Texmaco Ltd.

Vs

Collector of Central Excise, Calcutta

Civil Appeals Nos.5969-70 (NM) of 1990

(M. N. Venkatachaliah, S. C. Agrawal JJ)

31.07.1991

JUDGMENT

1. These appeals arise out of and directed against the common appellate order dated 21-8-1990 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi ('Tribunal' for short) in Appeals Nos. ED/ SB/T945/80A and ED/SB/T/ 586/81A. By the same order another appeal of the appellant was also disposed of but that matter is not carried up in appeal here.

2. The appellant, M/s. Texmaco Ltd., pursuant to contracts entered into in this behalf with the Railway Administration fabricated and delivered to the Railways wagon-bodies mounted on "wheel-sets" supplied by the Railways. The invoices raised by the appellant respecting these wagons reflected only the price of the wagon-bodies without including the value of the "wheel-sets" on which the wagon-bodies were mounted. The goods were cleared for purposes of Excise Duties on such invoice-value. The Revenue raised demand for recovery of short-levy and sought to recover the unpaid duty on the value of the "wheel-sets" also. This claim for recovery of the short-levy having been adjudicated against the appellant, an appeal was taken before the Tribunal.

3. Before the Tribunal, it would appear, two contentions were raised: First that the goods manufactured by the appellant were only the wagon-bodies mounted on the "wheel-sets" supplied by the Railway Administration and that, therefore, the assessable value could only be the value of the wagon-bodies excluding the "wheel-sets" supplied by the Railways and, secondly, that at all events the value in excess of the 'Invoice value' which represented the price of the wagon-bodies was exempt from levy of duty under the Exemption Notification No. 120 / 75-CE dated 30th April, 1975 issued under Rule 8 of the Central Excise Rules, 1944. What is implicit in the second contention is that, but for the said Notification No. 120/75-CE dated 30-4-1975, the assessable value would otherwise require the exclusion in it the value of the "wheel-gets" also on the premise that the "wheel-sets" became an integral part of the wagons, even though the "wheel-sets" had been supplied free of cost by the Railways themselves. The Notification No. 120/ 75-CE exempted "so much of the duty of excise..... as is in excess of the outy calculated on the basis of invoice prices."

4. On the first contention that the 'assessable-value' of the 'goods' could not include the "wheel-sets" which were not fabricated or manufactured by the appellant, the Tribunal, rejecting the contention said:

> "On going through the facts and in view of the, clear findings given by the lower authorities that no wagon is complete without the wheels, what has been cleared and removed by the appellants is the wagon mounted on wheel sets and not the wagon body alone.....

> On the issue of determination of assessable value, the Supreme Court has held that for the purpose of levy of excise duty, the value of the article is the full intrinsic value of the article inclusive of the cost of the materials and components supplied free by the customer and irrespective of the fact that no expenditure was incurred by the manufacturer on such components."

No fault can be found with this reasoning of the Tribunal. Indeed, considerations of ownership of the goods are extraneous to levy of duties of excise which are imposts on manufacture.

5. The second contention on which Dr. Pal laid particular emphasis, indeed, assumes the correctness of the first proposition and claims exemption on the strength of the Notification No. 120/ 75-CE. That Notification says:

> "The Central Government has exempted goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), cleared from the factory of manufacture, on sale from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the invoice price (excluding duty and local taxes, if any, included in such price) charged by the manufacturer for the sale of such goods:
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> Provided that the aforesaid exemption shall be admissible only if-
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> (i) the manufacturer files with the Superintendent of Central Excise having jurisdiction a written declaration to the effect that he opts to avail of the said exemption:
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> (ii) and (iii) Omitted as unnecessary.
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> (iv) the invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the manufacturer and the buyer other than the relationship created by sale of the aforesaid goods:
>
> (v) Omitted as unnecessary.
>
> Provided ..(Omitted as unnecessary)"

The Tribunal also rejected the claims for exemption under the Notification. It said:

> "We are unable to agree with the arguments of the appellants' counsel that assessable value of the article is different from the consideration received by the appellants to claim benefit under Notification No. 120/75.
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> ..... To claim exemption on benefit under Notification No. 120/75 it should be subjected to in compliance with the conditions specified therein. Condition No. IV of Notification No. 120/75 required that the invoice value should be the full commercial price of the article. According to the decision of the Supreme Court (supra) the value of the article is the intrinsic value and not restricted to consideration received by the appellants as urged by the appellants' counsel. In the view we have taken, the appellants are not entitled to concession under Notification No. 120/ 75 dated 30-4-

1975.

6. Dr. Pal appearing in support of the appeals urged that the Tribunal misdirected itself in law in its construction of the exemption Notification and in its reasoning that there was something in Cl. (iv) of the Notification which detracted from the permissibility of its benefit in the present case. Dr. Pal said that it was erroneous to read the said condition as requiring the 'invoice value' to be the full commercial price of the goods including therein the value of the "wheelsets". Dr. Pal said that Cl. (iv) did no more than merely importing the requirement that the invoice price should reflect a transaction at arms' length and not that appellant's invoice price should also include the value of the "wheel-sets" supplied by the Railways. Dr. Pal further urged that the very purpose of the exemption was to relieve the manufacturer from bearing the burden of the duty on such part of the assessable value as did not reflect the value of his supply and services but represented the value of the "wheel-sets" supplied by the Railway Administration itself free of charge. If Cl. (iv) was construed. in the way in which the Tribunal did, the effect, counsel said, would be to take away with one hand what the Notification gave with the other.

7. Shri Subba Rao, learned counsel for the Revenue, with his usual tenacity contended that Cl. (iv) of the Notification signified and imported idea of full value of the manufactured goods being required to be reflected in the invoice and that the reasoning of, and the conclusion reached by, the Tribunal was correct.

8. On a consideration of the matter we are afraid the Tribunal fell into an error in its understanding of the Notification. The Notification posits and predicates the possibility that the 'invoice value' could be lesser than the "assessable value" and, taking into account the need to mitigate the hardship on the manufacturer of being called upon to pay duty on the value in excess of the invoice value, seeks to exempt the manufacturer from payment of duty "in excess of the duty calculated on the basis of the 'invoice price'. There is no dispute in this case that the invoice price represented the value of the wagons, less the value of the "wheel-sets" supplied by the Railways. The invoice price could not be required to include the value of the "wheelsets". But the "assessable value" would take into account the full commercial value including that of the "wheel-sets". It is in order to mitigate the hardship that may arise by requiring the manufacturer to pay duty on this difference in such cases that the Notification No. 120/75 came to be promulgated. There is nothing in Cl. (iv) which enjoins upon the appellant to include' the value of the "wheel-sets". The contract between the parties does not also require this. The way in, which the Tribunal looked at the Notification is neither good sense nor good law. Such construction would make the Notification and the exemption contemplated thereunder meaningless. The need for the exemption arose in view of the fact that , assessable value" was higher than the invoice value'. Requiring the former and the latter to be the same as something compelled by Cl. (iv) is really to construe the Notification against itself.

9. Shri Subba Rao placed strong reliance on the pronouncement of this Court in M/s Burn Standard Company Ltd. v. Union of India, (1991) 3 JT 108 : (j991 AIR SCW 1887). On the contentions raised and argued in that case the judgment, if we may say so with great respect, is correct. The question of the effect of the exemption Notification No. 120/75-CE was not raised and argued in that case. That apart, the exemption Notification itself makes it clear that it does not apply or is attracted to every case automatically, but that the manufacturer should expressly opt for the benefit of the Notification. Since no such claim was made in that case, the decision therein is of no assistance to the revenue.

10. We accordingly allow these appeals; set aside the order of the authorities as well the affirming

order of the Tribunal under appeal and hold that the appellant was entitled under the said Notification No. 120/ 75-CE, to exemption from that part of the duty as was in excess of the invoice price which, we hold, was not required to include the value of the "wheel-sets".

Appeals allowed.

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