

SUPREME COURT OF INDIA

J.K. Cotton Spg. & Wvg. Mills Co. Ltd.

Vs.

Collector of Central Excise, Kanpur

(S Sen and B Kirpal JJ.)

05.02.1997

ORDER

1. The short question that arises for consideration is as to what is the wholesale price, on which the excise duty is payable, of the fabrics which are manufactured by the appellant-Company?
2. The appellant was manufacturing fabrics which were being sold to four wholesale dealers who were M/s. Shiv Narain Amar Nath, M/s. Hindus tan Traders, M/s. Anand Textiles and M/s. Narain Das Sajan Lal. These four parties in turn delivered the goods taken from the appellant to M/s. Agarcon (India) Ltd., Kanpur. M/s. Agarcon (India) Ltd. then sold the said fabrics to other wholesale dealers.
3. The Collector of Excise decided that the value, for the purpose of excise duty, of the goods should be the price which was charged by the appellant from the said four parties. The proposal to adopt the sale price of M/s. Agarcon (India) Ltd., as being the wholesale price for the purpose of excise duty, was dropped by the Collector by his order dated 27-2-1986.
4. Thereafter the Central Board of Excise and Customs issued a show cause notice as, in its opinion, the decision of the Collector was not correct. Thereupon an order was passed on 14-1-1987. In the

said order, it was, inter alia, stated that the manner in which the goods were sold by the appellant herein was extra-commercial and tortuous and the said four parties namely, M/s. Shiv Narain Amar Nath M/s. Hindustan Traders, M/s. Anand Textiles and M/s. Narain Das Sajan Lal "were not genuine wholesale dealers but were only commission agents and they were receiving the goods only on papers without even taking delivery of the same and were showing the sale of such goods to M/s. Agarcon (India) Ltd." After examining all the facts on record, the Board by the said order directed the adjudicating authority to apply to the Customs, Excise and Gold Control Appellate Tribunal for setting aside the order of the Collector. Pursuant thereto, the matter came to be decided by the Tribunal.

5. Before the Tribunal two preliminary objections were raised by the appellant herein. They are as follows :

(i) The Board had not specified the points arising out of the Collector's order-in-original which required determination by the tribunal; and

(ii) The point made in the Board's order that M/s. Agarcon functioned as the commission agent of the respondents did not arise out of the Collector's order since it was neither raised before the Collector in the Show Cause Notice nor did the Collector deal with it in his order.

6. The Tribunal came to the conclusion that the Board had specified the points which arose from the Collector's order and, therefore, there was no merit in the first preliminary objection. The Tribunal, however, found merit in the second preliminary objection but came to the conclusion that for the view which it was taking it was not necessary to decide the same. The Tribunal after examining the evidence came to the conclusion that M/s. Agarcon was not a related person of the appellant and therefore, the selling price of M/s. Agarcon could not be regarded as the wholesale price of the appellant herein. The Tribunal, however, came to the conclusion that the four firms which came in between the appellant and M/s. Agarcon (India) Ltd. Were mere shadows. It took note of the fact that these four firms had virtually no funds of their own, while they were having turnover of crores of rupees. These firms also had no godowns or storage place and they were merely carting away the goods from the appellant's factory and unloading them directly at the premises of the M/s. Agarcon (India) Ltd. Another important fact which was taken note of by the Tribunal was that all the parties not only belonged to Kanpur but the business address of M/s. Agarcon and all these four firms was the same. From these facts, the Tribunal concluded that the wholesale price, for the purpose of assessment, should be the price which was paid by M/s. Agarcon. In other words, the Tribunal was of the opinion that the so-called sale which was made to these four firms by the appellant has to be ignored and the correct assess sable value would be the price which was being paid by M/s. Agarcon (India) Ltd.

7. Aggrieved by the aforesaid decision, the appellant have filed this appeal. It has been strenuously

contended by Mr. S. Ganesh, learned Counsel appearing for the appellant-Company, that there were no reasons whatsoever for the Tribunal going into the question as to whether these four firms were genuine or not. His contention was that the show cause notice which was issued after the passing of the Collector's order related to only one question, namely, whether M/s. Agarcon was a related person of appellant or not? It was not in dispute, the learned Counsel submits, whether these four firms were genuine or not.

8. We do not agree with the submission. This very contention was raised before the Tribunal as well and the same was dealt by it in the following words :

The respondents contended that the point - that the four firms were mere shadows - did not arise from the Collector's order nor was this point specified in the Board's reference order. We do not agree with the respondents. There is a very extensive discussion on this point in both the orders. Whereas the Collector has concluded that the dealings between the respondents and the four firms were as from principal to principal, the Board was of the tentative view that the four firms were not real buyers and sellers. We hold that the point did arise out of the lower orders.

9. We are in agreement with the aforesaid observations. The order dated 14-1-1987 of the Board shows that all the facts relating to these four firms which have been enumerated in the order of the Tribunal have been taken from the Board's order. The appellant had been apprised of the reasons why according to the department the wholesale price which was being charged by M/s. Agarcon, was sought to be regarded as the assessable value of the goods. It is true that the Tribunal found that M/s. Agarcon was not a related person of the appellant and, therefore, to that extent it did not uphold the contention of the department of treating the sale price of M/s. Agarcon as being the assessable value. It, however, on the basis of the evidence on record and what was stated in the said order, came to the conclusion that the proper assessable value would be the purchase price which was paid by M/s. Agarcon to the said firms. The basis for coming to this conclusion was that these four firms were mere shadows and the transactions through them could not obviously be regarded as the genuine transactions. It is clear that introduction of these four firms was only a device which was adopted, whereby all the fabrics manufactured by the appellant were sold only to M/s. Agarcon which in turn sold them to other dealers. M/s. Agarcon did not deal with the products of any mill other than those of the appellant. This being so and also considering the fact that the so called wholesale dealers neither had the finances of their own and nor did they have any storage capacity, the only obvious conclusion was that this was only a device which was adopted by the appellant with a view to depress the assessable value for the purpose of excise. This is further strengthened by the fact that M/s. Agarcon is only known as the agent of the appellant and the goods were manufactured according to the designs and specifications given by M/s. Agarcon. In our opinion, therefore, the conclusion which was arrived at by the Tribunal was correct and calls for no interference. The appeal is accordingly dismissed with costs quantified at Rs. 10,000/-.