

Union of India and Others

Vs

Metal Box Co. of India Ltd. and Others

Civil Appeals No. 100 of 1981

(B. P. Jeevan Reddy, S. C. Sen JJ)

01.10.1996

JUDGMENT

B. P. JEEVAN REDDY, J. –

1. Leave granted in the Civil Appeal No. 12657 of 1996 [arising from Special Leave Petition (C) No. 1836 of 1982].
2. Common questions of law arise in this batch of appeals. For the sake of convenience, we may deal with the facts in Civil Appeal No. 100 of 1981 (Union of India v. Metal Box Co. of India Ltd.). The matter arises under the Central Excises and Salt Act, 1944.
3. The respondent, Metal Box Company of India Limited, were manufacturing tubes, popularly know as "aluminium collapsible and rigid tubes". The collapsible tube is a cylinder of pliable metal. These tubes were originally manufactured from lead but later they were being manufactured predominantly from aluminium. The respondent was manufacturing the said tubes from aluminium by extrusion, i.e., by forcing slugs or lumps of aluminium through a die under pressure. This process is called "extrusion process". After the tube is delivered from the extrusion press, it is trimmed to a correct length and its nozzle is threaded to the appropriate specification. According to the respondent, the operation of extrusion is completed at this stage and the resultant product is know as an "extruded tube". According to the respondent further, several processes/operations are done to such tubes like, making the tube collapsible, giving coating with appropriate colour to the tubes, printing the appropriate material as per the desire of the customer, fitting caps to the tubes and packing them into cartons. According to the respondent, all these operations are post-extrusion operations and totally distinct from the operation of extrusion.
4. One of the customers of the respondent was Colgate-Palmolive (India) Private Limited. According to the agreement arrived at between the respondent and Colgate-Palmolive, the latter was to purchase and supply to the respondent the plastic caps to be fitted to the aluminium extruded tubes manufactured by the respondent. On 29-12-1971, the respondent wrote a letter to the Assistant Collector of Central Excise pointing out the said agreement and asking for approval of the enclosed price list (which did not include the cost of the caps). While the matter was pending, the respondent filed a revised price list. The Excise Officer, however, called upon the respondent to pay excise duty including the value of the caps in the value of the tubes. The respondent thereupon approached the Bombay High Court by way of a writ petition (No. 511 of 1973) for issuance of a writ, order or direction to the Central Excise authorities not to include the costs/charges relating to coating or printing and relating to plastic caps fitted to extruded aluminium tubes in the assessable value of such tubes. The respondent also asked for the quashing of the demand notice issued by the Central

Excise Officer. It is significant to note that while the controversy raised by the respondent before the Excise authorities pertained only to the inclusion of the value of the plastic caps in the assessable value of the said tubes, larger relief was asked in the writ petition seeking the exclusion of the value of coating/printing in addition to the exclusion of the value of plastic caps. The learned Single Judge of the Bombay High Court allowed the writ petition. The reasoning of the learned Single Judge is to be found in the following observations :

"It is accepted on behalf of the respondents that the extruded tubes are sold in the market either in their naked (naked ?) form or after lacquering or printing or fitting with caps thereon. It is accepted that the extruded tubes are known in the market although they are neither lacquered nor printed or fitted with caps. The respondents, by paragraph 5 of the return, have further conceded that certain processes are carried out after the process of extrusion takes place ... what is liable for excise duty is a manufactured product of extruded tubes ... only those processes which are incidental or ancillary to the completion of the manufactured product would come within the expression of 'manufacture'.... It is undoubtedly true that the excise duty is leviable on an article when it is taken outside the factory and the rate of the duty is determined with reference to the date on which the article is taken outside the place of manufacture. But that fact would not enable the respondents to take into consideration the cost of printing, painting or fitting the caps which is really in the nature of post-manufacture cost. The process or manufacture of extruded tubes is not postponed till such tubes are painted, lacquered, printed or fitted with caps. That operation is done only to suit the convenience of the customer and is clearly a post-manufactured operational process. That being so, it is not possible to include the cost of those operations while determining the value of extruded tubes for the purpose of excise duty."

5. The learned Judge relied upon and followed the decision of the Gujarat High Court in *Extrusion Process (P) Ltd. v. N.R. Jadhav*, Supdt. of Central Excise [(1979) 4 ELT 380 : (1974) 15 Guj LR 161]. A writ appeal preferred by the Revenue against the judgment of the learned Single Judge was dismissed in limine by a Division Bench of the High Court on 24-3-1980 (Appeal No. 129 of 1980).

6. A reading of the judgment of the learned Single Judge, which was rendered on 24-7-1979, shows that it is influenced by the concept of "post-manufacturing expenses" which was then in vogue but which theory has since been rejected by this Court in *Union of India v. Bombay Tyre International Ltd.* [(1984) 1 SCC 467 : 1984 SCC (Tax) 17] and again recently by this Court in *Govt. of India v. Madras Rubber Factory Ltd.* [(1995) 4 SCC 349] where even the expression "post-removal expenses" is held to be not an accurate description of the method of levy and valuation underlying Sections 3 and 4 of the Central Excise Act. We find it difficult to sustain the judgment of the learned Single Judge and of the Division Bench, for more than one reason. But first we must mention that the filing of, and entertaining, the writ petition straightaway against a notice of demand issued by a Central Excise Officer (Superintendent of Central Excise) in a matter involving valuation was inadvisable. It has been repeatedly deprecated by this Court, the latest decision being in *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327], which decision refers to and affirms the ratio of the earlier decisions of this Court.

7. Now coming to the merits of the case, the relevant tariff item, viz., Tariff Item 27 in the Schedule to the Central Excise Act, as it stood at the relevant time, read as follows :

## "ALUMINIUM

(a)(i) In any crude form including ingots, bars, blocks, slabs, billets, shots and pellets.

(ii) Wire bars, wire rods and castings, not otherwise specified.

(b) Manufactures, the following : namely, plates, sheets, circles and strips in any form or size, not otherwise specified.

(c) Foils, that is a product of thickness (excluding any backing) not exceeding 0-15 millimetres.

(d) Pipes and tubes, other than extruded pipes and tubes.

(e) Extruded shapes and sections including extruded pipes and tubes."

8. Subsequently, clause (f) has been added in the above tariff item, which reads : "(f) Containers, plain, lacquered or printed or lacquered and printed". The definition of "manufacture", as inserted by the Finance Act (No. 25) of 1975 with effect from 1-3-1975 reads, insofar as is relevant, thus :

"2. (f) 'Manufacture' includes any process incidental or ancillary to the completion of a manufactured process; and..."

9. Section 4 provides that where the duty of excise is chargeable with reference to value, such value shall, subject to other provisions of the said section, be deemed to be the normal price thereof. The normal price means 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 - vide Section 4(1)(a).

10. In *Bombay Tyre International* [(1984) 1 SCC 467 : 1984 SCC (Tax) 17], it has been held by this Court that the wholesale cash price at the place of removal is the basis for determination of value of an excisable article and whatever be the wholesale cash price at which excisable article is sold in wholesale trade at the place of removal would represent the value of the excisable article on which excise duty is leviable and that no deduction from such wholesale cash price is permissible except in respect of trade discount and the amount of excise duty payable at the time of removal of the excisable article from the place of removal. It has been held that the expenses incurred by the assessee up to the date of delivery cannot be excluded from the assessable value. Of Course, so far as the cost of packing is concerned, separate principles have been enunciated in that behalf which have been reiterated and explained recently in *Madras Rubber Factory Ltd.* [(1995) 4 SCC 349], where it has been reiterated that the fundamental criterion for computing the value of the excisable article is the price at which the excisable article is sold by the manufacturer and that it is not the bare manufacturing cost and manufacturing profit which constitute the basis for determining such value. It has also been held that no deductions except those provided by Section 4 are permissible to be made from the wholesale price and that all expenses incurred on account of several factors which have contributed to the value of the excisable goods up to the date of sale/date of delivery are liable to be included. Applying the said test, it would be evident that the theory underlying the judgment of the learned Single Judge that only the value of the extruded tube shall form the basis of the assessable value and that the costs/charges for coating/printing etc. are not includible in the assessable value, is unsustainable in law. It is not necessary to discuss the issue relating to packing

charges for the reason that it has not been agitated before us (As we have said earlier, the law in that behalf is enunciated in *Bombay Tyre International* [(1984) 1 SCC 467 : 1984 SCC (Tax) 17] and *Madras Rubber Factory Ltd.* [(1995) 4 SCC 349])

11. For these reasons, it is also not possible for us to agree with the decision of the Gujarat High Court in *Extrusion Process (P) Ltd.* [(1979) 4 ELT 380 : (1974) 15 Guj LR 161]

12. So far as the value of the plastic cap is concerned, it is submitted by the learned counsel for the assessee that it is not only supplied by the purchaser to the assessee but that it does not form part of the tube which is sold by the assessee to the purchaser. It is further submitted by the learned counsel that fitting of the cap to the tube does not amount to manufacture, because these caps are manufactured separately and by another manufacturer. The learned counsel invited our attention to the order of this Court dated 20-11-1989 dismissing Civil Appeal No. 1930 of 1984 filed by the Collector of Central Excise, Calcutta against the Appellate Tribunal's order in the case of *Metal Box of India Ltd. v. CCE* [(1983) 13 ELT 956 (CEGAT)] itself whereunder the Tribunal had upheld the aforesaid contention of Metal Box. We are, however, of the opinion that whether the cap forms part of the tube cleared and sold by the respondent, or not, is a question of fact to be decided in a given case and no generalisation is possible. There has been no investigation of this factual aspect in this case because the respondent rushed to the High Court soon after receiving the demand notice. Moreover, the said decision was rendered prior to the decisions of this Court in *Bombay Tyre International* [(1984) 1 SCC 467 : 1984 SCC (Tax) 17] and *Madras Rubber Factor Ltd.* [(1995) 4 SCC 349]. We do not, however, express any opinion on the correctness or otherwise of the said decision of the Tribunal in *Metal Box of India Ltd.* [(1983) 13 ELT 956 (CEGAT)]. The proper course in the circumstances is to leave the matter to be gone into and determined by the appropriate authority in charge of approving the price list. The authority shall decide the said question after ascertaining the relevant facts and in the light of the law declared by this Court.

13. The appeal is accordingly allowed and the judgment of the learned Single Judge and the Division Bench of the Bombay High Court is set aside subject to the direction that insofar as the inclusion of the value of the plastic caps in the value of the extruded tubes is concerned, the matter shall be gone into and determined by the authorities under the Act in accordance with law. No costs.

14. In one of the appeals, viz., Civil Appeal No. 2132 of 1991, which deals with the position obtaining after inclusion of clause (f) in Tariff Item 27, the validity of the said clause (f) is challenged. The challenge is liable to fail in view of the decision of this Court in *Ujagar Prints (II) v. Union of India* [(1989) 3 SCC 488 : 1989 SCC (Tax) 469]. Yet another contention raised in this appeal relates to the validity of the levy of duty upon these tubes between 1-6-1980 and 25-8-1980. The contention is that the Finance Bill introducing clause (f) in Tariff Item 27 was introduced in Parliament on 18-6-1980 and that the Bill became law on passing of the Finance (No. 2) Act, 1980 with effect from 25-8-1980. It is submitted that though a declaration as provided by Section 3 of the Provisional Collection of Taxes Act, 1931 was made while introducing the said Bill in Parliament, such declaration cannot enable the Excise authorities to include the charges of printing and lacquering in the assessable value of the said tubes and rigid cans. Not only is this argument untenable in law but it does not actually arise for consideration in view of our holding in Civil Appeal No. 100 of 1981, that even apart from the said clause (f), the said charges are includible in the assessable value.

15. For the above reasons, Civil Appeal (No. 2132 of 1991) is dismissed. No costs.

16. Civil Appeals Nos. 3660 and 5017 of 1991, filed by the assesseees, are also dismissed for the same reasons. Civil Appeal No. 63 of 1992 and Civil Appeal No. 12657 of 1996 [arising out of SLP (C) No. 1836 of 1982], filed by the Revenue, are allowed. No costs.