

# CALCUTTA HIGH COURT

Union of India

Vs

Free India Dry Accumulators Ltd

(M.M. Dutt and M K Mukherjee , JJ.)

12.04.1982

## JUDGMENT

### **M.M. Dutt, J.**

1. This appeal has been preferred by the Central Excise authorities against the judgment of a learned single Judge of this Court, whereby the learned Judge made absolute the Rule Nisi issued on the application of the respondent company, Free India Dry Accumulators Ltd., under Article 226 of the Constitution.

2. The question that is involved in this appeal relates to the assessment of excise duty payable on the wholesale cash price of storage batteries. On April 30, 1970, the South Eastern Railway placed an order with the respondent for supply of 192 sets of electric storage batteries. The batteries were to be manufactured with old containers to be supplied by the Railway, the value of which was agreed to be adjusted against the price of the finished batteries. The price of each finished battery was fixed at Rs. 309.50 but, as the Railway would supply the containers, it was agreed that a rebate of Rs. 50/- was to be deducted from the said price. Consequently the Railway was to pay a sum of Rs. 259.50 for each battery. The said contract dated April 30, 1970 was, however, subsequently amended on March 29, 1971. The Railway agreed to supply also the lead acid required for the manufacture of batteries, and it was agreed that a further rebate of Rs. 30/- being the price of lead acid would be deducted from the price of each finished battery. So, a total rebate of Rs. 80/- was agreed to be deducted from the price of Rs. 309.50.

3. There was a second contract between the parties on November 30, 1979 whereby the price of each battery was fixed at Rs. 318.07, and a rebate of Rs. 80/- was agreed to be deducted from the said price as the Railway would supply the containers as also lead acid.

4. The Excise authority has been assessing excise duty on the price of the battery minus the rebate of Rs. 80/-. Thereafter, two show cause notices, one dated June 16, 1972 and the other dated February 1, 1973, were served on the respondent by the Assistant Collector of Central

Excise calling upon the respondent to pay the difference on excise duty between the total price and the rebated price, that is to say, on Rs. 80/- per battery on the ground that each battery had been undervalued to the extent of the said sum. The respondent replied to the said show cause notices contending inter-alia that it had not incurred any cost on account of the containers and the lead acid which were supplied by the Railway and, as such, there was no question of assessment of excise duty on the sum of Rs. 80/- per battery. This contention was overruled by the Assistant Collector by his orders dated 13th February, 1973 and 5th July, 1973. By the first order, the Assistant Collector directed the respondent to pay a sum of Rs. 18,136.80 and by the second order a sum of Rs. 4,200/- on account of differential duty from July 11, 1971 to November 21, 1971 and from October 1, 1972 to October 31, 1972. The respondent being aggrieved by the said orders of the Assistant Collector preferred appeals to the Appellate Collector who, by his order dated May 29, 1974, allowed both the appeals. The Government of India, Ministry of Finance in exercise of its power of revision called upon the respondent to show cause why the orders dated May 29, 1974 of the Appellate Collector should not be set aside. After considering the contentions and submissions made on behalf of the respondent, the Government of India by its order dated October 4, 1975 set aside the orders of the Appellate Collector.

5. The respondent being aggrieved by the said order of the Government of India filed a writ petition to this Court and, as stated already, a Rule Nisi was issued thereon. The learned Judge held inter-alia that as the respondent had not incurred any cost on account of the containers and lead acid which were supplied by the Railway, the value of the same could not be included with the manufacturing cost and, consequently there could be no assessment on such cost. In that view of the matter, the Rule Nisi was made absolute. Hence this appeal.

6. The respondent was to manufacture the batteries for the Railway. It was not the contract that the respondent was to supply the parts of the batteries. Indeed, the price for each battery including the cost of the container and lead acid was fixed. The value of the container and lead acid was also agreed between the parties. It was agreed that the Railway was to supply the containers and lead acid. It was further agreed that the value of the containers and lead acid would be adjusted against the price of the finished product in the form of rebate. It is true that the Railway supplied the containers and lead acid, but not gratis. If the respondent had to purchase the same from the market, it had to incur the same cost as agreed to between the parties. Instead of procuring such containers and lead acid from the market, the respondent got the same from the Railway and had to pay the price of the same which was adjusted as rebate. It is difficult to accept the contention made on behalf of the respondent that the respondent had not to incur any cost with regard to the container and lead acid that were supplied by the Railway. Indeed, the respondent had to adjust the price of the container and, lead acid against the price of the finished product. In our opinion, the manufacturing cost of a finished storage battery cannot be conceived of without taking into consideration the cost of the containers and lead acid. As has been already stated, the respondent was not, under the contract, to supply parts of the batteries, but was to supply the finished batteries. Such batteries must include also the cost of the container and lead

acid and that cost had to be incurred by the respondent when it granted rebate of Rs. 80/- from the total price. In the circumstances, therefore, the Government of India was quite justified in setting aside the orders of the Appellate Collector and in affirming that of the Assistant Collector of Central Excise directing payment of excise duty on the sum of Rs. 80/- for each battery supplied by the respondent.

7. For the reasons aforesaid, the judgment of the learned Judge is set aside. The writ petition is dismissed and the Rule is discharged. The appeal is allowed.

There will, however, be no order as to costs,

