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SIDHOSONS & ANR. ETC. ETC.

v.

UNION OF INDIA & ORS. ETC. ETC.

OCTOBER 28, 1986

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[M.P. THAKKAR AND B.C. RAY, JJ.]

Central Excise and Salt Act, 1944, s.2(f)—Market value—What is—For payment of excise duty—Brand name—Value of—When includible.

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The petitioner-company in W.P. No. 1685 of 1979 is manufacturing electrical goods for M/s. Bajaj Electricals Limited, the buyers. As per agreement the goods are not at all sold in the open market by the petitioner-company. After the manufactured goods are accepted by the buyers, the petitioner-company applies the label of the brand name of the buyers, namely, 'Bajaj' on the manufactured goods. The right to

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sell these goods with the aforesaid brand name is solely and exclusively that of the buyers having regard to the fact that they alone are owners of the brand name.

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Counsel for the petitioner in this writ petition contended that the market value of the goods manufactured by the petitioner should be assessed at the price at which the goods are agreed to be sold under the agreement between the manufacturer and the buyers. On the other hand, it was argued by counsel on behalf of the respondent-Union of India that the excise duty must be levied on the basis of market value fetched by the sale of these goods by the buyers to their wholesalers. Similar question of law arose in the other writ petitions.

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Allowing the writ petitions, this Court,

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HELD: 1.1. Excise duty is payable on the market value fetched by the goods, in the wholesale market at the factory gate manufactured by the manufacturers. It cannot be assessed on the basis of the market value obtained by the buyers who also add to the value of the manufactured goods the value of their own property in the goodwill of the 'Brand name'. [84F]

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1.2. Where a manufacturer who manufactures and sells his goods under his own brand name or under a brand name which he has acquired in use, the sale price fetched by sales effected by him under

such brand name in wholesale, will be the basis for computation of excise duty payable by him. So also nothing said herein will come to the rescue of a brand name owner who himself is the manufacturer of goods or to sales effected in favour of 'related' persons as defined by the Central Excises and Salt Act, 1944. [85A-B]

Union of India v. Cibatul Ltd., [1985] 22 E.L.T 302, *Joint Secretary to the Government of India v. Food Specialities Ltd.*, [1985] 22 E.L.T 324 and *M/s. R.O. Industries v. Union of India & Ors.*, Civil Appeal No. 1496 of 1977 decided on 3.4.86, relied upon.

In the instant case, the price fetched by the goods manufactured by the petitioner-company is the price of the electrical goods *sans* the brand name. And that should be the market value for the purposes of assessing the excise duty payable by the petitioner-company which manufactures the excisable goods. The enhancement in the value of the goods by reason of the application of the brand name is because of the augmentation attributable to the value of the goodwill of the brand name which does not belong to the manufacturer and which added market value does not accrue to the petitioner-company or go into its coffers. It accrues to the buyers to whom the brand name belongs and to whom the fruits of the goodwill belong. [89D-E]

ORIGINAL JURISDICTION: Writ Petition No. 1685-1691 of 1979

Under Article 32 of the Constitution of India.

Soli J. Sorabjee and K.C. Dua for the Petitioners.

V. Parthasarthy, Girish Chandra and C.V. Subba Rao for the Respondents.

The Order of the Court was delivered by

THAKKAR, J. The question raised in this Writ Petition under Article 32 of the Constitution of India as regards the determination of the market value of the goods manufactured by the petitioner company for the purposes of computation of the excise duty leviable on the same. The petitioners (manufacturers) are manufacturing electrical goods under a contract with another company known as the Bajaj Electricals Ltd. (here-after referred to as buyers). The agreement between the parties provides for the buyers having the right to reject the

- A** goods if the goods are not in accordance with the buyers' specifications or do not come up to the stipulated standard of quality. After the manufactured goods are tested, approved and accepted, by the buyers the manufacturers apply the label of the brand name of the buyers (in this case 'Bajaj') on the manufactured goods. The petitioners contend that the market value of the goods manufactured by the petitioners
- B** should be assessed at the price at which the goods are agreed to be sold under the agreement between the manufacturers and the buyers. On the other hand the respondent contends that the excise duty must be levied on the basis of the market value fetched by the sale of these goods by the buyers to their wholesalers. The goods manufactured by the Petitioner Company, which are accepted by the buyers and to which the brand name label 'Bajaj' is applied are sold by the manu-
- C** facturers to the buyers at the stipulated price and to none-else. They are not at all sold in the open market by the manufacturers. The right to sell these goods with the brand name is solely and exclusively that of the buyers having regard to the fact that they alone are the owners of the brand name 'Bajaj'. The price fetched by the goods manufactured
- D** by the petitioner company is the price of the electrical goods 'sans' the brand name. And that should be the market value for the purposes of assessing the excise duty payable by the petitioner company which manufactures the excisable goods. The enhancement in the value of the goods by reasons of the application of the brand name is because of the augmentation attributable to the value of the goodwill of the brand
- E** name which does not belong to the manufacturers and which added market value does not accrue to the petitioner company or go into its coffers. It accrues to the buyers to whom the brand name belongs and to whom the fruits of the goodwill belong. Excise duty is payable on the market value fetched by the goods, in the wholesale market at the factory gate manufactured by the manufacturers. It cannot be assessed
- F** on the basis of the market value obtained by the buyers who also add to the value of the manufactured goods the value of their own property in the goodwill of the 'brand name'—The Petitioners are therefore right and the respondents wrong. This point is covered by earlier decisions of this Court, namely, (1) *Union of India v. Cibatul Ltd.*, [1985] 22 E.L.T. 302, (2) *Joint Secretary to the Government of India v. Food specialities Ltd.*, [1985] 22 E.L.T. 324 and (3) Civil Appeal No. 1496 of 1977 disposed of by a Bench of three Judges of this Court by its judgment dated 3rd April, 1986. The petition must therefore be allowed. The respondents shall levy excise duty on the basis of the price charged by the manufacturers to the buyers namely M/s. Bajaj Electricals Ltd. A word of caution is however called for. Our decision must
- H** be understood correctly—not misunderstood conveniently. We, there-

fore, clarify that our pronouncement will not enable a manufacturer who manufactures and sells his goods under his own brand name or under a brand name which he has acquired a right to use. In such a case the sale price fetched by sales effected by him under such brand name in wholesale will be the basis for computation of excise duty payable by him—So also nothing said herein will come to the rescue of a brand name owner who himself is the manufacturer of goods or to sales effected in favour of 'related' persons as defined by the Act. The Central Excises & Salt Act, 1944. The Bank guarantee, if any, furnished by the petitioners in the context of the present Writ Petition will stand discharged. No Other point has been argued. The petition is allowed and the Rule is made absolute to the aforesaid extent. The Writ Petition is disposed of accordingly. There will be no order as to costs.

Writ Petitions Nos. 1686-1691 of 1979 raise the same point in the context of other brand names. These petitions will also stand disposed of in terms of this order with the same direction regarding computation of levy and discharge of guarantee bonds and with no order as to costs.

M.L.A.

Petition allowed.