

SUPREME COURT OF INDIA

Commissioner of Central Excise, Mumbai-I

Vs.

Parle International Limited

C.A.Nos.6460-6483 of 1999

(C.K.Thakker, Ruma Pal and Arijit Pasayat JJ.)

16.03.2005

ORDER

1. The issue in this case is whether the advertisement expenses incurred by M/s. Soft Drinks and Advertising Marketing Services Pvt. Ltd. (SAMS for short) to advertise the aerated products and manufactured by the third party bottlers could be includible in the assessable costs of the non alcoholic beverages (NABB) manufactured by the respondent. NABB is a concentrate which is sold under agreements to various bottlers throughout the country who after processing the concentrate bottle the outcome and sell the same under various brand names all of which, at the material point of time belonged to the respondent. Under the agreement between the bottlers and the respondent, the respondent was required to advertise the finished products. In 1988, SAMS was set up by the bottlers as a centralized agency for advertising finished products of the bottlers. The shareholders of SAMS are the representatives of the bottlers and its Directors are also representatives of the bottlers.

2. The department on the allegation that the respondent was in fact deriving benefit from the sale of the final product and also that the respondent was in some cases insisting on the bottlers to pay their contribution to SAMS towards the advertisement expenses, issued show case notices to the respondent in respect of clearances of NABB made for the period 1-3-1989 to November, 1993.

3. Both the departmental authorities relied on the decision of this Court in *Union of India & Ors. etc. v. Bombay Tyre International Ltd. etc.*¹ - as well as *Philips India v. C.C.E.* to hold that the advertisement costs incurred by SAMS under its agreement with the bottlers was includible in the assessable coats of the NABB for the purposes of Section 4 of the *Central Excise and Salt Act, 1944* (as it then stood).

4. The Tribunal reversed the findings of the departmental authorities on appeal. The Tribunal found, as a fact, that there was a distinction between the advertisement costs incurred by the respondent and the advertisement costs incurred by SAMS. It followed the earlier decision of the *Tribunal in Pepsi Foods Ltd. v. Collector of Central Excise reported in*² which held that

the advertisement costs of the aerated water promoted the marketability of the final product and was not includible in the value of the base essence.

5. The decision in Pepsi Foods Ltd. (Supra), in our view, cannot be distinguished from the present case on any reasonable basis. In that case the Tribunal had held:

"Advertisement expenses incurred for the soft drinks products manufactured by the bottlers cannot be included in the assessable value of concentrates manufactured by the appellants even by applying the ratio of Supreme Court judgment in the Bombay Tyre International case (supra) according to which it is only the advertisement and sales promotion expenses incurred for the goods under assessment that can be added to the assessable value. A perusal of the appellants' agreement with the bottlers also shows that the bottler is enjoined to undertake appropriate advertising and sales promotion activities for the beverage which again indicates that the obligation cast on the bottler as per the agreement does not extend to or cover the concentrates manufactured by the appellants. In the circumstances, it is held that the department has failed [to] establish their case for adding the advertisement expenses to the assessable value of concentrates manufactured by the appellants with satisfactory evidence, and, as such, the orders of the lower authorities in this regard are not sustainable. The demand on this count is, therefore, set aside."

6. The department's further appeal to this Court in CA. No. 14618/96 was dismissed on 14-3-1997 ; Collector of Central Excise, Chandigarh v. M/s. Pepsi Foods Ltd.

7. Larger issues were also sought to be raised by both parties. However, having regard to the particular facts, as found hereinbefore, we see no reason to interfere with the decision of the Tribunal. The appeals are, accordingly, dismissed but without any order as to costs.

SLP (C) NO. 13821/2004:

8. Delay condoned.

9. The special leave petition is disposed of in the light of the Circular No. 802/35/2004-CX dated 8th December, 2004.

¹1984 (1) SCR 347

²1995 Indlaw CEGAT 446