

(1990) 08 MAD CK 0071
In the Madras High Court
Case No : Writ Petition 9239/82

Viniba Products

APPELLANT

Vs

Assistant Collector of Central Excise

RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36, 4

Citation : (1991) 31 ECC 153

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanakaraj, J.—The petitioner is a proprietary concern engaged in the manufacture of talcum powders. The goods are excisable items under Tariff Item No. 14F of the First Schedule to the Central Excises and Salt Act, 1944, hereinafter referred to as "the Act". The petitioner filed price lists for the goods manufactured by them and claimed abatement of graded quantity trade discounts at the time of the assessment of the goods to excise levy on ad valorem basis. Though a show-cause notice was issued on 13.12.1973, the first respondent ultimately dropped all further proceedings by his order dated 15.6.1974. Nearly after two years another show cause notice dated 16.8.1976 was issued to the petitioner, in and by which the petitioner was directed to show cause to the Assistant Collector of Central Excise as to why certain discounts at the rate of 20% should not be disallowed. It was proposed to demand differential duty for the. past sales since 1973. The petitioner gave his explanation. However, by an order dated 3.1.1977, the trade discount was restricted to 12 1/2% for supply of 100 dozens and more, at 10% for supply of 25 dozens and more and also 12 1/2% for supply of 100 dozens and more of luxury talcum powders. On appeal, the second respondent accepted the contentions of the petitioner and set aside the order of the first respondent dated 3.1.1977. The third respondent issued a show cause notice dated 12.10.1979 exercising power u/s 36(2) of the

Act. The petitioner filed his objections on 29.11.79. By an order dated 10.12.1981 the order of the Appellate Collector was set aside and the order of the first respondent was restored. The writ petition is to quash the aforesaid order of the third respondent dated 10.12.1981.

2. The argument of the learned counsel for the petitioner is that Section 4 of the Act as it stood prior to 1.10.1975 alone should be applied in respect of the goods under consideration. The importance of this argument is that only after 1.10.1975, Section 4 was amended by bringing in the concept of "a related person". It is therefore necessary to quote Section 4 as it stood prior to the amendment introduced by Act 22 of 1973.

4. Determination of value for the purposes of duty.--Where, under this Act, any article is chargeable with duty at a rate dependent on the value of the article, such value shall be deemed to be--

(a) the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold at the time of the removal of the article chargeable with duty from the factory or any other premises of manufacture or production for delivery at the place of manufacture or production, or if a wholesale market does not exist for such article at such place, at the nearest place where such market exists, or

(b) Where such price is not ascertainable, the price at which an article of the like kind and quality is sold or is capable of being sold by the manufacturer or producer, or his agent, at the time of the removal of the article chargeable with duty from such factory or other premises for delivery at the place of manufacture or production, or if such article is not sold or is not capable of being sold at such place, at any other place nearest thereto.

3. In the order of the first respondent dated 3.1.1977, it is observed that the petitioner allowed graded discounts as per the approved list, but the maximum discount of 20% was allowed only in respect of one buyer, namely M/s. T.S.R. & Co., Kumbakonam. According to the first respondent, M/s. T.S.R. & Co., being a related dealer of the assessee the maximum discount of 20% cannot be taken as the uniform discount given to all purchasers. The first respondent also proceeds to discuss the explanation given by the petitioner to the show cause notice dated 16.8.76. In support of the petitioner's explanation, the petitioner had submitted letters dated 5.11.73 and 9.4.75 Meenakshi Enterprises, Madurai, a letter dated 8.5.75 of Murali Agencies, Madurai, a letter dated 2.11.73 of Shah Pukraj Sogalal, Kumbakonam, a letter dated 2.1.74 of M/s. Chetan & Co., Madras and a letter dated 3.5.75 of M/s. S.P.S. Agencies, Kumbakonam. The petitioner relied on these letters to show that the said purchasers had asked the petitioner to split up the bills so that they can lift the goods in smaller bunches. According to the purchasers, this would enable them to make payments easily without any financial constraints. On the basis of the gate pass and invoices, the first respondent came to the conclusion that the maximum discount was not given to

any other person except M/s. T.S.R. & Co. and the purchasers who had written letters were apparently not aware of the maximum discount. From these facts, the first respondent came to the conclusion that the petitioner had not allowed the approved trade discount uniformly to all buyers. Inasmuch as Section 4 of the Act permitted the allowance of trade discount to an assessee only if the discount was uniformly and unconditionally offered to all the buyers, the allowance of 20% discount cannot be taken note of. Therefore, the discount of 20% was excluded from the assessable value of the goods. The first respondent therefore proceeded to restrict the trade discount according to his own formula and directed that the differential duty shall be paid by the petitioner.

4. The appellate authority, the second respondent, relied on the very same letters written by the buyers and came to the conclusion that it is only because the buyers wanted their orders to be split up into small lots to suit their own convenience, that they became ineligible for the maximum discount of 20%. In this connection, it is necessary to point out that for all purchasers of 200 dozens and above, the petitioner was giving a 20% discount. Even though some of the purchasers other than M/s. T.S.R. & Co. had also placed orders for more than 200 dozens, they had requested that the orders may be split up to enable them to make payments without any financial constraints. But it is seen from the particulars given by the first respondent that on the same day the said buyers have lifted more than 200 dozens, though in different lots. The appellate authority has accepted the reasons given by the buyers for splitting up their orders, the reasons being (i) It facilitated the outward despatch to the customers of the buyers; and (ii) it facilitated the buyers to make payments without any difficulty. The second respondent has also taken into consideration that from the point of view of revenue, there were no loss caused by splitting up these orders and more Central Excise duty was being collected. The appellate authority also accepted the contention of the petitioner that he had given wide publicity to the buyers by circulating the printed price list which disclosed the grant of graded discount ranging up to a maximum of 20%. The appellate authority therefore came to the conclusion that it cannot be said that the graded discount was not uniformly allowed to all the buyers. Therefore, the appellate authority allowed the appeal and set aside the order dated 3.1.1977.

5. In the show cause notice issued by the 3rd respondent u/s 36(2) of the Act, the third respondent came to the conclusion that the maximum discount of 20% was allowed in toto only to one buyer, namely M/s. T.S.R. & Co. It is also observed that the proprietor of M/s. T.S.R. & Co, is the husband of the proprietrix of the petitioner proprietary concern. The point that is sought to be made is that M/s. T.S.R. & Co, is a related person. The third respondent in fact came to the conclusion that the graded system of discount was never intended to be passed on to buyers other than M/s. T.S.R. & Co. However, the third respondent seems to be aware of the amendment to Section 4 of the Act and therefore proceeds to say that according to Section 4 as it stood at the relevant time, the actual quantity of discount granted in the ordinary course of business are eligible for

abatement, if such discounts are uniformly allowed to all independent wholesale buyers. The 3rd respondent has come to the conclusion on the basis of the records that the graded discount was not allowed by the petitioner uniformly to all the individual buyers and in limiting the benefit of 20% discount only to M/s. T.S.R. & Co., the petitioner had betrayed an extra-commercial consideration to "the related firm".

6. As already stated, the argument of the learned Counsel for the petitioner is that the concept of "a related person" should not be brought into the fixation of assessable value in respect of the goods in question. It is not disputed that the impugned orders relate to goods manufactured prior to 25.9.75. Therefore Section 4 as it stood before 1.10.75 alone is applicable to the petitioner. The argument of the learned counsel for the respondents that the amendment is only a declaratory one and therefore will apply to the transactions in question is not acceptable. In the matter of assessment for the purpose of the central excise duty, only the provision of law as it stood, on the relevant date should be applied. This is well established in respect of taxation enactments. Inasmuch as the concept of related person was brought into force only after 1.10.1975 I am clearly of the opinion that the respondents cannot take note of the same for the purpose of holding that the petitioner is not entitled to abatement of 20% discount in fixing the assessable value of the goods. In the instant case, though the third respondent has referred to this aspect of the case in their show cause notice dated 12.10.1979, the same has been ignored at the time of passing the final order. The relevant portion of the show cause notice is extracted below:

According to Section 4 of the Central Excise and Salt Act, 1944, as it stood at the relevant time, the actual quantity discounts granted in the ordinary course of business are eligible for abatement, if such discounts are uniformly allowed to all independent wholesale buyers. The Central Government is, therefore, tentatively of the view that only such discount which had been uniformly allowed to all independent wholesale buyers are eligible for abatement from the wholesale price for arriving at the assessable value u/s 4 as it stood at the time of the assessment in the question.

In the final order, the third respondent says as follows:

The Government therefore hold that in view of what is stated in the foregoing paragraph it is clear that the graded discount were not allowed uniformly to all the individual buyers and that in limiting the benefit of maximum discount of 20% to M/s. T.S.R. & Co., alone, the party did betray an extra-commercial consideration to the related firm. In these circumstances Government consider that only that discount which was allowed on a uniform basis was admissible for deduction for the purposes of arriving at the assessable value as done by the Asstt. Collector.

It is thus clear from the order of the third respondent that the conclusion of the third respondent is only on the basis that M/s. T.S.R. & Co. is a related person

with reference to the petitioner-assessee. Inasmuch as the concept of "related person" was not in force prior to 1.10.75, I am clearly of the opinion that the order of the third respondent is liable to be set aside.

7. After perusing the records and going through the orders of respondents 1, 2 and 3, I am satisfied that there is no reason to conclude that the petitioner did not give 20% discount in a uniform manner to all the buyers. All that we could see from the price list is that 20% discount was available to those persons who lifted 200 dozens and more. If for some reason all the buyers except M/s. T.S.R. & Co. Kumbakonam, did not want to lift 200 dozens or more at a time, it cannot be said on that score that the petitioner was not giving the benefit of 20% discount uniformly to all the buyers.

8. I will now refer to some of the authorities cited on behalf of the petitioners. In *Union of India, New Delhi v. Jyoti Limited, Baroda* 1978 ELT (J 238) it has been held that the condition of uniform trade discount is an invention of excise authorities and it is unwarranted and a reading of Section 4 of the Excise Act does not warrant the imposition of such a condition. In *Standard Electric Appliances v. Superintendent of Central Excise and Anr.* 1979 ELT (53) this court has laid down that where a manufacturer permits a purchaser to have the advantage of a concessional price even though he had not lifted the full quantity of the goods within the stipulated period, the quantity discount allowed by the manufacturer will be permissible under the Act.

The learned Counsel for the respondents also cited certain passage in the *Interpretation of Statutes* by G.P. Singh for the proposition that when a law is declaratory, it can be made to apply retrospectively. I am clearly of the opinion that this will not apply in respect of Central Excises and Salt Act. In this case, where the amendment introduced by Act 22 of 1973 has far reaching consequences because the assessable value is enhanced by virtue of the amendment. Therefore, I am clearly of the opinion that the amendment introduced by Act 22 of 1973 cannot be applied to the facts of this case.

For all the above reasons, I am inclined to allow the writ petition and it is accordingly allowed. The impugned order is set aside and the order of the 2nd respondent will stand restored.

There will be no order as to costs.