

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). 894 OF 2001

COMMR. OF CENTRAL EXCISE, AHMEDABAD
pellant (s)

Ap

VERSUS

M/S XEROGRAPHIC LTD.
spondent (s)

Re

(With application for stay and with office report)

Date: 21/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. K. Radha Krishnan, Sr.Adv.

Ms. Shilpa Singh, Adv.

Mr. P.Parmeswaran, Adv.

For Respondent(s)

Mr. Ajay Aggarwal, Adv.

Mr. Rajan Narain, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Appeal is dismissed. No order as to costs.

(PARVEEN KR. CHAWLA) (KANWAL
SINGH)
Court Master Court
Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.894 OF 2001

Commissioner of Central Excise,
Ahmedabad

..Appellant(s)

VERSUS

M/s. Xerographic Limited

.Respondent(s)

O R D E R

This Appeal has been filed under Section 35L of the Central Excise Act, 1944 (for short 'the Act') against the Final Order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short' the Tribunal') in Final Order No. 1576/98-A dated 16.3.1999 in Appeal No. E/3434/89-A whereby the Tribunal has allowed the appeal filed by the respondent herein.

Briefly stated the facts are:

M/s Xerographic Limited, Sector-15, Gandhinagar, Gujarat (hereinafter referred to as 'the respondent') was engaged in the manufacture of Plain Paper Copier Machines with the Trade mark "Ricoh Murphy". Respondent was selling its products through two other companies viz. M/s Murphy (India) Limited and M/s Mecotronics (P) Limited.

By a show cause notice dated 25.2.1987 issued by the Collector of Central Excise, Ahmedabad (for short 'the adjudicating authority'), respondent and the afore-mentioned two companies were asked to show cause against various charges. It was alleged that the respondent was evading excise duty by under-valuing the goods. That the respondent and the afore-mentioned two companies were "related persons" within the meaning of Section 4(4)(c) of the Act and therefore the transaction between the respondent on the one hand and the two aforementioned companies on the other were not on principal to principal basis. The adjudicating authority held that the respondent and the two aforementioned companies were "related persons" and the price at which the photocopiers manufactured by the respondent were sold by the afore-mentioned two companies in the market would be the normal price for the purposes of arriving at the assessable value of the goods in the hands of the respondent.

Respondent, being aggrieved, filed an appeal before the Tribunal. The Tribunal rejected the contention of the respondent that the two afore-mentioned

companies were not "related persons". It held that M/s Murphy (India) Limited and M/s Mecotronics (P) Limited were "related persons" as envisaged in the definition of "related persons" under Section 4(4)(C) of the Act. The Tribunal, on facts, held that there was no extra commercial consideration shown by the respondent while selling the goods to the afore-mentioned two companies. That the department has failed to refute that the sales made by the respondent to the afore-mentioned two companies were on retail basis. On the question of limitation, the Tribunal held that as the price list had been regularly approved by the proper officer, the bar of limitation raised by the respondent was well founded.

After Amending Act No. XXII of 1973, relevant portion of Section 4 of the

Act reads as under:

"4. Valuation of excisable goods for purposes of charging of duty of excise:

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be -

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:

Provided that:

(i) where in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price, shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force, or at a price, being the maximum fixed under any

such law, then, notwithstanding anything contained in cl.(iii) of this proviso the price or the maximum price, as the case may be, so fixed shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason that such goods are not

sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) XX XX

(3) XX XX

(4) XX XX

(a) XX XX

(b) XX XX

(c) "related person" means a person who is associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation:- In this clause "holding company", "a subsidiary company" and "relative" have the same meanings as in the Companies Act, 1956."

Section 4(4)(c) defines the expression "related persons" and the said

section has to be read in the context of third proviso to Section 4(1)(a). On the

reading of the entire section it is clear that three conditions are required to be

satisfied before invoking the third proviso. Firstly there should be mutuality of

interest; secondly that the alleged related person should be related to the

assessee as per definition of Section 4(4)(c) given in the Act and thirdly and

importantly that the price charged from the "related persons" was not the normal

price but the price lower than the normal price and because of extra commercial considerations the price charged was less than the normal value.

Counsel for the parties have been heard.

Since the finding that M/s Murphy (India) Limited and M/s Mecotronics

(P) Limited are "related persons" to the respondent within the meaning of

Section 4(4)(c) of the Act has not been challenged before us, the same has

become final. The department failed to show the existence of any extra

commercial consideration in fixing the normal price between the respondents and

the distributors-mentioned two companies. Contention raised by the

respondent that its sale to the distributors were on retail basis has also not been

refuted by the department. Counsel for the appellant has also failed to show that

the price at which the goods were sold to the "related persons" was not the

normal price at which the goods were being sold through any other distributor or

dealer or was less than the market price at which it was being sold in the market

or that there was any extra commercial consideration in fixing the normal value.

The finding recorded by the Tribunal is a pure finding of fact which does not call

for interference.

In the light of the above discussion, we do not find any merit in this

appeal and dismiss the same with no order as to costs.

.....J.

.....

[ASHOK BHAN]

NEW DELHI;

.....J.

MARCH 21, 2006

.....

[LOKESHWAR SINGH PANTA]