

Perfect Circle Victor Ltd.

Vs

Union of India and Others

Civil Appeal No. 2626 of 1989

(S. Natarajan, A. M. Ahmadi JJ)

03.05.1989

ORDER

1. Special leave granted. Heard counsel for the parties.
2. The Assistant Collector of Central Excise, Nasik, vide his order dated March 19, 1981 rejected the appellant's contention that post-manufacturing expenses of 14.4 per cent on Gaskets and 6 per cent on Piston Rings was deductible in arriving at the assessable value of the goods covered under Tariff Item 34-A on the basis of the Price Lists 89 and 90 both dated May 16, 1980. The Assistant Collector was of the view that the value for the purposes of collecting of central excise duty under the amended Section 4 of the Central Excise and Salt Act, 1944 was "the normal price at which the goods are normally sold in the course of wholesale trade for delivery at the time and place of removal". According to him the only deductions that are permissible under the said provision are the trade discounts, elements of taxes and packing charges of durable and returnable containers. The appellant challenged this decision of the Assistant Collector by a Writ Petition No. 368 of 1982 in the High Court of Bombay. The High Court, relying on the decision of this Court in *Union of India v. Bombay Tyres International Limited* ((1984) 1 SCC 467 : 1984 SCC (Tax) 17 : (1983) 14 ELT 1896 : AIR 1984 SC 420), concluded that administrative expenses, selling expenses and profit could not be treated as post-manufacturing expenses and dismissed the petition with costs. Aggrieved by the said decision the appellant has approached this Court under Article 136 of the Constitution of India.
3. After the decision of this Court in *Bombay Tyres International Limited* ((1984) 1 SCC 467 : 1984 SCC (Tax) 17 : (1983) 14 ELT 1896 : AIR 1984 SC 420) a clarification order was made by this Court in the same case, *Union of India v. Bombay Tyres International Pvt. Ltd.* ((1984) 17 ELT 329 (SC)), to the effect that discounts allowed in the trade (by whatever name called) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and nature of discount being known at or prior to the removal of the goods. It was held that such trade discounts should not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price. It was further held that taxes and cost of insurance for carrying the goods from the factory gate to the place of delivery would also be deductible. After the said pronouncements certain format orders were passed in pending cases. In accordance with such format orders price lists were amended and fresh orders were passed by the concerned authorities. One such format order became the subject matter of the decision *Union of India v. Madras Rubber Factory Ltd.* (1986 Supp SCC 751 : 1987 SCC (Tax) 115 : AIR 1987 SC 701), whereby this Court expanded the list of deductible post-manufacturing expenses. It is significant to note that after the aforesaid decisions, in subsequent cases, the Assistant Collector himself has, by his orders dated September 30, 1985 and

July 20/21, 1988, allowed deduction of various items of post-manufacturing expenses from the assessable value in the appellant's own case. In these circumstances the decision of the High Court cannot be allowed to stand as it is.

4. After the present appeal was filed, notice was issued by this Court's order dated December 14, 1984. On August 22, 1983 (sic) the appeal was adjourned for two weeks as the parties desired to file a format order. It appears that thereafter several adjournments were obtained for filing the format order but the same could not be filed for want of agreement on the terms of the format order. Drafts of the format order were exchanged as is clear from Annexures C, D and E referred to in paragraph 4 of Susheel Prakash Sharma's affidavit. The appellant company forwarded the draft format order Annexures C, the revenue in turn forwarded the revised format order Annexures D whereupon the appellant countered by draft Annexures E. However, as learned counsel for the contesting parties expressed their inability to submit an agreed format order, the petition was set down for hearing counsel on the format order. We have perused the drafts Annexures C, D and E. We have heard the learned counsel for the parties on what should be the terms of the format order.

5. We have noticed the area of difference on the various clauses of the drafts exchanged between the parties and we have heard the views of counsel thereon. Taking the same into consideration, we set out hereunder the various clauses which should constitute this Court's format order. In doing so we have, to the extent possible, retained the language of the draft orders. The format order will read as under :

ORDER

1. The judgment of the High Court, insofar as it disallows post-manufacturing expenses contrary to the order of May 9, 1983 and the judgment dated October 7, 1983 in the case of Bombay Tyres International Limited ((1984) 1 SCC 467 : 1984 SCC (Tax) 17 : (1983) 14 ELT 1896 : AIR 1984 SC 420) as clarified by the order dated December 14, 1983 and the judgment dated December 20, 1986 in Union of India v. M.R.F. Ltd. (1986 Supp 751 : 1987 SCC (Tax) 115 : AIR 1987 SC 701) will stand set aside. The subsequent assessments made on the basis of the impugned judgment of the High Court are also set aside.

2. The following directions are given to the respective authorities : (a) In respect of the claim for deductions the assessing authorities shall permit the assessee to submit their statements of deductions/amendments in respect of price lists already filed for proper determination of excise duty liability taking into account the deductions that are permissible under the judgments and orders of the Supreme Court and other deductions as are otherwise allowable in law. Such statements/amendments to be filed by the assessee with the authorities by June 30, 1989. They shall file such documentary evidence as they may be called upon to do by notice/notices issued by the assessing authority within two weeks of the filing of the statements/amendments. Such documentary evidence shall be filed within 2 weeks of receipt of notice/notices. The assessee shall also give inspection of such documents in their possession as they may be called upon.

(b) Where the price list has been returned, the assessee may also file a revised price list within the said period i.e. before June 30, 1989.

(c) The authorities will then finalise the price lists within a period of 7 weeks thereafter, after giving an opportunity to the assessee to be heard. The assessing authority will give reasons for disallowing any one or more of the items of deductions of claims made by the assessee.

(d) The assessment will be finalised on the basis of the determination made by the authorities and the quantum of the final assessment figures will be indicated in the decision of the assessing authority. The final assessment orders will include set off in respect of refunds allowable and/or allowed to the assessee.

3 (a) The assessing authorities will file in this Court the orders of assessment along with copies of statements of deductions/amendments and the price lists which the assessee may file before the assessing authorities. Copies of such other documentary evidence which the assessee files before the assessing authorities will be filed by the assessee before this Court in the event of their requiring such copies at the time of hearing.

(b) The amount/amounts admittedly payable to the revenue on the basis of the revised statements/price lists filed by the assessee under Clauses 2(a) and (b) of this Order will be paid over by the assessee to the revenue subject to the assessee's right to approach this Court within four weeks for the payment of any such admitted amount by such instalments and subject to such conditions which this Court may fix.

(c) All final orders including orders for payment of the demands and the time within which the amounts are to be paid and all incidental, consequential and supplementary matters (including payments of interest) will be determined and decided by this Court, liberty being given to the respective parties to make their appropriate submissions in that behalf.

(d) Whatever bank guarantees that have been already furnished and are subsisting will be kept alive and subsisting until further orders of this Court.

4(a) It will be open to the assessing authorities to raise the plea of limitation in case any claim for refund is made and if the assessing authorities raise any such plea of limitation it will be open to the assessee to oppose the same. However, if a fresh assessment is ordered in terms of the format no question of limitation can possibly arise. These and other contentions which may be raised in regard to the plea of limitation shall be decided by the assessing authority after giving full opportunity to the assessee to make submissions. The decision on the question of limitation if any, will be open to challenge at the instance of either party when this matter comes up for directions.

(b) The original assessment made by the assessing authority will stand set aside. By virtue of this order a fresh assessment shall be made in accordance with the format.

5. Liberty to mention for having the matter listed for directions after the fresh assessment is made in accordance with the format.

6. Liberty to apply.

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