

JOINT SECRETARY TO THE GOVT. OF INDIA AND OTHERS  
v.  
FOOD SPECIALITIES LTD.

SEPTEMBER 30, 1985

[P.N. BHAGWATI, C.J., R.S. PATHAK AND AMARENDRA NATH SEN, JJ.]

Central Excise & Salt Act, 1944 - Goods manufactured for and on behalf of buyer with buyer's trade mark - Goods sold to buyer at wholesale price - Determination of the value of goods for the purpose of levy of excise duty - Trade marks - Whether value of trade marks can be added to the wholesale price for such determination.

The respondent used to manufacture certain goods for sale in India by Messers Nestle's Products India Limited (for short Nestle's) under certain trade marks in respect of which the latter was registered as the sole registered user in India. The goods were supplied to Nestle's at wholesale price on rail at Moga or free on lorry at factory. The respondent disputed the value of the goods determined by the excise authorities for the purpose of the levy under the Central Excises and Salt Act, 1944 and ultimately the respondent filed writ petitions in the High Court. The High Court allowed the writ petitions holding that the value of the trade marks cannot form a component of the value of the goods for the purpose of assessment of excise duty.

In appeal to the Supreme Court, the appellant contended that the value of the goods sold by the respondent to Nestle's should, for the purpose of levy of excise duty, include the value of the trade marks under which the goods are sold in the market and that the value of such trade marks should be added to the wholesale price for which the goods are sold by the respondent to Nestle's.

Dismissing the appeal.

**HELD:** The value of Nestle's trade marks cannot be added to the wholesale price charged by the respondent to Nestle's for the purpose of computing the value of the goods manufactured by the respondent in the assessment to excise duty. [168 C-D]

In the instant case, what are sold and supplied by the respondent are goods manufactured by it with the trade marks

A affixed to them and it is the whole sale price of goods that must  
determine the value for the purpose of assessment of excise duty.  
It is immaterial that the trade marks belong to Nestle's. What is  
material is that Nestle's have authorised the respondent to affix  
the trade marks on the goods manufactured by it and it is the  
goods with the trade marks affixed to them that are so sold by  
B the respondent to Nestle's. There can therefore be no doubt that  
the wholesale price at which the goods with the trade marks  
affixed to them are sold by the respondent to Nestle's as  
stipulated under the agreements would be the value of the goods  
for the purpose of excise duty. That is the price at which the  
respondent sells the goods to Nestle's in the course of wholesale  
trade. [167 H; 168 A-B]

C  
CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1723-1736  
of 1981

From the Judgment and Order dated 31.8.1976 of the Punjab  
and Haryana High Court in Writ Nos. 1969, 4420, 4422 to 4424,  
4429 to 4436, 4497 of 1975.

D  
K. Parasaran, Attorney General of India , R.N. Poddar and  
Miss A. Subhashini for the Appellants.

N.A. Palkhivala, Soli J. Sorabjee, Ravinder Narain, T.M.  
Ansari and Miss Rainu Walia for the Respondent.

E  
The Judgment of the Court was delivered by

**PATHAK, J.** This appeal by special leave is directed against  
the judgment and order dated August 31, 1976 of the High Court of  
Punjab and Haryana allowing a group of writ petitions filed by  
F the respondent against the levy of excise duty.

The respondent, Messrs. Food Specialities Limited, Moga  
is a company registered under the Indian Companies Act, 1956. It  
entered into a number of agreements with Messrs. Nestle's  
Products (India) Limited, a subsidiary of a foreign company,  
G Messrs. Nestle's Holdings Limited, to manufacture for and on  
behalf of Messrs. Nestle's Products (India) Limited (hereinafter  
referred to as "Nestle's") sweetened condensed milk, soluble  
coffee, baby milk food, milk powders and infant cereal foods for  
sale in India by Nestle's under certain trade-marks in respect of  
which the latter was registered as the sole registered user in  
H India. The agreement stipulated that the respondent would

manufacture the goods and supply them to Nestle's in such quantities as Nestle's might specify from time to time subject to a prescribed minimum and maximum, and Nestle's was obliged to buy the products so manufactured by the respondent. The products were manufactured by the respondent in accordance with detailed quality specifications supplied by Nestle's, and the price of the products was determined under the agreements free on rail at Moga or free on lorry at factory. The respondent enjoyed no interest in the trade marks and labels and undertook not to sell any of those products to any person other than Nestle's.

The products manufactured by the respondent were subject to excise duty under the said Excises and Salt Act, 1944. The respondent disputed the value of the goods determined by the excise authorities for the purpose of the levy, and a number of questions were raised in that context. The controversy was processed through the statutory channels provided by the Act and ultimately the respondent filed writ petitions in the High Court. The High Court found in favour of the respondent and quashed the orders of the Excise authorities and the Government of India impugned in the writ petitions.

In these appeals the only question pressed before us by the learned Attorney General on behalf of the appellant is that the value of the goods sold by the respondent to Nestle's should, for the purpose of levy of excise duty, include the value of the trade marks under which the goods are sold in the market and that the value of such trade marks should be added to the wholesale price for which the goods are sold by the respondent to Nestle's. It is urged by the learned Attorney General that the High Court erred in holding that the value of the trade marks cannot form a component of the value of the goods for the purpose of assessment of excise duty. We are of opinion that the High Court was right in the view it took and the appeal must fail.

It may be noticed that the respondent manufactures the goods according to the specifications supplied by Nestle's and affixes the trade marks of Nestle's on the goods and supplies the same to Nestle's at a wholesale price free on rail at Moga or free on lorry at factory stipulated under the agreements with Nestle's. What are sold and supplied by the respondent are goods manufactured by it with the trade marks affixed to them and it is the whole sale price of such goods that must determine the value for the purpose of assessment of excise duty. It is immaterial that the trade marks belong to Nestle's. What is material is that

- A Nestle's have authorised the respondent to affix the trade marks on the goods manufactured by it and it is the goods with the trade marks affixed to them that are sold by the respondent to Nestle's. There can therefore be no doubt that the wholesale price at which the goods with the trade marks affixed to them are sold by the respondent to Nestle's as stipulated under the agreements would be the value of the goods for the purpose of excise duty. That is the price at which the respondent sells the goods to Nestle's in the course of wholesale trade and we fail to see how the value of the trade marks could be added to the wholesale price for the purpose of determining the value of the goods for the purpose of levy of excise duty.
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We are satisfied upon the particular facts of this case that the value of Nestle's trade marks cannot be added to the wholesale price charged by the respondent to Nestle's for the purpose of computing the value of the goods manufactured by the respondent in the assessment to excise duty.

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The appeals are dismissed with costs.

M.L.A.

Appeals dismissed.