

Burn Standard Company Ltd. and another

Vs

Union of India and others Respondents.

Civil Appeal No. 3041 of 1988

(K. N. Singh, Kuldeep Singh JJ)

16.07.1991

JUDGEMENT

KULDIP SINGH, J.:-

1.M/s. Burn Standard Company Limited, the appellant before us, is one of the leading manufacturers of wagons. The wagons manufactured and produced by the appellant are primarily supplied to the Railway Board. The wagons, are manufactured in accordance with the specifications, terms and conditions contained in the agreements entered between the appellant and the Railway Board from time to time. It is the admitted case of the parties that the Railway Board supplies wheel-sets, axle boxes and various other finished components of wagons to the appellant Which are termed as "free supply items". These items are not manufactured by the appellant. The readymade "free supply items" are made available to the appellant by the Railway Board without charging any price. These items are fitted in the wagons manufactured by the appellant and are ultimately supplied to the Railway Board. The invoice-value of the wagon charged by the appellant from the Railway Board does not include the value of the "free supply items."

2. On the above facts, the short question for our determination is whether the excise duty u/ Ss. 3 and 4 of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act) is to be charged on the invoice-value of the wagon or on the value of completed wagon including that of the "free supply items".

3. The central excise authorities issued various show cause notices in respect of different transactions calling upon the appellant to show cause as to why the excise duty be not computed and charged on the value of the completed wagon including that of the "free supply items". The appellant challenged the show cause notices by way of writ petition under Art. 226 of the Constitution of India before the Calcutta High Court which was heard by a learned single Judge who allowed the writ petition and quashed the demand raised by the central excise authorities. The learned Judge came to the conclusion that the excise duty could only be charged on the basis of the invoice-value under the contract. The learned Judge based his conclusions on the following reasoning .(1988 (17) ECR 737, para 13 (Cal)):

"There is no dispute that certain items of finished components are supplied by the Railway Board to the petitioner. The value of these items is not taken into consideration in fixing the price of the wagons sold by the petitioner to the Railway Board. The price of the completed wagons is calculated on the basis of the manufacturing cost of the petitioner including the price of components acquired by the petitioner for which the petitioner has actually to pay the price. But the

components which are supplied free of cost by the Railway Board do not enter into the pricing mechanism of the petitioner at all. Therefore, the excise value of the wagons manufactured by the petitioner cannot be calculated after adding back the price of the components supplied free of cost by the Railway Board."

4. The Union of India filed appeal against the judgment of the learned single Judge which was heard by a Division Bench of the Calcutta High Court. The Bench did not agree with the reasoning and conclusions of the learned single Judge, set aside his judgment and dismissed the writ petition of the, appellant-petitioner. The. Division Bench allowed the appeal in the following words.

"Admittedly, in this case, the cost of wagon as a whole has not been mentioned in the agreement and we feel that the cost of normal price should include cost of construction and furthermore, when sale is the charge and the same under charging section of the said Act would mean actual price of the goods viz wagon as a whole, so the value of a wagon as a ' whole will form part of the relevant and necessary assessable value u/ S. 4 of the said Act, as the manufacturing cost of a complete wagon cannot be conceived of without taking into account or consideration the cost of free supply items..... We hold that the valuation cost of the free supply items should be included in the manufacturing cost of wagons. We think that S. 4(1)(a) of the said Act applies in this case and as such, the valuation of excisable goods will be charged or will take place when manufacture takes place. Thus, we also find and hold that while determining the valuation of wagons for charging the duty, the Revenue Authorities had acted duly and with justification, in adding the cost of free supply items under the provisions of the said Act as indicated above, the more so when, under the agreement in this case, the said petitioners were and are required to manufacture and supply completed wagons, in which the free supply items were and are required to be fixed at the time of manufacture. There cannot be any doubt that without fixing the free supply items, the production and manufacture of a wagon would not be effectively completed. The manufacture of a complete wagon thus takes place as soon as or as and when the free supply items are fitted and fixed by the said petitioners and with such manufacture, the process of manufacture would be complete u/ S.2(f) of the said Act and the liability to duty will also be attracted. We hold that the value of the manufactured goods must be determined at the factory gate i.e. at the stage when the manufactured goods here in this case wagons leave the factory."

5. This appeal, against the judgment of the High Court via special leave petition is by M/ s. Burn Standard Company Limited.

6. The relevant parts of Ss. 3 and 4 of the Act are reproduced hereinafter:

"3. Duties specified in the First Schedule to be levied. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in (India)....

4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be -

(a) the normal price thereof, that is to say, 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:

.....

(b) where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be Prescribed."

7. Section 3 of the Act provides for levy of the duty of excise. It is a levy on goods produced or manufactured in India. S. 4 of the Act lays down the measure by reference to which the duty of excise is to be assessed. The duty of excise is linked and chargeable with reference to the value of the excisable goods and the value is further defined in express terms by the said section. In every case the fundamental criterion for computing the value of an excisable article is the normal price at which the excisable article or an article of the like kind and quality is sold or is capable of being sold by the manufacturer. It is not disputed that the appellants are manufacturers of wagons. What comes down from the assembly-line of the appellant's factory is a complete wagon and as such the appellant being manufacturer of wagons is liable to pay duty of excise on the value of a complete wagon. The "free supply items" like wheel-sets etc. in the process of manufacturing become part of the complete wagon and lose their identity. It hardly matters how and in what manner the components of the wagon are procured by the manufacturer, so long as the appellant is manufacturing and producing the goods called "wagons" it is liable to pay duty of excise on the normal value of the wagon. In *Empire Industries Ltd. v. Union of India*, (1985) 3 SCC 314: (AIR 1986 SC 662), this Court while interpreting Sections 3 and 4 of the Act held as under (para 53 of AIR):

"The fact that the petitioners are not the owners of the end product is irrelevant. Taxable event is manufacture - not owner- ship."

8. In *M/s. Ujagar Prints v. Union of India*, (1989) 3 SCC 488 : (AIR 1989 SC 516). M. N. Venkatachaliah, J. speaking for the Court observed as under (at p. 533 of AIR):

"Duties of excise are imposed on the production or manufacture of goods and are levied upon the manufacturer or the producer in respect of the commodity taxed. The question whether the producer or the manufacturer is or is not the owner of the - goods is not determinative of the liability."

9. We, therefore, cannot accept the contention of the learned counsel for the appellant that the value of the "free supply items " should not be included in the assessable value Of the wagons manufactured by the appellant. We see no infirmity in the reasoning and the findings reached by the Division Bench of the High Court. The appeal is, therefore, dismissed with no order as to costs.

Appeal dismissed.

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