

SUPREME COURT OF INDIA

Hyderabad Industries Ltd.

Versus

Union of India.

(S.P. Bharucha, R.C. Lahoti and N. Santosh Hegde, JJ)

Civil Appeal No. 163-180 of 1998.

18.01.2000

JUDGMENT

Santosh Hegde, J.—

The only question that arises for our consideration in these appeals is whether the service charges payable to Minerals and metals Trading Corporation (for short "MMTC) by the appellant for the importation of raw asbestos made by them, is includible in the assessable value of import as provided in the Customs Act and Customs Valuation (Determination of Price) Rules, 1988 or not.

2. The appellant is a manufacturer of asbestos cement products for which it uses raw asbestos which is mainly imported from foreign countries. Under the provisions of the import and Export Policy of the Government of India, MMTC is designated as a canalising agent for the said purpose. MMTC imports the raw asbestos in bulk purchasing the same from the foreign sellers. It then enters into sale agreement on what is known as high seas sales basis with the various users of raw asbestos. Consideration paid by the purchasers of the raw asbestos from MMTC (which includes the appellant) includes apart from the purchase value incurred by MMTC an additional sum equivalent to 3.5 per cent. of the C&F value of the imports as service charges.
3. On applications being made for refund based on a claim that service charges collected by MMTC cannot be subjected to levy of customs duty, the appellant, who suffered adverse orders before all the authorities below including the Customs, Excise and Gold (Control) Appellant Tribunal, has preferred these appeals before us.
4. The argument of the appellant is that these service charges do not constitute part of the transaction value, hence are not liable to be added to the assessable value because the transaction between the appellant and MMTC is analogous to that of an agency transaction, though in fact there is no agreement of agency. It is also argued before us that the service

charges levied by MMTC are in the nature of "buying commission " which commission according to the appellant is not includible in the assessable value in view of the exclusion provided in Rule 9(1)(a)(i) of the Valuation Rules.

5. On behalf of the respondents, it is contended that there is no relationship of a "principal" and an "agent" between the appellant and MMTC and that the service charges collected by the latter cannot be equated with the commission that is payable to an agent. The stand of the respondent Union further is that these goods of which MMTC was the owner were sold to the appellant on a high seas sales basis for consideration which included apart from the cost paid by MMTC to its foreign seller the service charges payable to it.
6. The undisputed facts which are to be noticed for the purpose of disposal of these appeals are as follows : to cater to the needs of the users of raw asbestos, MMTC calls for global tender and after identifying the foreign supplier it purchases the raw asbestos in bulk which MMTC charges apart from the sale consideration paid by it to the foreign buyer an additional sum as service charges. It is an admitted fact that there is no relationship of a principal and an agent between the purchaser like the appellant and MMTC. MMTC admittedly does not buy the raw asbestos for and on behalf of any particular consumer of raw asbestos in India. On the contrary, it makes a bulk purchase to cater to the needs of various consumers of the raw asbestos in India and it is only after the goods are sold on the basis of high seas sales, the goods become the property of the purchasers like the appellant.
7. The argument of the agency is obviously put forth to invoke the benefit of exemption granted to "buying commission" under Rule 9(1)(a)(i) of the Valuation Rules referred to above. This rule excludes the amount paid as "buying commission" from the cost and services which is to be included in determining the transaction value. To attract this exclusion, the appellant seeks to rely upon the interpretative note to Rule 9 which reads thus : "In Rule 9(1)(a)(i), the term 'buying commission' means fees paid by an importer to his agent for the service of representing him abroad in the importer to his agent for the service of representing him abroad in the purchase of the goods being valued". The appellant wants this Court to firstly equate "service commission to "buying commission", then on this basis to treat MMTC as an agent. It is not possible to accept this argument of the appellant for more than one reason. As already noticed, there is no relationship of principal and agent between the appellant and MMTC nor is there any agreement between the parties to pay "buying commission" nor has MMTC agreed with the appellant to represent it abroad in the purchase of raw asbestos. The material on record. On the contrary, shows that MMTC on its own goes through the process of identifying the foreign supplier from whom it purchases the goods in question on its own without representing any particular buyer in India and sells the same to purchaser on high seas sales basis to Indian buyers like the appellant. Purchase by MMTC from the foreign seller and subsequent sale by it to the Indian buyers are independent of each other. Therefore, MMTC when it includes service charges in its sale consideration, it does not include the same as "buying commission". Therefore, this contention of the appellant is rejected.

8. It is lastly contended on behalf of the appellant that by the inclusion of service charges in the assessable value of the imported goods, the Customs Authorities have imposed a heavy and unreasonable burden on them. We are not impressed with this argument either. Assuming the burden of duty is heavy, this Court has held that the same cannot be avoided on that ground. That apart, it must be noticed that if the appellant had been permitted to import independently, it would have incurred substantial expenses in identifying a foreign supplier and negotiating

the terms of the sale with the said supplier. Further, we should also take notice of the fact by virtue of the high seas sales through which the appellant purchased the raw asbestos from MMTC, it has derived the benefit of avoiding the payment of sales tax on appellant raised on the basis of unreasonableness of the levy.

9. For the above reason, these appeals fail and are dismissed with costs.