

Customs, Excise and Gold Tribunal - Delhi

Collector Of C. Ex. vs Electrical Corporation Of India on 24 January, 1997

Equivalent citations: 1997 ECR 530 Tri Delhi, 1997 (91) ELT 109 Tri Del

ORDER U.L. Bhat, J. (President)

1. The common question arising for consideration in these appeals is whether amount collected as 'Dharmada' along with the price of excisable goods manufactured by respondent is liable to be included in the assessable value of the goods for the purpose of reckoning duty. Respondent had filed price list without showing the amount collected as 'Dharmada' and on approval of the price list was clearing the goods on payment of duty on the assessable value of the goods without including the 'Dharmada' amount. Notice was issued to the respondent to show cause why duty should not be demanded on the 'Dharmada' amount and after considering the contention of the respondent the demand was confirmed by the Assistant Collector. In appeal, Collector (Appeals) set aside the order relying on the decision of the Supreme Court in Commissioner of Income-tax v. Bijli Cotton Mills (P) Limited - AIR 1979 S.C. page 346. The common order passed by the Collector (Appeals) is under challenge at the instance of the Department.

2. Shri M. Ali, JDR representing the appellant place reliance on the decision of the High Court of Madras in N.S. Pandaria Pillai v. The State of Madras - 1973 (31) STC 108. The case related to amount representing 'Mahimai' at the rate of half per cent of the net sale price demanded and collected by the assessee from his customers on the occasion of the sale and shown separately in the sale bills. The question was whether this amount would form part of the taxable turnover of the assessee under the Tamil Nadu General Sales Tax Act and sales tax was payable on this amount, although the customers were under no legal obligation to pay the same to the assessee. The assessee placed reliance on the decision of the Nemkumar Kesrimal v. Commissioner of Sales Tax, Madhya Pradesh - 1955 (6) STC 222 to the effect that a sum charged as 'Dharmada' will not form part of the 'sale price' as defined in Section 2(g) of the Central Provinces and Berar Sales Tax Act. The High Court of Madras took a different view and held that since turnover has been defined as an aggregate amount for goods paid and sold by dealer, the sum collected for 'Dharmada' would be part of the turnover.

3. The above decision as well as a similar decision of the Andhra Pradesh High Court in Poosarla Sambamurthi v. State of Andhra - AIR 1957 Andhra Pradesh 910 were considered by the Supreme Court in Bijli Cotton Mills case. The Supreme Court held that the sum collected as 'Dharmada' cannot be regarded as part of price or a surcharge on price of goods purchased by the customers though it is a payment which a customer is required to make in addition to the price of the goods which he purchases from the assessee but the purchase of the goods by the customer would be the occasion and not the consideration for the 'Dharmada' amount taken from the customer. The Supreme Court indicated that the 'Dharmada' amount is clearly not a part of the price but a payment for the specific purpose of being spent on charitable purposes. Referring to the decision of the High Courts of Andhra Pradesh and Madras, the Court stated that decisions are clearly distinguishable inasmuch as they were rendered under the sales tax legislation where the question required to be considered was whether the realisation for 'Dharmam' (charitable purpose) in the Andhra Pradesh case or 'Mahimai' (religious purpose) in the Madras case would fall within the definition of

"turnover" contained in the concerned legislations and that the realisation is not a part of the price or the surcharge on the price but payment for the specific purpose of being spent on charitable purposes.

4. The Tribunal has followed the above view in a number of cases. For example, See Mohan & Company - 1987 (30) E.L.T. 624. This view is being taken by the Tribunal since 1987. We do not think that in these circumstances we should apply the dictum laid down by the High Court of Madras in the context of assessable value of the excisable goods, since the Supreme Court has held that the sum representing 'Dharmada' is not part of the price or surcharge of the price. We find no ground to interfere and accordingly dismiss the appeals.