(1991) 10 BOM CK 0061

In the Bombay High Court

Case No : Appeal No. 1210 of 1988 in Writ Petition No. 653 of 1982

State of Maharashtra APPELLANT

Vs

Griffon Laboratories Pvt. Ltd. RESPONDENT

Date of Decision : 16-10-1991

Acts Referred:
Central Excises and Salt Act, 1944 — Section 4

Citation : (1992) 41 ECR 471 : (1992) 58 ELT 36

Hon'ble Judges : S.P. Bharucha, J;N.D. Vyas, J

Bench : Division Bench

Advocate : Shri L.C. Chogle, for the Appellant; Shri D.B. Shroff, instructed by M/s. Little and Co., for the Respondent

Judgement

Bharucha, J.—The appeal is directed against the judgment and order of the learned single judge making the writ petition filed by the respondents to the appeal absolute. The learned judge remitted the case to the Commissioner of Prohibition and Excise for decision in accordance with the law pointed out in his judgment. The learned judge remarked that the stand taken by the appellants disclosed an unawareness of the provisions of Section 4 of the Central Excises & Salt Act, 1944.

2. The respondents manufacture medicinal and pharmaceutical preparations. Two of its preparations contain alcohol. These two preparations are, therefore, assessable to excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, which is administered by the State Government. The basis for calculation of excise duty thereunder is the basis provided by Section 4 of the Central Act.

3. It is an admitted position that all the preparations of the respondents are sold through a company called Franco Indian Pharmaceuticals Pvt. Ltd., which has been treated as a related person within the meaning of Section 4(c) of the Central Act. It is also an admitted position that the price at which Franco Indian sells the preparations to wholesalers is their assessable value for the purposes of

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excise duty. The wholesalers get from Franco Indian an 8% trade discount; this is taken into account in the computation of the assessable value of the respondents'' preparations as aforesaid. Approximately 4% of the respondents'' preparations are distributed free of charge as samples to medical practitioners.

4. On 23rd August, 1979 an officer of the appellants wrote to the respondents stating that they were not entitled to deduct from the price of the preparations that contained alcohol and which were cleared as physicians'' samples the trade discount for the purposes of determining their assessable value. A sum of Rs. 12,001.82 was demanded as the differential duty on this account for the said preparations cleared between 1st April, 1978 and 30th June, 1979. On 3rd September, 1979 the respondents replied and asked that the demand be withdrawn. On 7th March, 1980 the appellants'' officers directed the respondents to make payment of Rs. 12,001.82 On 16th March, 1980 the respondents replied and asked to be heard. On 23rd March, 1980 the appellants'' officers demanded a further sum of Rs. 7,388.11 for the said preparations cleared during the period 1st July, 1979 to 29th February, 1980. On 15th April, 1980 the respondents'' advocates wrote to the Commissioner of Prohibition & Excise and requested him to look into the matter, issue suitable instructions and not to start coercive processes to recover the sums demanded. On 27th August, 1981 the Commissioner of Prohibition & Excise upheld the decisions of his officers. On 26th February, 1982 the Collector of Bombay informed the respondents that their licences under the State Act were being held up due to the aforementioned arrears. Thereupon the writ petition was filed and, as aforementioned, was allowed by the order under appeal.

5. Section 4 (so far as it is relevant for our purposes) of the Central Act reads thus :

"Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be -

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place or removal, where the buyer is not a related person and the price is the sole consideration for the sale; provided that -

(i)....

(ii)....

(iii) Where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to

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dealers (being related persons), who sell such goods in retail."

6. The respondents sell their preparations through the related person, Franco Indian, to the wholesale trade. The price at which the related person, Franco India, sells the preparations in the course of the wholesale trade is, by reason of proviso (iii) aforementioned, the assessable value of the preparations u/s 4. To the wholesale dealers Franco Indian gives a trade discount of 8% and the assessable value is computed accordingly. That is the assessable value of the respondents'' preparations. No addition thereto can be made on the ground that some of these preparations, which are cleared as physicians'' samples, are not sold and, therefore, not eligible for the trade discount.

7. As the learned judge said, when an assessee sells his goods to the wholesale trade only through a related person, the price at which the related person sells the goods in the course of wholesale trade is the price on which excise duty is chargeable u/s 4 of the Central Act. If this is understood, it is seen that the price at which Franco Indian sells the respondents'' preparations to wholesalers is the value on which excise duty can be levied thereon.

8. There is no merit in the appeal, and it is dismissed with costs.

9. Mr. Chogle applies that an expedited copy of this order should be ordered to be given to the appellants. We see no ground for such expedition here.

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