

ITEM NO.109

COURT NO.2

SECTION III

## S U P R E M E C O U R T O F I N D I A

## RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7251-7302 OF 2000

M/S. TATA CHEMICALS LTD.

Appellant (s)

VERSUS

COLLECTOR OF CENTRAL EXCISE

Respondent(s)

(With office report )

Date: 23/03/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. T.R. Andhyarujina, Sr. Adv.

M/s. Ravinder Narian, Sonu Bhatnagar,

Ajay Aggarwal, Amrita Bhinder, Rajan Narain, Adv.

For Respondent(s)

Mr. T.M. Youseff Mohamed, ASG

Mr. Manish Tiwari, Adv., Mr. Vivek Sood, Adv.

Mr. P. Parmeswaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

arger Bench, in As per the observations made the matter is referred to a 1

terms of the signed order.

(R.K. DHAWAN)

(MADHU SAXENA)

COURT MASTER

COURT MASTER

(Signed order is placed on the file)

2

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7251-7302 OF 2002

M/S. TATA CHEMICALS LTD.

....APPELLANT.

VERSUS

COLLECTOR OF CENTRAL EXCISE

.... RESPONDENT.

O R D E R

The appellant manufactures soda ash. It sells soda ash to various customers inter alia in gunny bags. The question is whether the value of the gunny bags should be included in the assessable value of the soda

ash for the purposes of levy of excise under the Central Excise and Salt

Act, 1944 (hereinafter referred to as 'the Act').

The period in question is from 1981 to 1985. According to the appellant, beginning from 1970 they had entered into correspondence with their customers under which they had asked their customers to return empty gunny bags for being reused for the supply of soda ash.

For example, in a letter dated 15th December, 1970, the appellant said,

"We would strongly urge our customers to reclaim the used bags and return the sound ones back to our Works at Mithapur for reuse. Such cyclic uses of bags, in the interim, would once again result in substantial benefit to the consumer as there will be no cost of packing material

3

involved."

In a letter dated 2-4-1971 written to its customers, the appellant again said,

"In the interest of our consumers and conservation of jute supplies we once again very strongly urge the return of our used bags to Mithapur for re-use. May we, therefore, request that you give this matter your urgent consideration

and arrange for the return of the used bags to Mithapur for packing your further supplies."

This was again reiterated on 11-1-1972 where the appellant urged its customers to return the appellant used and serviceable jute bags for refilling the product.

According to the appellant, these letters would show that the cost of gunny bags were not to be included in the cost in the value of the soda ash.

In terms of Section 4(4) (d) of the Act, valuation of excisable goods for the purposes of charging of duty of excise would have to be determined on the basis of the provisions of that section. The word "value" has been defined (insofar relevant) in Section 4(d) as follows:-

"(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

The appellant contends that the packing material in question was of durable nature and was returnable by the buyer to the appellant. Therefore, in terms of the aforesaid provisions the cost of the packing could not be included in the value of the goods. They have relied upon decisions of this Court in Mahalakshmi Glass Works (P) Ltd. v. Collector of Central Excise, 1988 (36) E.L.T. 727 (S.C.) ; Triveni Glass Ltd. v. Union of India and others, 2005(3) SCC 484 and Commissioner of Central Excise v. Hindustan National Glass & Industries Ltd., 2005(3) SCC 489. According to the appellant, all these cases are authorities for the proposition that where there is an arrangement between the seller and the buyer under which the seller is under an obligation to take back the packing material, the value of the packing material should not be included in the cost of the excisable goods, irrespective of the fact whether the packing material is returned or not.

The submission of the appellant was not accepted by the Tribunal on the ground that the documents, which we have quoted earlier, did not show that there was any such arrangement regarding returnability of the

gunny bags which would justify exclusion of the cost of the gunny bags from the cost of the soda ash.

The relevant provisions of Section 4(4)(d) of the Act which we have already quoted provides as a general rule that the cost of packing shall be

5

included in the cost of the goods at the time of its removing in a packed condition. The exception to this rule is where the packing material is of durable nature and is returnable by the buyer. The question is: what does 'returnable' mean? In the decision Mahalakshmi Glass Works (P) Ltd. (Supra) , this Court noted that the agreement between the seller and the buyer provided that the buyer was bound to return the crates in which the goods were supplied to the assessee-seller within a period of thirty days. The Court said in that context, following the decision in K.Radha Krishnaiah v. Inspector of Central Excise and others, 1987 (2) SCC 457, that the packing is returnable by the buyer to the assessee if there is an arrangement between them that it shall be returned.

Therefore, the Court said,

"Actual return or extent of return is not relevant. What is

necessary is that if the buyer chooses to return the packing,

the seller should be obliged to accept it and refund the

stipulated amount."

Incidentally, It was found in that case that such arrangement was

not established.

As we read the decisions in K.Radha Krishnaiah (supra) and

Mahalakshmi Glass Works (P) Ltd. (supra), the Court was of the view

that there must be an arrangement to the effect that the packing material

must be returnable to the seller by the buyer. In such a case actual

return would not have to be established. The reason for this is obvious.

6

From the section it appears that if the packing material is obliged to be

returned to the seller, the seller does not in fact transfer the title in the

packing material to the buyer. The seller retains the property in the

packing material. In such circumstances, irrespective of the actual

return of the packing material by the buyer to the seller, the seller, not

having effected the sale of packing material, was not required to include

the cost of packing material in the cost of excisable goods. In the present case there was no obligation on the part of the buyers to return the gunny bags, and the assessee-seller clearly indicate that only if the gunny bags are actually returned would the buyers be entitled to a deduction of the value of the gunny bags. Therefore value of the gunny bags formed part of the prices and were otherwise includible in the value of the goods. There would be a deduction of the sale price only if the gunny bags were returned by the customers to the assessee. The Tribunal rightly came to the conclusion that there was in fact no such arrangement between the appellant and its customers that the packing material shall be returned. The letters show request, recommendation and urging of the customers by the assessee, all of which were open to the customers concerned to either accept or reject. If we were to hold that such an arrangement would allow the appellant to exclude the cost of the packing material from the value of the goods as a matter of course and irrespective of the customers returning the gunny bags, it would run contrary to the language of the section and the decisions in K. Radha

Krishnaiah (supra) and Mahalakshmi Glass Works (P) Ltd. (supra). The basis for making an exception in the statute in respect of durable and returnable packing material would also cease to justify such an exception.

We may, also note at this stage that the appellant has also contended and in fact it had only claimed a reduction in the value of the soda ash on the basis of gunny bags actually returned. Nevertheless on the basis of the decision in Triveni Glass Ltd. (supra), it contends that irrespective of the actual return of the gunny bags, the Tribunal was bound to exclude the cost of the gunny bags from the value of the soda ash in all cases where there was an arrangement to return the packing material as a matter of law.

The decision in Triveni Glass Ltd. (supra), does appear to suggest that even if there is no obligation on the part of the buyer to return the packing material, but there is an obligation on the part of the seller to accept the packing material if the buyer chooses to return it, then in all

cases the cost of the packing material must be excluded from the cost of

the excisable goods. This view is, in our opinion, contrary to the ratios

laid down in the cases of K. Radha Krishnaiah (supra) and Mahalakshmi

Glass Works (P) Ltd. (Supra).

Since the view expressed in Triveni Glass Ltd (supra) was of a

Bench of three Judges, in view of our respectful disagreement with that

decision, the matter must be placed before a larger Bench. Let the

8

papers be placed before the Chief Justice of India for appropriate

directions.

.....J

(RUMA PAL)

.....J

(B.N. SRIKRISHNA)

.....J

(DALVEER BHANDARI)

NEW DELHI;

MARCH 23, 2006.