Particular sale target in order to entitle it to be a permissible discounts." It is difficult to accept this reasoning of the Assistant Collector. If quantity/target discount are admittedly given and it they vary from region to region as also within the same region from dealer to dealer, in our view, no objection can be taken to such a practice. The only reason assigned by the

Assistant Collector for rejecting the claim is that the quantum of discount was not uniform. We are not at all in agreement with the view expressed by the Assistant Collector and we hold that the claim for deduction on account of quantity/target discount will have to be considered on its own merit irrespective of the fact that the quantum of discount varies from region to region and also within the same region from dealer to dealer. The Assistant Collector was not justified in rejecting the said claim on that ground.

10. In view of the above, it is necessary to direct the Assistant Collector to consider the claim of the petitioner on all the heads mentioned above viz. (i) Commission, (ii) Cost of Packing, and (iii) Interest on Book Debts. It is further necessary to direct the Assistant Collector to consider the petitioners' claim for deduction on account of cash discount given from 1st September 1971. It is also necessary for the Assistant Collector to consider the petitioners' claim for deduction on account of quantity/target discount irrespective of the variation in the amount thereof from region to region or from dealer to dealer in the same region.

11. In view of the above, the Petition succeeds partly. The order dated 4th August 1984 is set aside. The Assistant Collector is directed to consider the claim of the petitioners for deduction under the several heads mentioned above. The Assistant Collector shall give the petitioner an opportunity to put forth their case and of producing the relevant documents and making submissions. The Assistant Collector will, however, dispose of the case as expeditiously as possible and in any case within 6 months from today. No order as to costs.