
(1991) 07 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 352 of 1983

Raymond Woollen Mills Ltd.	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 233B
Central Excises and Salt Act, 1944 — Section 4

Citation : (1991) ECR 504 : (1992) 57 ELT 396

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

Bench : Division Bench

Advocate : Shri J.J. Bhatt, Mr. D.B. Shroff and Mr. P.D. Shah, instructed by M/s. Manilal Kher Ambalal and Co, for the Appellant; Shri R.V. Desai and Shri J.P. Deodhar, for the Respondent

Judgement

A.V. Savant, J.—By this Petition, the Petitioners are challenging the orders passed on 16-3-1984 and 27-7-1988 by the Assistant Collector of Central Excise, Thane, partly rejecting the petitioners' claim in respect of the abatement of certain items of expenditure on the ground that they are the post-manufacturing expenses. The first petitioner is a manufacturer of man-made and woollen fabrics falling under Tariff Items Nos. 21 and 22. By their letter dated 18th March, 1991, the petitioner-Assessee claimed refund on the ground that the excise duty was wrongfully collected in respect of certain items which are in the nature of post-manufacturing expenses. The assessee thereafter filed further revised claims of refund for the subsequent periods. The claims for refund having been rejected, the assessee filed the present Writ Petition No. 352 of 1983 in this Court and obtained a stay order on 21st February 1983 requiring the assessment to be done on the value arrived after deducting the alleged post-manufacturing expenses from the selling price on the condition that the assessee was required to execute a bond in favour of the Department that in the event of the petition being dismissed, the assessee shall pay to the Department the requisite amount.

2. After this interim order was passed on 21st February 1983, this Court passed

a further order on the 9th December 1983 in the light of the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . One of us - Pendse J., passed the said order on 9th December 1983 giving certain guidelines and fixing the time schedule for deciding the issue of post-manufacturing expenses in the light of the directions given by the Supreme Court in the above said decision.

3. In terms of the said order passed on 9th December 1983, the assessee filed a further revised statement of deduction on the ground of post-manufacturing expenses. In respect of some of the items, the assessee produced the necessary evidence consisting of Account Books which were duly certified by the Chartered Accountant. During the pendency of the proceedings before the Assistant Collector, the assessee filed further revised price-list for the subsequent period. Whereas the order dated 16-3-1984 at Exh. "R" deals with the price-list for the period prior to 10-5-1983, the order dated 27-7-1988 at Exh. "AA" to the Petition deals with the price-list effective from 10-5-1983 till 31-3-1988. In the light of the evidence produced on record, the Assistant Collector has partially granted the claim of abatement in respect of freight and transportation charges for the period stipulated in the order, between October 1980 and February 1983, excluding the period covered by the four months of July 1981, August 1981, April 1982 and July 1982. The claim for these four months on account of freight and transportation has been rejected. The other items which have been disallowed are bonus to dealers, commission to agents, expenditure incurred on account of secondary packing, interest on security deposits from dealers and agents, interest on dealers' deposits against direct dispatches and lastly, interest and bank charges on drafts.

4. We have heard Mr. Bhatt for the petitioners and Mr. Desai for the Respondents in respect of the following items :-

- (i) Freight & Transportation-charges incurred during the four months of July & August 1981, April & July 1982;
- (ii) Bonus to dealers;
- (iii) Commission to Agents;
- (iv) Secondary Packing;
- (v) Interest on security deposits from dealers and agents;
- (vi) Interest on dealers' deposits against direct dispatches;
- (vii) Interest and Bank Charges on Drafts.

We consider each of the items as under :-

- (i) Freight & Transportation :

In respect of the claim of abatement on account of Freight and Transportation, the only reason for disallowing the claim for these 4 months is that while the

assessee has to issue the necessary gate-passes, the gate-passes during these four months did not bear the endorsement "duty paid under protest". Relying on the provisions of Rule 233B, the Assistant Collector, therefore, held that since the duty was not paid under protest, the assessee would not be entitled to claim abatement on this ground. However, it is clear that the fact that the assessee had paid duty during the relevant four months of July and August 1981 and April and July 1982 has not been disputed. There was also a covering letter that the duty was paid under protest. It is, however, true that while the gate-passes for the other period, from October 1980 to February 1983, excluding these four months, did bear the endorsement "duty paid under protest", the gate-passes for these four months did not bear such an endorsement. In our opinion, it is not possible to reject the claim of the assessee for abatement in respect of these four months also merely on the ground stated above. The assessee would, therefore, be entitled to claim abatement on account of the freight and transportation charges paid during the four months of July and August 1981 and April and July 1982.

(ii) Bonus to Dealers :

The 2nd item on account of which deduction was claimed related to bonus to dealers. The Assistant Collector has observed that deduction on this ground was not ascertainable at the time of removal of the goods and that these expenses were incurred after the date of the delivery of the goods. Mr. Bhatt, appearing for the petitioners, has submitted that the bonus claimed is in the nature of trade discount and is admittedly given as part of the assessee's trade practice under a scheme which prescribes different slab rates. This bonus was ascertainable prior to the removal of the goods as per the trade practice and the expense as arrived after the date of delivery ought, therefore, to be excluded from the value of the goods for the purposes of exercise. Mr. Bhatt has also invited our attention to the Judgment delivered by us on 2nd July 1991 in the case of Advani Oerlikon Limited Vs. Union of India, , where we have taken a similar view. Relying upon the observations of the Supreme Court in the case of Bombay Tyre International (supra) it was contended by Mr. Bhatt that the assessee has satisfactorily established the fact of the existence of the trade practice followed by him for several years. On the other hand, Mr. Desai, the learned Counsel appearing for the Revenue, contended that in view of the observations of the Supreme Court in the case of Coromandel Fertilisers Ltd. v. Union of India and Others, reported in 1984 (17) ELT (S.C.) bonus to dealers cannot qualify for deduction in determining the assessable value of goods for the purposes of imposition of excise duty under the Act. Mr. Desai tried to place reliance on the observations appearing in Para 13 of the said Judgment, appearing at page 614 of the Report, which read as under :-

"The commission which is paid by the appellant to the selling agents is for services rendered by them as such agents. Such commission paid to agents for services rendered cannot be considered to be in the nature of any trade discount

which may qualify for deduction in determining the assessable value of the goods for the purpose of imposition of excise duty under the Central Excises and Salt Act, 1944."

In our view, the ratio of the Supreme Court decision can have no application to the facts of the present case. In the facts of the case before the Supreme Court, the agreements which the appellants had with the selling agents clearly indicated that selling agents were being appointed as the agents of the appellants for the sale of the appellants' product. The agreement clearly provided that the selling agents will secure orders on behalf of the appellants, execute such orders on behalf of the appellants and will remain liable to the appellants for realisation of the price of the goods sold to various parties and for such services rendered by the selling agents to the appellants, the selling agents, would be entitled to commission. In these facts, the Supreme Court held that the commission which was paid by the appellants to the selling agents was for services rendered by them as agents and, therefore, such commission cannot be considered to be in the nature of trade discount which may qualify for deduction in determining the assessable value of the goods. In our view, in the present case dealing with bonus to dealers given on a principal to principal basis, the ratio of the aforesaid Supreme Court Judgment can have no application. In our opinion, having regard to the fact that there was evidence on record which showed an established trade practice of grant of bonus to the dealers, the claim for abatement on this account ought to have been granted. It will, however, be necessary to remand the matter back to the Assistant Collector for quantifying the exact amount after verification of the material on record.

(iii) Commission to Agents :

The 3rd item on account of which abatement has been claimed is commission to agents. The said claim has been disallowed on the same ground as stated in Item (ii) earlier. In view of what has been stated above, it is clear that the commission payable to the agents was also ascertainable as a matter of trade practice followed by the Assessee over the years. The commission has been given as a part of the agency agreement. The commission is not for any services rendered by the agent. Since the commission payable was ascertainable prior to the removal of the goods and the agent was aware of the same by virtue of the Agreement, the claim on this account is liable to be allowed. The matter, however, will have to go back for quantifying the deduction subject to verification of the material on record.

(iv) Secondary Packing :

Mr. Bhatt contended that the assessee made a claim for deduction of the expenses incurred on account of secondary packing on wooden cases, hessian clothes etc. According to the learned Counsel, this did not include the expenses incurred on account of primary packing. The Assistant Collector, however, has observed as under :-

"When asked specifically whether the clearances in such secondary packing is made to all buyers or to certain buyers at their request, M/s. Raymonds however did not reply this query but stated that the goods are packed in the condition in which they are to sold in the wholesale market at the factory gate."

A perusal of the claim made by the assessee in this behalf also shows that for the relevant period the claim made by the assessee is somewhat vague and lacks in material particulars. Whether there was a special packing provided at the instance of some of the customers at a particular destination has not been specified. On the contrary, when liberty was given to the assessee to substantiate his contention that the special packing was provided at the instance of some of the customers in certain cases, the assessee failed to produce the necessary material, but gave the answer as reproduced above. As the evidence stands on record, this is a pure finding of fact that for the relevant period the assessee has not been able to substantiate his claim that he was required to provide any secondary or special packing other than the normal packing. In view of this finding of fact based on the evidence for the relevant period, it is possible to disturb the conclusion of the Assistant Collector that the assessee is not entitled to any deduction on account of the expenses incurred for the alleged secondary or special packing.

(v) Interest on Security Deposits from Dealers and Agents :

This claim was disallowed on the ground that these deposits were held by the petitioners and that obviously the same were utilised in the working capital. The contention of the assessee is that interest on security deposits of dealers were undisputedly incurred after the delivery of the goods. According to the assessee, such interest does not go into the value of the goods or their marketability. However, in view of the decision of the Division Bench of this Court in *Britannia Industries Ltd. Vs. Union Bank of India*, the said claim has to be rejected.

(vi) Interest on Dealers' Deposits against direct dispatches :

The claim under this head has been disallowed on the ground that the deposits were held by the petitioners and obviously the same were utilised in the working capital. The assessee's contention is that interest on security deposits on direct dispatches were undisputedly incurred after the delivery of the goods and that such interest does not go into the value of the goods and their marketability, but is a post-manufacturing expenditure. However, in view of the decision of the Division Bench of this Court in *Britannia Industries Ltd.'s (supra)* case, it is not possible for us to accept the said contention. The assessee's claim on this ground, therefore, stands rejected.

(vii) Interest and Bank Charges on Drafts :

The last item on account of which abatement is claimed is interest and bank charges on drafts. The said claim has been disallowed as expenditure was incurred subsequent to the delivery of the goods and that these expenses have

contributed to the value of the goods and increased their marketability upto the date of the sale. Mr. Bhatt for the petitioners has contended that the expenditure has admittedly been incurred after the date of delivery. It is, therefore, not possible to accept the reasoning that the expenditure has contributed to the marketability of the goods. The expenses are incurred under a scheme which permits the assessee to make delivery of the goods on credit and on the dealers' giving bills of exchanges which are subsequently negotiated with the Bank at discount. In our opinion, in view of the scheme of Section 4 of the Central Excises and Salt Act, 1944, Bank Commission, Hundi Commission and interest charges payable to the Bank in the account of the customers are in the nature of post-clearing expenses and, therefore, they are deductible while calculating the assessable value of the goods. In our opinion, the claim of the assessee on account of deduction in respect of interest and bank charges on drafts is a post-manufacturing expenditure and the matter will have to be remanded back for verification of the amount deductible in this behalf.

5. In view of the above, the impugned order at Exh. "R" dated 16-3-1984 partly rejecting the claim of the assessee on the ground of deduction in respect of freight and transportation charges and rejecting the assessee's claim in respect of bonus to dealers, commission to agents, and interest and bank charges on drafts will have to be set aside. The findings of the Assistant Collector in respect of the rejection of claim of secondary packing, interest on security deposit from dealers and agents and interest on dealers' deposits against direct dispatches are confirmed. The matter is remanded back to the Assistant Collector for calculating the deduction permissible only under the heads of :-

- (i) Freight and Transportation charges for the four months of July and August 1981 and April and July 1982;
- (ii) Bonus to Dealers;
- (iii) Commission to Agents; and
- (iv) Interest and Bank Charges on drafts.

6. In the light of the observations made in this Judgment, the order of the Assistant Collector at Exh. "AA" dated 27-7-1988 relating to the price-list effective from 10-5-1983 till 31-3-1988 is also set aside to that extent as the order Exh. "R" dated 16-3-1984. The Assistant Collector is directed to reconsider the matter in the light of the observations made in this Judgment. Accordingly, Rule is made partly absolute. No order as to costs.