M/s. Seshasayee Paper and Boards Limited, Erode

Vs

Collector of Central Excise, Coimbatore

Civil Appeal No. 3217 of 1988

(M.H. Kania, J.S. Verma JJ)

13.02.1990

JUDGMENT

KANIA, J. -

1. This is an appeal preferred by the appellant (assessee) from a judgment of the Central Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the said Tribunal").

2. As the controversy before us is an extremely limited one, we propose to set out only the facts necessary for appreciating that controversy.

3. The appellant is a public limited company engaged inter alia in the manufacture of paper and paper boards which were assessable under Tariff Item 17 of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Central Excises Act"). The period with which we are concerned in this appeal is the period September 9, 1979 to July 26, 1983. The appellant filed several price lists in Part I and Part II in respect of the clearances of paper and paper boards made by the appellant. Section 4 of the Central Excise Act prescribes the mode of valuation of excisable goods for the purpose of charging of the duty of excise. Under clause (a) of sub-section (1) of section 4, it is provided, in brief, that the duty of excise is chargeable on any excisable goods with reference to value which shall, subject to the other provisions of the Act, be deemed to be the normal price thereof and the normal price, generally speaking, is 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 of removal, where the buyer is not a related person and the price is the sole consideration for the sale. In the fixation of the normal price of paper and paper boards manufactured by the appellant for the purpose of levy of excise duty, the appellant claimed several deductions. One of these deductions was described as "trade discount" and another as "service charge discount". The trade discount was the discount paid to the purchaser in accordance with the normal practice of the trade. The appellant has engaged several dealers with a view to promote its sales. A specimen of the usual agreements entered into by the appellant with its dealers has been taken on record. The opening part of the said agreement shows that appellant is referred to in the agreement as the company and the contracting dealers is referred to as the Indentor. We propose to refer to the dealers engaged by the appellant to promote the sales of its products as "Indentors" for the sake of convenience. Clause (3) of the agreement shows that the Indentor agreed to purchase in his own name or procure acceptable indents from third parties for paper and paper boards manufactured by the company (sic) of such quantities and varieties as set out in the Schedule A to the agreement. The Indentors agreed to deposit with the company a certain amount of money as security. Clause (8) of the agreement shows that the Indentors held themselves responsible for the immediate clearance of the documents relating to the supply of paper on presentation by the bankers and that all bank

charges other than discounting charges would be on the consignee's account.

4. It is common ground that in the invoices in respect of the paper and paper boards supplied and sold pursuant to the aforesaid agreement with the Indentors, in most cases the name of the dealer concerned was shown as the Indentor and the names of the parties to whom the goods were to be delivered were shown as the purchasers but in some cases the Indentors were themselves shown as purchasers. It was urged by Dr. Gauri Shanker, learned counsel for the appellant, that although the discount allowed to the Indentors in respect of some of the aforesaid sales might have been described as service charge discount that name could not govern the real nature of the translation and the discount was really a trade discount. It was submitted by him that this discount should have been allowed a deduction in the determination of the normal price of the aforesaid goods for the purpose of levy of excise duty. He relied upon the decision of the court in Union of India v. Bombay Tyres International Pvt. Ltd. ((1983) 4 SCC 210 : 1882 SCC (Tax) 315 : (1984) 17 ELT 329) and submitted that the nomenclature given to the discount could not be regarded as decisive of the real nature of the discount. There can be no quarrel with this proposition. But it is equally well settled that in the determination of the national price for the purposes of levy of excise duty, it is only a normal trade discount which is paid to the purchaser which can be allowed as a deduction and commission paid to selling agents for services rendered by them as agents cannot be regarded as a trade discount qualifying for deduction (Coromandel Fertilizers Limited v. Union of India (1984 Supp SCC 457 : 1984 SCC (Tax) 225 : (1984) 17 ELT 607)). The correctness of this proposed was not disputed by learned counsel for the appellant but it was submitted by him that in several cases where supplies had been effected pursuant to the aforesaid agreements, the Indentors were really themselves the purchasers and hence, the normal trade discount paid to them should have been allowed a deduction in the determination of the normal price for the purpose of levy of excise duty. We find from the judgment of the Tribunal and the lower authorities that there is no dispute that wherever the indentors are shown as the purchasers in the respective invoices, the trade discount given to them has been allowed as a deduction. Moreover, to obviate any controversy in this regard, learned Attorney General who appears for the respondent fairly states that when the matter goes back to the Tribunal, the respondent is agreeable that the normal trade discount may be allowed in those cases where the Indentors is also shown as the purchaser in the concerned invoice. It is, however, submitted by learned counsel for the appellant that although in some of the cases the indentor might not be shown as the purchaser and the purchaser shown is a different party, yet the real nature of the transaction was that the Indentor purchased the goods referred to in the said invoice and in turn sold it to a customer whose name was shown as the purchaser in the invoice for the sake of convenience so that delivery could be directly effected to him. We are of the view that it is not open to the appellant to raise this contention at this stage. No case ever been made out right up to the Tribunal and even before the Tribunal that in respect of any particulars invoice although the name of the purchase was other than that of the Indentor, it was really the Indentor who was the purchaser and he in turn has sold the goods to the third party whose name was shown as purchaser or even that the Indentor had entered into transaction as the agent of the purchaser. If such a contention had been raised the factual position could have been examined and different considerations might have been applied. But it is certainly not open to the appellant to raise this contention at this stage, in this appeal, particularly keeping in mind that the Tribunal is the final fact-finding authority. No other contention has been raised before us.

5. In our opinion, there is no merit in the appeal. There will, however, be one clarification that, as agreed to by learned Attorney General, if in any case the purchaser named in the invoice is the same as the Indentor, normal trade discount given to the Indentor will be allowed as a deduction in the determination of the normal price for the levy of excise duty subject to other relevant

considerations.

6. In the result, the appeal fails and is dismissed, save to the extent of the aforesaid clarification. The appellant to pay the costs of the appeal to the respondent.

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