
(1985) 08 DEL CK 0032

In the Delhi High Court

Case No : Civil Writ Petition No. 842 of 1980

Redihot Electricals, Delhi

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Citation : (1986) 23 ELT 421

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Judgement

1. Though only CM No. 1741 of 1981 was listed today for vacation of the stay order dated 28th August, 1980 passed in CM No. 1295 of 1980 but with the consent of learned counsel for the parties the writ petition itself is being disposed of.

2. The petitioner M/s. Redihot Electricals had challenged an order dated 13th October, 1977 passed by the Assistant Collector of Central Excise (Annexure "A" to the writ petition) and an order dated 31st July, 1978 passed by the Appellate Collector Central Excise (Annexure "C" to the writ petition).

3. The petitioners M/s. Redihot Electricals are manufacturers of domestic electrical appliances. These electrical appliances are chargeable to excise duty under Tariff item No. 33 C. ad valorem excise duty is chargeable with reference to the value of the appliances and the value of the appliances is required to be determined u/s 4(a) of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act").

4. The petitioners had filed their list or prices with the excise authorities which was approved and the goods were being cleared on payment of excise duty on the basis of the approved list.

5. It appears that two demand show cause notices dated 3rd December, 1974 - one for the period 17-5-1973 to 12-12-1973 for Rs. 17,436.50 ps. and the

second for the period 13-12-1973 to 30-5-1974 for Rs. 19,510.19 ps. were issued by the Assistant Collector of Central; Excise. These notices purported to have been issued under Rule 10 of the Central Excise Rules, 1944 as was existing at the relevant time.

6. The basis for issuance of the demands were alleged short levy of the excise duty on manufacture of certain domestic electric appliances which the petitioners had manufactured as per orders of M/s. Killick Nixon Bombay; M/s Racold Appliances Pvt. Ltd., Delhi, and their sister concern M/s. Refrigeration and Appliances Company Ltd., New Delhi. The electrical appliances had the brand names of "Killick" and "Racold" respectively.

7. The case of the excise authorities was that in the present case the approved price list of the petitioners was not relevant and that the wholesale cash price for purposes of Section 4 of the Act was the price on which the goods manufactured by the petitioners were sold by the petitioners' buyers M/s. Killick Nixon, Bombay; M/s. Racold Appliances Pvt. Ltd., Delhi, and their sister concern M/s. Refrigeration and Appliances Co. Ltd., New Delhi.

8. The petitioners on the other hand submitted that the demands were barred by time under Rule 10 of the aforesaid Rules and also that the excise duty was payable on the price which was the wholesale cash price received by the petitioners from their customers.

9. The excise authorities found that out of the aforesaid two demands the amount to the extent of Rs. 21,660.58 was within time and rest was barred by time so to that extent relief was granted to the petitioner but otherwise the submission of the petitioners was rejected. It was held by the appellate authorities that "the appellants manufactured appliances bearing brand name on behalf of M/s. Racold and M/s. Killick and, Therefore, Central Excise duty should be paid on these goods on the basis of the prices at which these are sold by M/s. Racold and M/s. Kellick "

10. The petitioners had challenged this part of the finding of the appellate authorities.

11. It is an admitted case of the parties that the entire capital of the petitioners is their own and M/s Killick Nixon, Bombay or M/s. Racold Appliances Pvt. Ltd., or their sister concern M/s. Refrigeration and Appliances Co. Ltd., New Delhi, have no interest whatsoever in the business of the petitioners. All domestic appliances were supplied to these parties on the basis of contracts which include the manufacturing costs profits. The goods were sold by the petitioner in normal course of their business. The prices charged by the petitioners from these customers were wholesale cash prices.

12. An identical question came before the Supreme Court in the case A.K. Roy and Another Vs. Voltas Limited, . The Supreme Court interpreted Section 4(a) of the Act and came to the conclusion that "if manufacturer were to enter into an

agreement with dealer for wholesale sales of the articles manufactured on certain terms and conditions, it would not follow from that alone that the price for these sales would not be the wholesale cash price for the purpose of Section 4(a) of the Act if the agreements were made at arms length and in the usual course of business". It was also observed that "if there is a special or favored buyer to whom a specially low price is charged because of extra-commercial considerations i.e. because he is relative of the manufacturer, the price charged for those sales would not be the wholesale cash price. Once wholesale dealings at arms length are established, the determination of the wholesale cash price for the purpose of Section 4(a) of the Act may not depend upon the number of such wholesale dealings". Thus the expression used by the Supreme Court "if the agreements were made at arms length" were explained by the Supreme Court itself namely contracts which should not be tainted by extra-commercial consideration.

13. It is no body's case that the contract with M/s Killick and M/s. Racold suffer from the vice of extra-commercial considerations. Therefore, the decision of the Supreme Court in the aforesaid case is fully applicable to the present case and the excise authorities were not right in treating the sale price of M/s Killick and M/s. Racold as the wholesale cash price for the purpose of Section 4(a) of the Act for determining the excise duty livable on the disputed goods.

14. The same view was followed by this Court in two Division Bench judgments reported as 1982 Excise Law Times 454 : Zenon Electronics Pvt. Ltd. and others v. Union of India and others and 1982 Excise Law Times 463 : Sylvania & Laxman Ltd. and another v. Union of India and others, wherein the Division Bench consisted of Chief Justice Prakash Narain and Chadha, J. took the view that "a customer cannot be treated as a manufacturer if he merely". This is precisely what has happened in the present case and, Therefore, the price at which the customer sells the goods cannot be treated as the wholesale cash price for the purpose of Section 4(a) of the Act.

15. The same view was again reiterated by the Supreme Court in the case Union of India (UOI) and Others Vs. Atic Industries Ltd., .

16. The Voltas Case (supra) has again been reiterated by the Supreme Court in the case Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . and etc. etc. In paragraphs 26 and 27 the Supreme Court observed as under :

"Having explained the true scope of A.K. Roy and Another Vs. Voltas Limited, and Atic Industries Ltd. Vs. H.H. Dewa, Asstt. Collector of Central Excise and Others, , we may now proceed directly to the consideration of certain aspects of the provisions of the old Section 4. There has been serious argument on the question whether Section 4(a) provides for the value of assessed's excisable article being determined on the basis of the wholesale cash price charged or chargeable for articles of the like kind and quality sold by manufacturers

generally or on the basis of the wholesale cash price for articles of the like kind and quality sold by the assessed. At first blush, it would seem that the former construction should be accepted, and indeed some support can be derived for that view from the observations of the Privy Council in AIR 1932 168 (Privy Council) , where the "Wholesale cash price" mentioned in Section 30(a) of the Sea Customs Act, 1878 was construed to mean "that price current for staple articles, the amount of which, if not a subject of daily publication in the press, is easily ascertainable in appropriate trade circles". But this general observation can be of no help to the assesseds, because since then, the Courts have proceeded to make the position amply clear. The problem presented itself again to the Privy Council in AIR 1938 15 (Privy Council) , and while taking note of what it had said in the earlier case, the Privy Council laid down that where the excisable goods constituted a class of their own and it was not possible to say that other manufacturers produced goods of that kind and quality, the goods under assessment could be considered as members of their own class for the purpose of Section 30(a) even though at the time and place of importation, there were no other members. The price obtained for them, it was said, would correctly represent the price obtainable for goods of the like kind and quality at the time and place of importation. Then in A.K. Roy and Another Vs. Voltas Limited, , this Court observed that the application of Section 4(a) of the Central Excises and Salt Act did not depend upon any hypothesis to the effect that at the time and place of sale, any further articles of like kind and quality should have been sold. If there was a actual price for the goods themselves at the time and place of sale and if that was a "wholesale cash price", the clause was not inapplicable for want of sale of other goods of a manufacturer. The practical way of looking at the problem is that there are very few cases indeed where two manufacturers produce an article of the like kind and quality, an referred to the case of a factory which manufactures identical electric bulbs for supply to a number of companies who sell them in the market under their own distinctive trade names. While such examples are possible, we are inclined to accept the statement of the learned Solicitor General that goods manufactured by different manufacturers generally differ in both kind and quality. Further, the manufacturing and other costs would vary from one manufacturer to another, depending on the efficiency of manufacturing techniques and management methods employed. Other important considerations are certainly and convenience in the administration of the levy from the view-point of both the assessed and the Revenue. There is the further considerations that the wholesale cash price charged by the assessed must be ascertained on the basis that the sale to the wholesale dealer is at arm's length. We are, Therefore, of the view that we should prefer the construction suggested by the Revenue that Section 4(a) applied to the goods manufactured by the assessed himself. We may also point out that this conclusion is in accord with the general intent expressed in the new Section 4(1)(a), and as well shall now presently it is the case of both the assesseds and the Revenue that in enacting the new Section 4 in suppression of the old section, no material departure was intended from the basic scheme for determining the value of the excisable article.

Accordingly, we hold that pursuant to the old Section 4(a) the value of an excisable article for the purpose of the excise levy should be taken to be the price at which the excisable article is sold by the assessed to buyer at arm's length in the course of wholesale trade at the time and place of removal. Where, however, the excisable article is not sold by the assessed in wholesale trade but, for example, is consumed by the assessed in his own industry the case is one whereunder the old Section 4(a) the value must be determined as the price at which the excisable article or an article of the like and quality is capable of being sold in wholesale trade at the time and place of removal."

17. Both the decisions of the Assistant Collector of Central Excise as well as the Appellate Collector Central Excise are, on the face of them, contrary to the aforesaid dicta in the cases *A. K. Roy and another v. Voltas Limited* (supra) and *Union of India and others v. Atic Industries Ltd.* (supra).

18. There was no question of any short levy in the circumstances and Therefore, the notices issued under Rule 10 of the Central Excise Rules, 1944 were without jurisdiction and the demands were totally unauthorised.

19. I would accordingly quash the impugned orders, noticed earlier, of the Assistant Collector of Central Excise and the Appellate Collector Central Excise.

20. The petitioners would be entitled to their costs of the present proceedings which are assessed at Rs. 2,000.