SUPREME COURT OF INDIA

Commissioner of Central Excise, New Delhi

Vs.

M/S Vikram Detergent Ltd.

C.A.No.2579 of 2000

(S.P.Bharucha, Doraswamyy Raju and Ruma Pal JJ.)

16.01.2000

JUDGMENT

Ruma Pal,J

1. In both these appeals, the appellant has challenged the decision of the Customs, Excise and Gold (Control) Appellate Tribunal holding that bank charges for collection of sale proceeds and discount for damages are allowable deductions in computing the value of the manufactured goods under Section 4 of the *Central Excise and Salt Act, 1944*. Civil Appeal No. 2579 of 2000 In this appeal, the respondent, M/s Vikram Detergent Ltd. is engaged in the packing of detergent powder received by it from M/s Hindustan Lever Ltd. (HLL). After the goods are packed, they are cleared from the factory by HLL and sold through its clearing and forwarding agents from their depots all over the country to wholesale buyers who are known as Redistribution Stockists. The Department calculated the excise duty payable on the detergent powder on the price charged by HLL from the Redistribution Stockists. Civil Appeal No. 3160 of 2000 M/s IPF Vikram India Ltd., the respondent in this appeal produces detergent under agreement with M/s Indexport Ltd. (IEL) and Stepan Chemicals Ltd. (SCL) under the brand name Wheel. The respondent despatches the goods manufactured by it to the destinations specified by IEL/SCL. According to this respondent, IEL and SEL send the goods to clearing and forwarding agents depots from where the goods are sold and delivered to re- distribution stockists. The price lists filed by the respondent with the excise authorities are according to the advice of IEL/SCL and reflect the price charged by them for the goods in the wholesale market. Both the respondents inter alia claimed deduction on account of damage discount and bank charges on outstation cheques from the price charged in arriving at the assessable value of the goods for the purposes of excise duty. It is not necessary to set out in detail the proceedings before the authorities under the Act except to state briefly that in the first appeal, the Assistant Commissioner disallowed the respondents claim but the Commissioner allowed the respondents appeal. The Tribunal affirmed the Commissioners decision. In the second appeal, both the Assistant Commissioner and the Commissioner had disallowed this respondents claim for discount of damaged goods and bank charges relying on the decision of this Court in *Government of India V. MRF*[1]. The respondent challenged the decision before the Tribunal. The Tribunal allowed the appeal. Both the orders of the Tribunal are now the subject matter of challenge before us. The issues are the same in both

appeals as are the relevant facts. We have heard one set of arguments and our decision disposes of both matters. According to the appellant, the discount on the damaged goods could not be known at the time of their removal from the factory and as such was not admissible as a deduction on the wholesale price. It was contended that what the respondents claimed as discount was in fact a refund to the buyers for receiving goods damaged in transit. As far as Bank collection charges are concerned, according to the appellant, these were neither cash discounts nor any other discount within the meaning of the word in Section 4(4)(d)(ii) of the Act. It was submitted by the respondents that deduction on account of damages represented discounts allowed to the whole- sellers for damages suffered by the goods cleared from the factory during transit there being no sale at the factory and were incurred in lieu of transit insurance. Bank collection charges, according to the respondents were post manufacturing expenses and had been correctly held to be deductible from the assessable value of the goods. The issue of value depends on the construction of Section 4 of the *Central Excise Act, 1944* (referred to as the Act). The relevant extract of the Section for the purposes of this judgment reads as follows:

> "4. Valuation of Excisable Goods for purposes of charging of duty of excise (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be (a) the normal price thereof, that is to say, 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.
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> xxx xxx xxx xxx
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> (2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.
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> (3) xxx xxx xxx xxx
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> (4) For the purpose of this section, -
> xxx xxx xxxxxx@@ III
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> (d) value, in relation to any excisable goods, -
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> xxx xxx xxx xxx
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> (ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale."

2. The normal price in this case, would have to be determined with reference to the time and place of removal of the goods from the respondents respective factories. Since the price in both cases was fixed with reference to the sale at the depots to the Redistribution Stockists, clearly in terms of sub-Section (2) of Section 4, the respondent would be entitled to deduction of the cost of transportation from the factory to the selling depots. It has been so held in *Union of India and Others V. Bombay Tyre International Ltd. and Others*[2] as well as *Assistant Collector of Central Excise and Others V. Madras Rubber Factory Ltd.*[3] as well as *Government of India V. Madras Factorey Ltd.*[4]. These decisions also held that the cost of transportation would include cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery but would not include compensation for defective goods. The position was further clarified in *Collector of Central Excise, Meerut V. Surya Roshni Ltd.*[5] where it was held that: The payment made by the respondent to its customers for breakages and losses cannot tantamount to insurance. Nor can, by any means, such compensation be treated as a part of the cost of transportation; it is a clear case of making up to the customer by means of a credit note the monies that it has lost on account of breakages or losses in transit.

3. The respondents sought to distinguish the decision in Surya Roshni case (supra) by contending that the claim for deduction on account of damaged goods was a claim not under sub-Section (2) of Section 4 as being part of the cost of the transportation but under sub-Section 4(d) (ii) of Section 4 as a trade discount. We are unable to accept the submission. The object of damage discount is to compensate the buyer for the damaged goods and logically, compensation for damaged goods could not feature as a relevant consideration for determining the price of the goods as manufactured at the time of clearance of the goods. The discount is admittedly on account of damages suffered by goods after removal from the factory. A similar deduction claimed as a warranty discount was negatived in the two Madras Rubber Factory judgments referred to earlier. Bhagwati C.Js dictum in the first of such judgments which was quoted with approval in the second was: what is really relevant is the nature of the transaction. the warranty is not a discount on the tyre already sold, but relates to the goods which are being subsequently sold to the same customers. It cannot be strictly called as discount on the tyre being sold. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale. a compensation in the nature of warranty allowance on a defective tyre. The finding of the Tribunal on this issue therefore cannot be sustained. On the question of bank charges, however we are of the view that bank charges being in the nature of post clearing expenses are deductible while calculating the assessable value of the goods. In *Assistant Collector of Central Excise and Others v. Madras Rubber Factory (supra) and Shriram Fertilizers & Chemicals V. Union of India*[6] *and Government of India and Others V. Madras Rubber Factory Ltd. and Others*[7], this Court has held that interest on receivables earned on account of the time lapse between the delivery of the goods and the realisation of the monies is deductible from the assessable value of the goods at the time of removal from the respondents factories. For the same reason, bank charges included in the price on account of clearance of outstation cheques cannot form part of the price of the goods at the time of removal and are as such excludible from the price while calculating the assessable value of the goods. The Tribunal had, as such,

correctly allowed this deduction. In the circumstances, the appeals are allowed to the extent of disallowing the respondents claim for deduction on account of damage discount and dismissed in so far as the respondents claims for deduction of bank charges are concerned. There will be no order as to costs.

[1]*1995 (77) ELT 433*
[2]*1984 (1) SCC 467*
[3]*1986 Supp.SCC 751*
[4]*(1995) 4 SCC 349*
[5]*2000 (122) ELT 3 (SC)*
[6]*1997 (96) ELT 12(SC)*
[7]*1995 (4) SCC 349*