

Union Of India (Uoi) vs Kanti Lal Chunilal And Ors. on 3 April, 1986

Equivalent citations: AIR1987SC1410, 1987(11)ECC1, 1986ECR273(SC), 1986(26)ELT289(SC), (1987)2GLR1333, 1986(1)SCALE1355, 1986SUPP(1)SCC345, AIR 1987 SUPREME COURT 1410, (1987) 2 GUJ LR 1333, 1986 CRILR(SC MAH GUJ) 479, 1986 SCC (SUPP) 345, 1986 SCC (TAX) 717, 1986 UPTC 1321, (1986) 26 ELT 289, (1986) 9 ECR 1273, (1987) 11 ECC 1, (1987) 62 COMCAS 401

Bench: P.N. Bhagwati, G.L. Oza, V. Khalid

ORDER

C.A. No. 222/81:

1. The only question which arises for consideration in these appeals is as to whether the firm of M/s. Alok Textiles could be said to be related person within the meaning of that expression as defined in Clause (c) of Sub-section (4) of Section 4 of the Central Excise & Salt Act 1944 and whether the value of the excisable goods for the purpose of levy of excise duty in the hands of the respondents could be taken to be the whole-sale cash price at which the excisable goods were sold by the firm of M/s. Alok Textiles on the basis that the firm of M/s. Alok Textiles was a related person. The facts giving rise to these appeals may be briefly stated as follows:

The respondents are a limited company carrying on business of manufacturing textiles in Surat. They sold the entire goods manufactured by them to about 15 to 20 wholesale dealers and one of such dealers was the firm of M/s. Alok Textiles. The partners of this firm are related to some of the Directors of the respondent. The Department contended that the value of the excisable goods for the purpose of levy of excise duty in the hands of the respondent must be calculated by reference to the wholesale cash price at which this firm sold goods in the course of wholesale trade because the firm of M/s. Alok Textiles was a related person. This view taken by the Department was challenged by the respondents by filing a Writ Petition in the High Court of Gujarat. The High Court by its Judgment dated 28.10.80 upheld the contention of the respondents that the concept of 'related person' as set out in Clause (c) of Sub Section (4) of Section 4 was ultra vires entry 84 in list I of the 7th Schedule to the Constitution and the definition of that expression must, therefore be declared to be unconstitutional and void. The High Court also held that the value of the excisable goods must therefore be taken to be the wholesale cash price at which the excisable goods were sold by the respondents to the wholesale dealers and that the post manufacturing expenses were not to be included in the wholesale cash price for

the purpose of determination of the value of excisable goods for levy of excise duty. This view has been challenged before us on behalf of the appellant in this appeal preferred with certificate obtained from the High Court.

2. Having regard to the decision of this Court in *Union of India v. Bombay Tyres International*, the view taken by the High Court that the definition of 'related Person' in Clause (c) of Sub-section (4) of Section 4 is unconstitutional and void has to be rejected. We have read down the definition of 'related person' and held that on the view taken by us in regard to the interpretation of this definition, it cannot be said to be ultra vires or void. But even on the interpretation placed by us on the definition of 'related person', it is difficult to see how the firm of M/s. Alok Textiles could be said to fall-within the category of 'related person', because though the firm of M/s. Alok Textiles had interest in the business of the respondents, it could not be said that the respondents had any interest, direct or indirect, in the business of M/s. Alok Textiles. Moreover, the firm of M/s. Alok Textiles was not the only firm to which the excisable goods were sold by the respondents in the wholesale trade. The respondents sold only 34 to 40% of the total production to the firm of M/s. Alok Textiles and the remaining production was sold to other wholesale dealers. The Assessing authorities were therefore clearly wrong in taking the wholesale cash price at which the excisable goods were sold by the wholesale traders as the value of excisable goods for the purpose of levy of excise duty. The wholesale cash price at which the excisable goods were sold by the respondents to M/s. Alok Textiles and other wholesale dealers was the only price liable to be taken for determination of the value for the purpose of levy of excise duty.

3. The High Court also observed that for the purpose of levy of excise duty what was liable to be taken into account was "the fully commercial price which is reflected by the manufacturing cost and the manufacturing profits," which clearly implied that post manufacturing expenses and post manufacturing profits were liable to be excluded in determination of the value of excisable goods for the purpose of excise duty. This view taken by some of the High Courts was overruled in the *Bombay Tyres International* case (*supra*) and this Court held in that case that the wholesale cash price at which the excisable goods are sold in wholesale at the factory gate is the price which is liable to be taken into account for determination of the value of the excisable goods for levy of excise duty.

4. We would therefore partly allow the appeal of the appellant and direct that fresh assessment be made on the respondents on the basis that the wholesale cash price at which the excisable goods are sold by the respondents to M/s. Alok Textiles and other wholesale dealers, shall be taken to be the value of the goods for the purpose of levy of excise duty and such assessment shall be made in accordance with the judgment of this Court in *Bombay Tyres International* case. The assessment shall be completed within six weeks from today and the bank guarantee given by the respondents will be encashed only to the extent to which the respondents may be held liable to pay any amount to the Department and in respect of the balance the bank guarantee will stand discharged and if no amount is ultimately found payable by the respondents to the Department, the whole of the bank guarantee will be discharged. If on such assessment being made, it is found that any amount is refundable by the appellant to the respondents, the same shall be refunded within six weeks from the date of such assessment. There will be no order as to costs.

C.A. No. 221/81:

5. The facts giving rise to this appeal are identical with the facts in Civil Appeal 222/81 which is disposed of by judgment, the only difference being that the respondents are a firm manufacturing electrical appliances and two of the wholesale dealers to whom these electrical appliances were sold by the respondents were M/s. Batliboi's Co. and M/s. Nirupam Trading Co. We would, for the reasons given by us in the Judgment in Civil Appeal No. 222/81, dispose of the present appeal also in the same terms with no order as to costs.

C.A. No. 900/81:

6. The partnership firm manufacturing watch cases and certain other goods at Rajkot and other cases are sold by them in wholesale by the dealers M/s. Rivex Sales Enterprise. There will be an order in the same terms as in Civil Appeal No. 222/81, without any reference to bank guarantee.