Collector of Central Excise, Delhi

Vs

M/s Kelvinator of India Ltd.

Civil Appeals Nos. 727 and 962-74 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

20.04.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. These appeals arise under Section 35-L(b) of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act'). The respondents herein M/s Kelvinator of India Ltd. in these appeals manufacture refrigerators. They market these through their four exclusive wholesale dealers, namely, M/s Gem, M/s Leonard, M/s Expo Machinery and M/s Tropicana. The respondents give one year warranty for the complete refrigerator and all parts thereof (except the light bulb and the crisper glass). During this warranty period, they provide free repair and replacement for defects in material and workmanship under normal use and service. This free service is available only within the municipal limits of the area served by an office of the wholesale dealer or the authorised dealer from whom the refrigerator is originally purchased. The respondents include the cost of this one year warranty in the sale price as well as assessable value of the refrigerator. After the free warranty period of one year is over, the respondents offer a four year service contract only for the sealed system or parts thereof. This contract is not free. It is on payment basis. Charges for it during the material period (April 10, 1981 to June 30, 1986), in Civil Appeals Nos. 962-75 of 1988, varied from Rs. 300 to Rs. 450 per refrigerator. It is a fact that these four dealers enter into this contract with the respondents. The final consumer in turn enters into the service contract with the dealer from whom he buys his refrigerator. The service is rendered by the respondents and the entire contract money accrues to them. It is on evidence that during the material period the four dealers referred to hereinafter entered into services contract in respect of a total of 91 per cent of their purchases. The remaining 9 per cent did not enter into such contract. This is optional.

2. The Assistant Collector by his order dated August 18, 1986 held that four year service charge is includible in the value of the refrigerator for the purpose of assessment of central excise duty under Section 4 of the Act. The Assistant Collector further held that for all intents and purposes this charge was not optional as it was not exercised only in respect of 9 per cent of the sales. The Assistant Collector relied on the decision of this Court in Union of India v. Bombay Tyre International Ltd. [(1984) 1 SCR 347 : (1984) 1 SCC 467 : 1984 SCC (Tax) 17 : AIR 1984 SC 420 : 1984 Tax LR 2436] where it was held that after sale service charges could not be deducted from the assessable value. The Assistant Collector confirmed the demands totaling Rs. 17,40,68,326.32 against the respondents (in Civil Appeals Nos. 962-74 of 1988) and Rs. 7,07,535 (in Civil Appeal No. 727 of 1988). The respondents herein filed an appeal before the Appellate Collector. The Appellate Collector upheld the decision of the Assistant Collector. There was an appeal to the Tribunal and the Tribunal held that the optional service charge during the second and third year after the expiry of the first year warranty period was not includible in the assessable value. The Tribunal

allowed the appeals of the assess with consequential relief. Hence these appeals come to this Court.

3. The point involved in these appeals is whether the four year service contract charge is includible in the value of the refrigerators for the purpose of assessment of central excise duty under Section 4 of the Act. It was found as a fact by the Tribunal that after the free warranty period of one year is over, the respondents herein offer a four year service contract only for the sealed system or parts thereof. This contract is not free. It is on payment basis. The contract is not compulsory and the four dealers entered into service contract in respect of 91 per cent of their purchase. They did not make the contract for the remaining 9 per cent. It is also not necessary that the contract should be made right at the time of purchase of the refrigerator from the respondents. In fact, it was found as a fact that sometimes contract was made only in less than 10 per cent of the sales. For the remaining 81 per cent of the purchases, the dealers took time one week to over six months from the date of purchase. It was explained by the respondents that depending upon the demand pattern in a particular area, the dealer purchased about 10 per cent of the refrigerators straightway with the service contract; for the remaining purchases, he exercised the option later, as and when the dealer anticipated further demand from his customers.

4. The Tribunal on an analysis of the evidence came to the conclusion that it was after sale service and it was optional. Therefore, such service charges were not includible in the assessable value of the respondents herein. The principle under which these will be includible has been laid down in Union of India v. Bombay tyre International Ltd. [(1984) 1 SCR 347 : (1984) 1 SCC 467 : 1984 SCC (Tax) 17 : AIR 1984 SC 420 : 1984 Tax LR 2436], where Pathak, J., as the learned Chief Justice then was, inter alia, observed as follows : [SCC p. 506 : SCC (Tax) p. 56, para 50]

> ... expenses incurred by the assessee up to the date of delivery on account of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely, after sales service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling or organisation expenses and after sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee up to the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery.

5. This aspect was later clarified by this Court in Assistant Collector of Central Excise v. Madras Rubber Factory Ltd. [(1987) 27 ELT 553 : 1986 Supp SCC 751 : 1987 SCC (Tax) 115 : AIR 1987 SC 701], where Bhagwati, C. J. at page 562 of the report observed as follows : [SCC p. 762 : SCC (Tax) p. 126, para 14]

> Interest on finished goods from the date the stocks are cleared till the date of the sale was disallowed by the Assistant Collector, Kottayam. This head has again been urged for our consideration as a proper deduction for determination of the assessable value. As quoted in our judgment in Union of India v. Bombay Tyre International Ltd.

> [(1984) 1 SCR 347 : (1984) 1 SCC 467 : 1984 SCC (Tax) 17 : AIR 1984 SC 420 : 1984 Tax LR 2436], we have held that expenses incurred on account of several factors which have contributed to its value up to the date of sale which apparently would be the date of delivery at the factory gate are liable to be included. The interest on finished goods until the goods are sold and delivered at the factory gate would therefore necessarily, according to the judgment in Bombay Tyre International case [(1984) 1 SCR 347 : (1984) 1 SCC 467 : 1984 SCC (Tax) 17 : AIR 1984 SC 420 : 1984 Tax LR 2436] have to be included but interest on finished goods from the date of delivery at the factory gate up to the date of delivery from the sales depot would be an expense incurred after the date of removal from the factory gate and it would therefore, according to the judgment in Bombay Tyre International case [(1984) 1 SCR 347 : (1984) 1 SCC 467 : 1984 SCC (Tax) 17 : AIR 1984 SC 420 : 1984 Tax LR 2436] not be liable to be included since it would add to the value of the goods after the date of removal from the factory gate. We would therefore have to allow the claim of MRF Ltd. as above.

6. It was mentioned before us by the learned Additional Solicitor General that this judgment is under review.

7. The Tribunal in its judgment herein has observed as follows :

> We have given enough facts in paragraph 2 above to show that the four year service contract charge in the present was not compulsory one. As to why the appellants' buyers chose not to enter into such contract only for about 9 per cent of the purchases and not more is a matter between the manufacturer and his customers. The percentages may look small but the statement of sales filed before us for the five year period (1981-86) shows that the number of refrigerators in respect of which the option was not exercised was in thousands, ranging from over 18,000 to over 39,000 per year. We find no force in the department's pleading that the service charge, for all intents and purposes, was a compulsory one. As to what machinery the appellants devised for extending this service is not material. If any customer did not like to have the service, there was no compulsion on him to go in for it. That is the important thing.

Once we reach the conclusion that the post-warranty service activity could not be subjected to excise, it ceases to be material that 91 per cent of the customers had opted for the service contract. The ordinary or normal price referred to in Section 4(1)(a) can take in the costs up to the stage of factory gate and not beyond as held by the Hon'ble Supreme Court.

8. The Tribunal also observed that because the respondents herein offered the four years service by a stamped endorsement on their sale invoice itself, it did not mean that the subsequent exercise of option by the buyer related back to the date of purchase itself. It was also found that there was no evidence to conclude that the service contract was a facade to split the true value of refrigerators into taxable and non-taxable components.

9. I that view of the matter, the Tribunal set aside the order of the Collector of Central Excise (Appeals) and allowed the appeals. The contract for four years warranty service was optional, which was entered into later on. This is clearly after-sale facility and cannot be includible in the assessable value of the refrigerators.

10. In the aforesaid view of the matter, the Tribunal was right in the view it took. These appeals fail and are accordingly dismissed.

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