COMMISSIONER OF CENTRAL EXCISE, MEERUT-I

v.

BISLERI INTERNATIONAL PVT. LTD.

JULY 27, 2005

[B.P. SINGH AND S.H. KAPADIA, JJ.]

Central Excise Act, 1944/Central Excise (Valuation) Rules, 1975—Section 4/ Rules 5—Aerated water—Assessable Value of—Whether includes amounts received as 'price support incentive' and 'rent on containers'—Held: The amounts received is not includible in the assessable value of the aerated water—In the facts of the case no extra commercial considerations have entered the transaction—The levy of rent on containers did not form price of the aerated water.

Respondent-Assessee was manufacturer of aerated water. It obtained the concentrate (raw-material) from a Company, used to bottle the same and sold to the wholesale dealers. Assessee used to collect rent on containers from some of the dealers and it also used to receive price support incentives from the raw material supplier.

The question for consideration in the case was whether the cost of rent on containers and the value of price support incentive were liable to be included in the assessable value in terms of Rule 5 of Central Excise (Valuation) Rules, 1975. Dismissing the appeal, the Court

HELD: 1. Under Section 4 of Central Excise Act, 1944, as it stood at the material time, price is adopted as a measure or a yardstick for assessing the tax. The said measure or yardstick is not conclusive of the nature of the tax. Under section 4, price and sale are related concepts. The "value" of the excisable article has to be computed with reference to the price charged by the manufacturer, the computation being made in accordance with section 4. In every case, it will be for the Revenue to determine on evidence-whether the transaction is one where extra-commercial considerations have entered and, if so, what should be the price to be taken into account as the value of the excisable article for the purpose of excise duty. [845-G, H; 846-A]

Union of India and Ors. **v.** *Bombay Tyre International Ltd. etc.,* **AIR (1984) SC 420, relied on.**

A **2. There is no evidence of flow back of any additional consideration from the buyers of aerated water (beverage) to the assessee. On account of cut-throat competition from another Company, the Company which used to supply raw material to the assessee, had to provide incentive to the assessee. On the other hand, the evidence on record indicates that price uniformity was maintained. No favour for extra commercial reasons was shown to any of the** B **buyers of aerated water. There is no evidence of any concession to any of the buyers. There is no evidence of existence of any favoured buyers. In the circumstances, Rule 5 of Central Excise (Valuation) Rules, 1975 is not applicable. [846-D, E]**

C **3. So far as rent on containers is concerned, the rent equivalent to interest was collected by the assessee on account of delay in returning of empty crates/bottles. The purpose of charging interest was to get back empty bottles/crates immediately as otherwise the assessee was required to make additional investment towards stock inventory on crates/empty bottles. Further, the said levy did not form the price of the aerated water and, therefore, ROC** D **was not includible in the assessable value. [846-F, G]**

Collector of Central Excise **v.** *Indian Oxygen,* **(1988) 36 ELT 730, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 772 of 2001.

E

From the Judgment and Order dated 5.11.99 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. No. 1558/99-A. No. E/2438/98-A.

WITH

F C.A. Nos. 769, 770, 771, 1403-1404/2001, 6765/2002, 120, 1763, 5215-5219/2004 and 672 of 2005.

Rajiv Dutta, Add. Solicitor General, Shalini Kumar, Ravindra Agarwal, P. Parmeswaran, B.K. Prasad and S.N. Terdol with him for the Appellant.

G Dushyant Dave, V. Lakshmi Kumaran, M.P. Devnath, Alok Yadav, Rajesh Kumar, Maninder Singh, Pratibha M. Singh, Kirtiman Singh, Abhinav Mukerji, Pradeep Jain, Ms. Hetu Arora, Rupesh Kumar, Neelam Sharma, T.C. Sharma, B.V. Desai, Vinay Vaish, Hitender Mehta, Amit Awasthi, Sanjeev K. Singh, Pradeep K. Malik, Sheenam Parwands, Ms. Meenakshi Arora, M/s. Aruptham Aruna & Co. and V. Balachandran with him for the Respondents.

H

The Judgment of the Court was delivered by A

KAPADIA, J. A short question which arises for determination in these appeals filed by the department under Section 35-L(b) of the Central Excise Act, 1944 (for short "the said Act") is - whether the assessee had undervalued the aerated water by excluding two items, namely, the amounts received under credit notes as price support incentive and rent on containers (ROC) from the B assessable value?

For the sake of convenience, we mention hereinbelow the facts in civil appeal no.772 of 2001, in the case of *Commissioner of Central Excise, Meerut-I v. Bisleri International Private Limited* (formerly known as M/s Coolade Beverages Ltd.). C

M/s. Coolade Beverages Ltd. (hereinafter referred to as "the assessee") were manufacturers of aerated waters. The manufacturing activity of the assessee basically consisted of bottling. The assessee obtained the concentrate (raw-material) for aerated water from a subsidiary of *Coca Cola* Corporation. D The name of that subsidiary was M/s Britco Food Company Ltd. (hereinafter referred to as "M/s Britco"). The assessee sold the bottled aerated water to the wholesale dealers.

The department found that the assessee used to collect from some wholesale dealers ROC @ Rs.7.50 per crate. The department further found that E the assessee used to receive price support incentives in the form of credit notes from M/s Britco. Accordingly, the department issued show-cause notice contending that the cost of ROC and the value of price support incentive were liable to be included in the assessable value in terms of rule 5 of the Central Excise (Valuation) Rules, 1975. The assessee contested the show-cause notice. The assessee submitted that the ROC had no relation to the F value of the aerated water; that the leasing of the bottles was a separate activity which had no connection with the manufacture of aerated water and, therefore, realizations from such ancillary activity were not includible in the assessable value of the aerated water. In this connection, the assessee placed reliance on the judgment of this Court in the case of *Collector of Central* G *Excise* v. *Indian Oxygen Ltd.*, reported in 1988 (36) ELT 730.

With regard to the amounts received as price support incentive from M/s Britco, the assessee contended that the said payment was *immaterial to* the wholesale price of the aerated water; that the sale to the wholesale dealers was on principal to principal basis and that the wholesale price was the sole H

A consideration. Therefore, the sale price constituted the 'normal price' under section 4(1)(a) of the said Act and that rule 5 of the said Rules, 1975 had no application to the facts of the present case.

The Commissioner accepted the submissions of the assessee and dropped the duty demand contained in the show cause notice.

B

So far as the price support incentive was concerned, the Commissioner held that the credit notes were not received from the buyers of aerated water; that they were received from M/s Britco (supplier of concentrate); that the credit notes were received from M/s Britco on account of reduction in the price of the concentrates and, therefore, the question of including the amount C received under such credit notes in the assessable value did not arise. The commissioner further held that no additional consideration had flown directly from the buyers of aerated water and, therefore, rule 5 was not applicable to the facts of the present case. The commissioner further found that the benefit of reduction in prices of concentrates was in fact passed on by the assessee D to the buyers in the form of reduced sale price of the aerated waters; that, with effect from 12.9.1994, the sale price of aerated water was reduced by Rs.27 per crate i.e. from Rs. 108 per crate to Rs. 81 per crate whereas the gain to the assessee from the credit notes was only Rs. 1.66 per crate and, therefore, there was no additional consideration flowing back to the assessee from their buyers. The commissioner further found that with effect from E 12.9.1994, the assessable value went up from Rs.46 per crate to Rs.52 per crate. The commissioner further found that the consumers were benefited on account of acute competition between Coca Cola and Pepsi. In the circumstances, the adjudicating authority came to the conclusion that the department had erred in invoking rule 5.

F

On the question of ROC, the commissioner came to the conclusion that the facts of the present case were similar to the facts in the case of *Collector of Central Excise* v. *Indian Oxygen,* (supra). The commissioner found that in the present case also, the ROC was related to an ancillary activity; that the said ROC had no connection with the manufacture of aerated water and, G therefore, ROC was not includible in its assessable value.

Aggrieved by the aforesaid decision, the department went in appeal to the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). By impugned decision, the tribunal confirmed the order of the adjudicating authority (commissioner). Hence, this civil appeal.

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Mr. Rajiv Datta, learned senior counsel appearing on behalf of the department submitted that the assessee had reduced their wholesale price on instructions of M/s Coca Cola Company in order to lower the incidence of excise duty; that this reduction in price of aerated water was compensated by issuance of credit notes by M/s Britco (subsidiary of M/s Coca Cola Company); that the giving of price support incentive by M/s Britco to the assessee constituted additional consideration which in turn depressed the prices of aerated water and, therefore, the entire arrangement was entered into in order to lower the incidence of excise duty. It was further submitted that M/s Britco the manufacturer of concentrates (raw-material) had nothing to do with the marketing activity of the assessee. It was urged that M/s Britco was a medium to flow back the additional consideration to the assessee. It was urged that but for the credit notes issued by M/s Britco, the assessee was required to increase the assessable value and the sale price of aerated water. It was submitted that with the reduction of the prices of aerated water, the sales had increased which was directly relatable to the reduction in prices. It was submitted that the price support incentive was given by M/s Britco to the assessee in order to make good the loss sustained by the assessee in making the price of aerated water competitive. It was submitted that receipt of price support by the assessee was enough evidence to justify that the normal price was more than the price actually charged to the buyer. Learned counsel further submitted that the prices of the product were lowered on account of incentive received by the assessee from M/s Britco (supplier of the raw-material).

At the outset, it may be mentioned that under section 4(1)(a), "value" in relation to any excisable goods is a function of the price. In other words, "value" is derived from the normal price at the factory gate charged to an unrelated person on wholesale basis and at the time and place of removal.

It is for the department to examine the entire evidence on record in order to determine whether the transaction is one prompted by extra-commercial considerations. It is well settled that under section 4 of the said Act, as it stood at the material time, price is adopted as a measure or a yardstick for assessing the tax. The said measure or yardstick is not conclusive of the nature of the tax. Under section 4, price and sale are related concepts. The "value" of the excisable article has to be computed with reference to the price charged by the manufacturer, the computation being made in accordance with section 4. In every case, it will be for the revenue to determine on evidence whether the transaction is one where extra-commercial considerations have

A entered and, if so, what should be the price to be taken into account as the value of the excisable article for the purpose of excise duty. These principles have been laid down in the judgment of this Court in the case of *Union of India and Ors.* v. *Bombay Tyre International Ltd. etc.* reported in AIR 1984 SC 420.

B The short question which arises for determination in the present case is - whether the department has been able to show that the intrinsic price of aerated water was more than the price actually charged to the buyer? According to the department, the actual price was lower on account of incentives given by M/s Britco, the supplier of concentrates to the assessee. As found by the C adjudicating authority as well as by the tribunal, the prices had to be reduced by the assessee on account of competition in the market. Further, the prices stood reduced on account of concession given by M/s Britco, supplier of concentrates (raw-material), to the assessee. There is no evidence of flow back of any additional consideration from the buyers of aerated water (beverage) to the assessee. On account of cut throat competition from Pepsi, D M/s Britco had to provide incentive to the assessee. But for the incentive from the supplier of concentrates (raw material), the assessee was not in a position to face acute competition from Pepsi. On the other hand, the evidence on record indicates that price uniformity was maintained. No favour for extra commercial reasons was shown to any of the buyers of aerated water. There E is no evidence of any concession to any of the buyers. There is no evidence of existence of any favoured buyers. In the circumstances, rule 5 is not applicable.

So far as ROC is concerned, the commissioner found that the rent equivalent to interest was collected by the assessee on account of delay in F returning of empty crates/bottles. The purpose of charging interest was to get back empty bottles/crates immediately as otherwise the assessee was required to make additional investment towards stock inventory on crates/empty bottles. Further, the said levy did not form the price of the aerated water and, therefore, ROC was not includible in the assessable value. In the circumstances, the G commissioner was right in applying the ratio of the judgment of this Court in the case of *Collector of Central Excise* v. *Indian Oxygen,* (supra).

For the aforestated reasons, there is no merit in these appeals preferred by the department. Accordingly, all the appeals are dismissed with no order as to costs.

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K.K.T. Appeal dismissed.