

(1985) 07 MAD CK 0038
In the Madras High Court
Case No : Writ Appeal No. 176 of 1980

Standard Electric Appliances	Vs	APPELLANT
The Superintendent of Central Excise and Others		RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:

Citation : (1986) 7 ECR 278

Hon'ble Judges : H.N. Chandurkar, C.J; Venkataswami, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This Writ Appeal coming on for hearing on this day the Court delivered the following Judgment.

The judgment of the Court was delivered by the Honourable The Chief Justice.

The only question which arises in this appeal is whether the Excise authorities were justified in rejecting the price at which the appellant manufacturer sold its products to M/s. Philips India Limited as the wholesale cash price.

2. Admittedly, we are concerned in this appeal with the sales of electric appliances, namely, water heaters manufactured by the appellant during the period 1.3.1969 to 14.11.1969. 90 per cent of the production was sold to M/s. Philips India Ltd., at the rate of Rs. 265/-, Rs. 308/- and Rs. 348/- for water heaters having a capacity of 25, 35 and 45 litres respectively. The remaining 10 per cent of the production was sold to retailers at the rate of Rs. 340-45 p, Rs. 394-26 p. and 444-36 p. At one stage, the first respondent had approved the price list at the rates at which goods were sold to the retailers. However, the Deputy Collector later on by order dated 3.1.1970 changed these rates to Rs. 386.75 p, Rs. 446.25 p. and Rs. 501.50 p. The manufacturer-appellant had already appealed against the wholesale cash price being fixed at Rs. 340.45 p., Rs. 394.36 p. and 444,36 p. It also changed the wholesale prices later on fixed on 3.1.1970.

3. The only two grounds on which the Superintendent of Central Excise had rejected the price at which the products were sold to M/s. Philips India Ltd., as the wholesale cash price were : (i) M/s. Philips India Ltd., besides being a sole selling agent were attending to advertising, after sales service, warranty etc., and (ii) M/s. Philips India Limited were favoured buyers.

4. The Deputy Collector who heard the appeals which were filed before the Collector, however, merely observed while disposing of the appeals as follows:

Considering all the above matters it is hereby decided that since up-to 14.11.1969 the majority sales of the product was being effected to the sole distributors Philips India Ltd., I confirm the price of Rs. 386.75, Rs. 446.25 and Rs. 501.50 for 25, 35 and 45 litres units respectively from 8.3.1969 to 14.11.1969 u/s 4(b) of the Central Excise Act....

He also directed that from 15.11.1969. the assessable value will be fixed by the Superintendent u/s 4(a) of the Act.

5. Though the Deputy Collector refers to his having considered all the matters, the order shows that the only matter which he considered was that the price approved on 17.9.1969 was much lesser than the price at which M/s Philips India Ltd., sold to the sub-dealers and slightly higher than the final prices approved by the Superintendent on 26.8.1969. There is nothing else which seems to have been considered as it appears from the order of the Deputy Collector. A revision petition filed by the appellant came to be dismissed without any consideration of the merits of the claim of the appellant.

6. When the appellant came to this Court by a writ petition questioning the validity of the orders passed by the Excise authorities, the learned Judge also confirmed the finding of the excise authorities that M/s. Philips India Ltd., were favoured buyers getting the goods at a discount. The reason given by the learned Judge for this conclusion was that the goods were given to M/s. Philips India Ltd. at a lower price as they were buying large quantities. The order of the learned Judge does not disclose any other reason for coming to the conclusion that M/s. Philips India Ltd., were favoured buyers.

7. In this appeal, it is now contended by Mr. Natarajan appearing on behalf of the manufacturer that in the absence of any finding that the transactions with M/s. Philips India Ltd were not transactions at arms length, the learned Judge and the excise authorities were not justified in coming to the conclusion that the price at which a large part of the stock was sold to M/s. Philips India Limited who were the main buyers was not the wholesale cash price for the purpose of assessment to excise duty.

8. Mr. Somasundaram appearing on behalf of the Department relied on the two circumstances which were taken into account by the Superintendent of Central Excise, namely that the price at which goods were sold to M/s. Philips India Limited is much lower than the price at which the goods were sold to retailers

and M/s. Philips India Limited were attending to advertisement, sales service and warranty claim and, therefore, according to the learned Counsel, M/s. Philips India Limited were considered to be favoured buyers for the purpose of Section 4(4)(c) of the Central Excises and Salt Act, 1944 (hereinafter called "the Act"). There is one appare error into which the authorities seem to have fallen inasmuch as they seem to have been influenced by the concept of "related person" which was introduced in the Act when the present Section 4 was substituted for the whole of old Section 4 by Central Act 22 of 1973 with effect from 1.10.1975 While dealing with sales and liabilities to excise duties for the period 1.3.1969 to 14.11.1969, admittedly neither Clause (a) nor (b) of Section 4 as it then was contained any concept of "related person". Even under the amended proviso the concept of "related person" is a very narrow concept and sales which are made in the course of normal commercial dealings and at arms length are not hit by Section 4(4)(c) of the Act.

9. When the definition of "related person" was challenged before the Supreme Court in *Union of India and Ors. etc., etc. v. Bombay Tyre International Limited etc., etc.* 1983 E.L.T. 1896 : 1983-1983 ECR 1627 S.C. ECR C 663, the Supreme Court took the view that the provision in the definition of "related person" relating to a distributor can be legitimately read down and its validity thus upheld. In paragraph 44 of the judgment, the Supreme Court observed as follows:

...In our opinion, the definition of related person should be so read that the words "a relative and a distributor of the assessee" should be understood to mean a distributor who is a relative of the assessee. It will be noticed that the Explanation provided that the expression "relative" has the same meaning as in the Companies Act, 1956 As regards the other provisions of the definition of "related person", that is to say, "a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company..." we think that the provision shows a sufficiently restricted basis for employing the legal fiction. Here again, regard must be had to the Explanation which provides that the expression "holding company and subsidiary" have the same meanings as in the Companies Act, 1956. Reference in this connection may be made to *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, where the principle was approved by this Court that the corporate veil could be lifted where the companies shared the relation of a holding company and a subsidiary company and to *Juggi Lal Kamalapat Vs. Commissioner of Income Tax, U.P.*, where this Court held that the veil of corporate entity could be lifted to pay regard to the economic realities behind the legal facade, for example, where the corporate entity was used for tax evasion or to circumvent tax obligation.

10. Therefore, even under the amended provision of Section 4, the concept of "related person" has been given a very narrow meaning. It is nobody's case that Messrs. Philips India Limited are a corporate entity which is only a facade for the

activities of the manufacturer.

11. In *Amar Dye-Chem Ltd. and Anr. v. Union of India and Anr.* 1981 E.L.T. 3481982 ECR 711D Bombay. A Division Bench of the Bombay High Court took the view that in the case of buyer who purchases goods on payment of a commercial price to the manufacturer and transaction in effect is a sale such a buyer even though a kind of distributor and is different from the distributor who acts as an agent of or on behalf of a manufacturer, and in such a case, the distributor is in fact a wholesale buy and the property in the goods passes to such a buyer. It is also pointed out therein that it is wholly immaterial whether the price is paid in cash or the goods are supplied on credit.

12. In *A.K. Roy v. Voltas Ltd.* AIR 1973 S.C. 2250 1975 Cen. 104C the Supreme Court pointed out that mere existence of the agreements between the manufacturer and the wholesale dealers under which certain obligations were undertaken by them like service to the articles would not render the price any the less "the wholesale cash price".

13. In *S.M. Chemicals & Electronics and Anr. v. R. Parthasarthy and Ors.* 1980 E.L.T. 197 1980 Cen. 130D, a learned Judge of the Bombay High Court held that merely because the buyer undertakes to carry out after sale service during the warranty period, this by itself would not make him a "related person" within the meaning of Section 4 of the Central Excise Act.

14. We have cited the authorities to indicate that even when the Legislature wanted by the amendment sales to related persons to be considered differently, when the question of wholesale cash price had to be determined, courts have consistently taken the view that where certain agreements are entered into between the manufacturer and the wholesale dealer under which the wholesale dealer is required to render certain services to the consumer, the sale, if it is at a commercial price, does not cease to be a sale and the price at which the sale is effected must be treated as wholesale cash price.

15. If the transactions entered into by the manufacturer with M/s. Philips India Limited are considered in a commercial perspective, it is obvious that the appellant instead of finding out a large number of whole-sale dealers has found one wholesaler who was prepared to lift 90 per cent of its production. If under these circumstances, it had charged a lower price for its product than what it does to retailers, we fail to see how the sale to M/s. Philips India Limited cannot be considered as a sale at a commercial price.

16. It is also difficult to appreciate how merely because the product was being advertised by the wholesaler and the wholesaler had undertaken to give after sales service and comply with the normal warranties, M/s. Philips India Limited could be considered as favoured buyers. It is common knowledge that when a consumer purchases an article from a dealer, in the case of service facilities, he looks to the dealer and not to the manufacturer. In cases of replacements of defective parts also he will look to the dealer from whom he has purchased and

notwithstanding the fact that the wholesale dealer may ultimately have the parts replaced by them reimbursed from the manufacturer, the service facilities are provided by the wholesaler with a view to earn the good will and to attract customers. Advertising a product by wholesale is one of the well known method by which the wholesaler attracts the customers and if as a result of increasing his business the demand for the product of manufacturer also increases the advertising by the wholesaler cannot be said to be for and on behalf of the manufacturer. The view taken by the excise authorities appears to us to be wholly contrary to and inconsistent with normal commercial business practices on which business is carried on by wholesalers and manufacturers. The decision is, therefore, liable to be struck down. It is true that the learned Judge has also held that since large part of the production is sold to Messrs. Philips India Limited at a lower price, they must be treated as favoured buyers. As we have already pointed out, there is good justification for the manufacturer to dispose of large part of the stock only to one wholesaler and if in consideration of having lifted large part of the stock a lesser wholesale price is charged, the buyer does not merely on that account become a favoured buyer. The price which is a commercial price must, therefore be necessarily regarded as wholesale cash price for the purpose of Section 4. In our view, the order of the learned Judge dismissing the petition is also liable to be set aside.

17. We accordingly allow the appeal, set aside the order of the learned Judge, allow the writ petition and hold that the appellant was entitled for the period 1.3.1969 to 14.11.1969 to Rs. 265/-, Rs. 308/- and Rs. 348/- determined as wholesale cash price in respect of the water heaters of the capacity of 25, 35 and 45 litres respectively. The respondents will pay the costs of this appeal. Costs Rs. 500/-.