(1979) 08 BOM CK 0026

In the Bombay High Court

Case No : Misc. Petition No. 508 of 1975

Tata Oil Mills Co. Ltd. APPELLANT

Vs

Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 18-08-1979

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

Citation : (1989) 24 ECR 530

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Pendse, J.—The petitioners carry business of manufacturing soap, in their mills at Hay Bunder Sewree Bombay Soap is an excisable commodity falling under item 15 of the First Schedule of the Central Excises & Salt Act 1944 Section 4 of the said Act provides that the value of an article chargeable with duty a" a rate depending on its value shall be determined for the purpose of assessment of excise duty. At all relevant times the petitioners submitted their price lists in respect of soap manufactured by them and Excise Authorities approved the said price lists showing the ex-factory price. Delivery charges from the factory gate to the point of destination were shown separately in the invoices at a uniform rate of Rs. 2.50 per box from August, 1973 to March 31, 1974 and at a rate of Rs. 3.50 per box from April 1, 1974 to June 30, 1974. The Excise Authorities approved the ex-factory price lists submitted by the petitioners and excise duty was levied accordingly. The petitioners cleared goods from the mills between July 20, 1973 to December 3, 1974 and the dispute in this petition relates to the clearance during that period.

2. The Superintendent of Central Excise, Range IV, Bombay Division-V served on the petitioners various show cause notices stating that the duties appeared to have been short levied for the clearance of soap during the relevant period and additional amount was recoverable from the petitioners under Rule 10 of the

Central Excise Rules, 1944. The ground given for holding that it was short levied is as follows :

Delivery charges at Rs. 2.50 per C.B. Case has been charged uniformly from all customers. The delivery charges are not mentioned in the price list. This will be an element of assessable value.

3. The petitioners replied to various show cause notices and pointed out that the delivery charges are recovered at a uniform rate and those charges include post-manufacturing expenses and cannot be taken into account for levy of excise duty. The contention raised by the petitioners was turned down by the Superintendent of Central Excise and various show cause notices were confirmed. The petitioners carried an appeal before the Appellate Collector, Central Excise, Bombay but the appeal was dismissed and the orders of the Superintendent, Central Excise were confirmed. The present petition is filed under Article 226 of the Constitution to challenge the legality and validity of those orders.

4. Mr. Joshi, the learned Counsel appearing in support of the petition, contended that both the authorities below were clearly in error in assuming that the delivery charges are an element of assessable value. The learned Counsel contended that delivery charges could not be calculated in arriving at the whole-sale cash price for determination of excise duty u/s 4 (a) of the Act. It was submitted that delivery charges were not at all referable to the pre-manufacturing activity. The learned Counsel relied upon the decision of the Supreme Court reported in A.K. Roy and Another Vs. Voltas Limited, in the case of Sh. A.K. Roy and mother v. Voltas Limited and also upon a Division Bench judgment of this Court in Miscellaneous Petition No. 293 of 1974 decided on December 15, 1975. While speaking for the Division Bench Mr. Justice Tulzapurkar, as he then was, after considering various decisions of the Supreme Court observed as follows:

As regards freight though it is true that in both types of delivery generally effected by the petitioner-company to its wholesalers a uniform price is being charged, that by itself would not be a valid ground to refuse the relief of deduction. The mere fact that the same price is charged both at the factory gate and also at the godowns of the wholesalers would not mean that the price charged at the factory gate would always be exclusive of non-manufacturing element of freight. It is quite possible that the petitioner-company may have for the purpose of maintaining good relations with its wholesalers fixed a uniform price in both types of delivery, but at the same time in fixing the uniform price may have struck an average in regard to freight. It would, therefore, be a matter of investigation and ascertainment whether the wholesale price charged by the petitioner-company at its factory gate includes non-manufacturing element of freight.

5. Relying on these observations Mr. Joshi submitted that the Excise Authorities were clearly in error in including the delivery charges for calculating the

wholesale cash price for ascertainment of excise duty. This submission is correct and must be upheld. Mr Joshi pointed out that the company has maintained a separate register showing the recovery of delivery charges and it is not necessary to make any investigation as pointed out by the Division Bench Mr. Dalai, the learned Counsel appearing on behalf of respondents, did not dispute the correctness of the submission of the petitioners but submitted that it is necessary to investigate and ascertain whether the wholesale price charged by the petitioners at its factory gate includes non-manufacturing element of freight. Mr. Dalai submitted that as regards delivery at the godowns the charges recovered by the petitioners cannot be included but/investigation is required in case of gate delivery. In my judgment, the (submission is not sound as the Division Bench h as clearly mentioned that in both types of delivery where a uniform price is being charged that by itself (would not be a valid ground to refuse the relief of deduction. In view of the Division Bench Judgment it is not necessary to make investigation and ascertain whether the wholesale price charged at the factory gate includes non-manufacturing element of freight. It is also required to be stated that more than six years have lapsed from the date of clearance of the goods and it would not be proper and fair to the petitioners to be called upon to establish at such late hour that the wholesale price charged at the factory gate delivery included non-manufacturing element of freight. In my judgment, the Excise Authorities were clearly in error in issuing show cause notices and requiring petitioners to pay additional excise duty.

6. In the result, the petition succeeds and the rule is made absolute in terms of prayer (a) of paragraph 20 of the petition. In the circumstances of the case, there will be no order as to costs.

