VIJAYAWADA BOTTLING CO. LTD. A

v.

COLLECTOR OF CENTRAL EXCISE, GUNTUR

SEPTEMBER 2, 1997

B

[S.C. AGRAWAL AND M. JAGANNADHA RAO, JJ.]

Excise—Central Excises and Salt Act 1944—Section 4 and Tariff Item 1-B of First Schedule—Manufacture and sale of Aerated Water (Maaza Mango) in returnable bottles by the assessee—Service Charges incurred and realised by assessee in connection with re- use of such bottles—Held, process undertaken not part of manufacturing process of aerated water—But, to be treated as a part of process of packing—Hence, amount realised not includible in assessable value of aerated water—Matter remitted for verification of actual service charges and for re-determination of assessable value. C

D

The appellant, a manufacturer of 'Maaza Mango' (mango drink falling under Tariff Item 1-B of the First Schedule to the Central Excise and Salt Act 1944), filed price-lists wherein amounts of Rs. 2.50 per crate towards rental and Rs. 3.00 per crate towards service charges were not included in the price of aerated water. The service charges incurred by the assessee pertained to the activities of unloading of empty bottle outside the factory and sorting them brandwise, separating the defective bottles and thereafter, cleaning of bottles chemically in the factory wherein the bottles brought to the factory were placed in conveyors to automatic bottle washing plant from where they came out after washing. Then, the bottles were examined again in strong light to avoid contamination. The Assistant Collector of Central Excise while according approval to the assessable value as shown in the price list included the said amount of rental and service charges in the price. The stand of the Assistant Collector was affirmed by the Collector of Central Excise (Appeals). The Customs, Excise and Gold (Control) Appellate Tribunal held that rental charges were includible in the assessable value and the matter was remitted to the Assistant Collector of Excise for the purpose of verifying the actual rental charges of the bottles and re-determine the assessable value of aerated water. With respect to service charges, the Tribunal held that these charges collected by the appellant in respect of the activities undertaken related to manufacture of excisable goods in question and were therefore included in E F G H

A **the assessable value of aerated water. Aggrieved, the assessee filed the present appeals.**

Allowing the appeals, the Court

HELD : 1.1. The Tribunal was not right in holding that the service B **charges claimed by the assessee is includible in the Assessable value. The process undertaken by the assessee relates to preparing the bottles used earlier to be re-used for the purpose of bottling of the aerated water produced by the appellant. Since the aerated water has to be supplied in packed bottles only, the activities for which the appellant was claiming** C **service charges related to the process of packing after the manufacture of aerated water. Since there is no dispute that the bottles are durable and returnable containers, the activities undertaken by the appellant is to ensure that the empty bottles that have been received back are available for re-use for bottling of aerated water and is to be treated as part of process of packing and not as part of the manufacturing process of aerated water.** D **[680-B-D]**

1.2. Since the matter as regards rental charges is already remitted to the Assistant Collector of Central Excise for purpose of verifying the actual rental charges of the bottles and to re- determine the assessable value of aerated water, it is directed that the Assistant Collector shall also verify the E **actual service charges and re-determine the assessable value of aerated water after such verification, on necessary material to be furnished by the appellant. [680-F]**

CCE **v.** *Century Spg. and Mfg. Co. Ltd.,* **[1997] 11 SCC 709, relied on.**

F *CCE* **v.** *Indian oxygen Ltd.,* **[1988] 4 SCC 139 and** *CCE* **v.** *Century Spg. and Mfg. Co. Ltd.,* **(1988) 37 ELT 277 (CEGAT), referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11445-47 of 1995.

G From the Judgment and Order dated 8.5.92 of the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi in F.O. No. 277 to 279 of 1992-A.

Ravinder Narain and Ms. Amita Mitra for the Appellant.

H R. Mohan, R.N. Verma and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. M/s. Vijayawada Bottling Co. Ltd., the appellant herein, is a manufacturer of 'MAAZA MANGO' (mango drink) falling under Tariff Item 1-B of the erstwhile First Schedule to the Central Excise Act, 1944. The appellant filed for approval a price list no. 17/1984-85 dated August 6, 1984 in respect of the said product wherein the price was shown as Rs. 32 per crate of 24 bottles. In the said price list there was a note to the effect that the appellant was realising Rs. 2.50 per crate towards rental and Rs. 3.00 per crate towards service charges and the said amounts were not included in the price. The Assistant Collection of Central Excise, Vijayawada, issued notice dated August 17, 1984 requiring the appellant to show cause why the said amount of rental and service charges should not be included in the price. The appellant submitted a reply to the said show cause notice. By order dated November 30, 1984, the Assistant Collector of Central Excise while according approval to the assessable value as shown in the price list included in the said amount of rental and service charge in the price. The Collector of Central Excise (Appeals) by his order dated April 26, 1986 dismissed the appeal of the appellant and affirmed the order passed by the Assistant Collector. The appeal of the appellant before the Customs Excise and Gold (Control) Appellate Tribunal was first heard by a bench of two learned Members of the Tribunal (Shri V.P. Gulati and Miss S.V. Maruthi). In view of the decision of this Court in *Collector of Central Excise* v. *Indian Oxygen Limited,* [1988] 4 SCC 139, both the learned Members held that rental charges were includible in the assessable value. There was, however, difference of opinion among the learned Members on the question whether service charges are includible in the assessable value. The Judicial Member (Miss S.V. Maruthi), relying upon the order of the Tribunal in *Collector of Central Excise* v. *Century Spg. and Mfg. Co. Ltd.,* (1988) 37 ELT 277 held that the service charges that were claimed related to unloading, sorting out the branded bottles, separating the broken bottles before the bottles are sent to automatic bottle washing plant and that these activities do not relate to the manufacture of aerated waters which are the subject matter of the Excise duty and that in view of Section 4(4)(d) of the Central Excise Act, 1944 (hereinafter referred to as 'The Act'), the entire cost relating to durable and returnable containers should be excluded which include these miscellaneous service charges. The Technical Member (Shri V.P. Gulati) was, however, of the view that service charges have to be included in the price for the purpose of arriving at the assessable value.

A He held that the preparatory operations to ensure that the bottles are fit for botting have to be considered a part of manufacturing process and the cost of the same has to be reckoned towards the manufacture of the appellant's product. In view of the difference of opinion among the two learned Members, the matter was referred to the third Member of the
B Tribunal on the following point of difference.

> "Whether in the facts and circumstances of the case, the service charges do not relate to the manufacture of aerated water, as claimed by the appellants, and are therefore, to be excluded for arriving at the assessable value as held Member (Judicial) or these
C relate to the manufacture of aerated water and are therefore, to be included for arriving at the assessable value as held by Member (Technical)."

The third learned Member of the Tribunal (Shri P.C. Jain) agreed
D with the view of the Technical Member and held that the service charges collected by the appellant in respect of the activities undertaken by them related to the manufacture of the excisable goods in question. In view of the majority opinion the Tribunal has held that the service charges, namely, for sorting out the printed bottles separating the broken bottles before they are sent to automatic bottle washing plant relate to manufacture of aerated
E water and are includable in the assessable value of aerated water. The appeal of the appellant as regards service charges was, therefore, dismissed, but the appeal was allowed in respect of the rental charges and the matter was remitted to the Assistant Collector to verify the actual rental charges and re- determine the assessable value of aerated water for deduct-
F ing the same from the price of the aerated water. Feeling aggrieved by the decision of the Tribunal, relating to inclusion of service charges in the price, the appellant has filed this appeal.

Section 4 of the Act makes provision for valuation of excisable goods for the purpose of charging of excise duty in cases where under the Act
G duty of excise is chargeable on any excisable goods with reference to value. For the purpose of Section 4, the expression "value" is defined in clause (d) of Section 4(4). The relevant part of the said definition is produced as under :

H "(4)(d) "value" in relation to any excisable goods,-

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation - In this sub-clause "packing" means the wrapper, container, bobbin, pim, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;"

In the case of *Collector of Central Excise* v. *Century Spg. and Mf. Co. Ltd.* (supra), the assessee was manufacturer of liquid Chlorine which was supplied to the customers in Tonners and Cylinders made of steel, which were accepted as a durable and returnable containers. The assessee claimed deduction of Rs. 100 in the case of Tonners (800 to 1,000 Kgs. capacity) and Rs. 150 in the case of cylinders (20 to 100 Kgs. capacity) towards costs of packing on account of maintenance of Cylinders/Tonners, service charges etc. The Tribunal found that the department accepts that the containers were durable and returnable and that their cost is not includible in the assessable value of chlorine as per Section 4(4)(d)(i). The Tribunal, therefore, held that the cost has to be the full cost of packing which should take in not only the initial purchase price of the container but also the further expenses on its maintenance and repairs. The said decision of the Tribunal has been affirmed in appeal in *Collector of Central Excise, Bomaby-3* v. *M/s Century Spg. and Mfg. Co. Ltd.,* (Civil Appeal No. 4207 of 1988) decided on July 15, 1997.

In the present case, as recorded by the Tribunal, the fact that the bottles are returnable and durable are not disputed. Before the Tribunal it was pointed out that the service charges pertain to the following activities:

"After unloading of the empty bottles at a place about 100 yards outside the factory, the bottles are sorted brandwise, (sometimes the bottles get mixed with bottles of other manufacturers which are to be separated). Thereafter, the bottles are examined for any defects which are also separated. Cleaning of the bottles is done chemically. These are then loaded in the trolleys, brought to the factory and placed in conveyors to automatic bottle washing plant from where they come out after washing. Bottles are examined

A again in strong light to avoid contamination."

The process referred to above relates to preparing the bottles that were used earlier to be reused for the purpose of bottling of the aerated water produced by the appellant. Since the aerated water has to be supplied in packed bottles only, the activities for which the appellant was B claiming service charges related to the process of packing after the manufacture of aerated water. We find it difficult to appreciate how these activities can be treated as a part of the manufacturing process of aerated water. Since there is no dispute that the bottles are durable and returnable containers, the activities referred to above undertaken by the appellant to C ensure that the empty bottles which have been received back are available for reuse for bottling of aerated water, have to be treated as part of the process of packing and not as part of the manufacturing process of aerated water. The position is not very different from that in the case of *Century Spg. & Mfg. Ltd.* (supra) where the durable and returnable containers were used again for supply of gas and it was held that charges for maintenance D and repairs of such containers were not includible in the assessable value of the gas. We are, therefore, unable to uphold the view of the majority in the Tribunal was not right in holding that the service charges claimed by the appellant have to be included in the assessable value.

E In the result, the appeals are allowed, the impugned judgment of Tribunal holding that service charges @ Rs. 3.00 per crate claimed by the appellant are to be included in the assessable value is set aside. Since the matters have already been remitted to the the Assistant Collector of Excise for the purpose of verifying the actual rental charges of the bottles and re-determine the assessable value of the aerated water, it is directed that the F Assistant Collector of Excise shall also verfy the actual service charges and re-determine the assessable value of the aerated water after such verification. The appellant would furnish the necessary material in order to enable the Assistant Collector to ascertain the actual service charges. No order as to costs.

R.D. Appeals allowed.