Free India Dry Accumulators Ltd.

Vs

Union of India and Others

Civil Appeal No. 4369 of 1983

(S. Saghir Ahmadi, S. B. Bharucha JJ)

01.08.1996

ORDER

1. The appellants entered into contracts with the South-Eastern Railways for supply of electric storage batteries. The batteries were to be manufactured with old containers which were to be supplied by the Railways. It was agreed that, on this account, there would be a rebate of Rs 50 from the price of the finished batteries which was fixed at Rs 309.50 a piece. The contract was subsequently amended; thereunder, the Railways agreed to supply to the appellants the lead acid that was required for the batteries and a further rebate of Rs 30 per piece was agreed upon.

2. The question was whether, in determining the assessable value of the batteries, the rebate obtained in respect of the containers and acid was to be taken into account. The Assistant Collector took the view that the price of the batteries, regardless of the rebate, was the assessable value. The Appellate Collector demurred and held that the batteries were related and supplied to the Railways, and there was no wholesale market for them; that being so, the contractual price less the rebate should determine the assessable value. His order was sought to be reviewed by the Central Government under Section 36(2) of the Central Excises and Salt Act, 1944, and a show-cause notice in that behalf was given. Upon considering the representation of the appellants in reply, the order of the Appellate Collector was set aside. The Central Government held that under Section 4 of the Act, abatement (sic rebate) or deduction could not be allowed in respect of the value of the old containers. The order of the Central Government was challenged by the appellants in a writ petition filed in the High Court at Calcutta. The learned Single Judge upheld the appellants' contention, taking the view that since the containers were obtained from the Railways free of charge, it could not be said that any cost was incurred by the appellants in that behalf in the process of the manufacture of the batteries and that, accordingly, the rebate of Rs 50 could not be a part of the manufacturing cost. In appeal, the Division Bench noted the terms of the contract, which we have adverted to above. The Division Bench held that the appellants were to manufacture batteries for the Railways. The price of each battery, including the cost of the container and lead acid, was fixed. Since the containers and lead acid were to be supplied by the Railways, rebate was given. The cost of the batteries for the purposes of their assessable value had to include the cost of the battery inclusive of the rebate amount of Rs 80.

3. It is that order of the Division Bench which is in appeal before us. Learned counsel on behalf of the appellants relied upon the judgment of this Court in CCE v. Indian Oxygen Ltd. [(1998) 4 SCC 139 : 1988 SCC (Tax) 491] The facts of that case do not help the appellants. That was a case in which the respondents manufactured dissolved acetylene gas and compressed oxygen gas. They supplied these gases in cylinders at the factory gate. For taking delivery of the gases, some consumers brought their own cylinders while others used cylinders supplied by the respondents. For

supply of cylinders, the respondents charged a certain rental and a deposit was taken to ensure their return. On these deposits, a notional interest at 18% per annum was calculated. These amounts, namely, the rental of the cylinders and the notional interest earned on the deposits for the cylinders, were the subject-matter of the dispute, the dispute being whether they were includible in the assessable value of the gases under Section 4 of the Act. The Court held that the activity of supply of cylinders to purchasers of the gases was not an activity for the manufacture of the gases. It was ancillary to it, but not incidental. Any income earned in the shape of interest on deposits or on the rental would not be the price for the manufacture of gases and, therefore, these amounts could not be included in the assessable value of the gases.

4. The more apposite judgment is that in Burn Standard Co. Ltd. v. Union of India. The appellants manufactured wagons. What came down from the assembly line of the appellants' factory, it was held, was a complete wagon and, as such, the appellants were liable to pay excise duty on the value of the complete wagon. The free-supply items like wheel sets had, in the process of manufacturing, become a part of the complete wagon and lost their identity. It hardly mattered how and in what manner these components had been procured by the manufacturer. So long as the appellants were manufacturing and producing the goods called "wagons", they were liable to pay excise duty on the normal value of the wagons and the value of the free-supply items had to be included in the assessable value of the wagons.

5. Following the aforestated judgment, the appeal is dismissed, but with no order as to costs.