

A COLLECTOR OF CENTRAL EXCISE, AHMEDABAD

v
I.T.E.C.(P) LTD., BOMBAY

SEPTEMBER 18, 2002

B [SYED SHAH MOHAMMED QUADRI AND S. N. VARIAVA, JJ.]

Central Excise Act, 1944/Central Excise Rules, 1944:

C *Ss.4(4) (c) and 11-A/r.9(2)—‘Related person’—Ingredients of—Assessee selling projectors and other goods to another company, namely, ‘I’, which in turn selling the said goods to independent buyers on higher rate and collecting excise duty from them—Assessee not paying excise duty and enjoying benefit of exemption Notification No.71/78 dated 1.3.1978—Revenue issuing notice to assessee on 13.4.1982 demanding excise duty along with penalty, on higher value fetched directly or indirectly by it from independent buyers for the period 11.4.1978 to 19.9.1979 on the ground that company ‘I’ was a related person—On adjudication, excise duty and penalty confirmed—Tribunal allowing the appeal of assessee holding that company ‘I’ was not a related person, and as regards penalty, it held that there was no suppression on behalf of assessee and as such larger period of limitation u/s.11-A was not available—Held, assessee and Company ‘I’ had common Directors and they were relatives of one another—Both the companies were family concerns and their benefits were shared by members of one and the same family—Thus mutuality of interest between the two is apparent—The finding of the Tribunal that the two companies were not related persons is set aside.*

F *Union of India and Ors. etc. etc. v. Bombay Tyre International Ltd. etc. etc., [1984] 1 SCR 347 and Union of India and Ors. v. Atic Industries Ltd. [1984] 3 SCC 575, relied on.*

G *S.11-A—Notice for demanding excise duty and imposing penalty — Limitation—Sale to related person—Notice issued on 11.4.1982 for the period 13.4.1978 to 29.9.1979—Held, assessee had disclosed the correct facts including the price at which the goods were sold to related person and the difference in the price—Therefore, it cannot be said that there was any suppression on the part of assessee—On facts, larger period of limitation provided u/s.11-A is not available to Revenue—Show cause notice is far*

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beyond the period of six months—Revenue not entitled to claim any difference of duty. A

Words and Phrases:

Expression 'related person'—Meaning of in the context of s.4(4)(c) of Central Excise Act, 1944. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 736 of 1995.

From the Judgment and Order dated 25.7.1991 of the Central Excise Customs and Gold Control Appellate Tribunal, New Delhi in ED/SB/A.No. 777/83-A in F.O. No. 532/91-A. C

Soli J. Sorabjee, Attorney General, Rajiv Nanda and B. Krishna Prasad, for the Appellant.

R.P. Bhatt, M.N. Shroff and Chirag M. Shroff, for the Respondent.

The following Order of the Court was delivered : D

This appeal, filed by the Revenue, is from the judgment and order No. 532/91-A of the Customs, Excise and Gold (Control) Appellate Tribunal in Appeal No. ED/SB. A. No. 777/83-A dated July 25, 1991. E

The respondent-assessee was selling projectors and other goods to M/s. International Talkie Equipment Co. Pvt. Ltd. (hereinafter referred to as 'M/s. International'). It was also enjoying the benefit of exemption under Notification 71/78 dated March 1, 1978. On the ground that M/s. International was a related person within the meaning of the Central Excise Act, 1944 (for short, 'the Excise Act'), the Superintendent of Central Excise issued a notice on April 13, 1982 for the period April 11, 1978 to September 29, 1979 to the respondent to show cause as to why the duty at appropriate rate under Rule 9(2) of the Central Excise Rules on the higher value fetched directly or indirectly by it from the independent buyers should not be charged when they were not paying excise duty, in view of the benefit of the Notification 71/78, and as to why penalty should not be imposed. After adjudication, the duty and penalty were confirmed. On appeal, the Tribunal accepted the findings recorded by the adjudicating authority and held that the respondent and M/s. International were not related persons. In regard to the application of larger period of limitation under Section 11-A of the Excise Act, the Tribunal found that there was no suppression of fact by the respondent and, F
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A therefore, the benefit of Section 11-A was not available to the Revenue. The Tribunal allowed the appeal of the respondent herein on July 25, 191. That is the order under challenge before us.

B The learned Attorney General, appearing for the appellant, contends that without anything more the findings accepted by the Tribunal are sufficient to show that the requirements of 'related person' are satisfied. Learned counsel for the respondent invited our attention to the following findings of the Tribunal:

C "No evidence regarding mutuality of interest has been brought on record except the evidence of sale of goods by the appellants to or through M/s. International."

He contends that as there is no material to hold that the respondent and M/s. International are related persons the Tribunal has rightly allowed the appeal.

D The questions as to whether the respondent and M/s. International are related persons has to be determined in the light of the definition of that expression in Section 4(4)(c) of the Excise Act. It reads as follows :

E "(c) 'related person' means a person who is so 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.

F Explanation - In this clause "holding company", "subsidiary company and "relative" have the same meanings as in the Companies Act, 1956 (1 of 1956)."

G From a plain reading of the definition, it is evident that if a person is so associated with the assessee that both of them have interest directly or indirectly in the business of each other, they would be treated as related persons. The definition also includes a holding company, a subsidiary company, a relative and a distributor of such distributor, but we are not concerned with the later part of the definition. The ingredients of the first part of definition are: first, a person to be treated as related person must be associated with the assessee; secondly, the person so associated and the assessee must have interest in the business of each other; and thirdly, such interest may be direct or indirect. Mutuality of interest between the other

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person and the assessee in the business of each other, whether direct or indirect, is necessary to label such a person as a related person. A

In *Union of India and Ors. etc. etc. v. Bombay Tyre International Ltd. etc. etc.*, [1984] SCR 347, a three-Judge Bench of this Court upheld the constitutional validity of the said definition by reading it down. B

The validity of the same definition again came up for consideration before this Court in the case of *Union of India and Ors. v. Actic Industries Ltd.*, [1984] 3 SCC 575. Following the judgment in *Bombay Tyre International* (supra), speaking for the Court, Bhagwati, J., as he then was, observed:

“It is essential to attract the applicability of the first part of the definition that the assessee and the person alleged to be a related person must have interest, direct or indirect, in the business of each other. Each of them must have a direct or indirect interest in the business of the other. The equality and degree of interest which each has in the business of the other may be different; the interest of one in the business of the other may be direct, while the interest of the latter in the business of the former may be indirect. That would not make any difference, so long as each has got some interest, direct or indirect, in the business of the other.” C D

Keeping these expositions and the ingredients of the definition of the “related person”, we shall advert to the question as to whether M/s. International was so associated with the respondent that they had interest, directly or indirectly, so as to conclude that they were related persons. E

We may not turn to the findings recorded by Customs, Excise and Gold (Control) Appellate Tribunal. It was found that the respondent and M/s. International were having common Directors and that they were relatives of one another; a further finding was also noted that both the companies were family concerns and were beneficiaries of their ventures and that the benefit of both the concerns are shared by members of one and the same family. From these findings, it is difficult to resist the conclusion that the respondent and M/s. International have a direct interest, in the business of each other and that the mutuality of interest between the two is apparent. We may point out here that the Tribunal’s observation, quoted above, that no evidence regarding mutuality of interest has been brought on record, is inconsistent with the acceptance of the finding of the adjudicating authority, referred to above. Once those findings are accepted, the conclusion that there is mutuality of F G H

- A interest between the two concerns is inevitable. In this view of the matter, we set aside the finding of the Tribunal that the respondent and M/s. International are not related persons.

- B The next question that arises for consideration is; whether, on the facts and in the circumstances, it is open to the Revenue to invoke the provisions of Section 11-A of the Act. The Tribunal held that once the respondent declared M/s. International as a 'related person' giving the prices at which the goods were sold to the related person and to other dealers and the differential price in the classification list while claiming the benefit of the exemption under Notification 71/78, as it evident from page six of the paper book, it was for the Revenue to deal with the respondent before approving the price list. The respondent declared the prices of their goods in proforma Part IV relating to "sale of goods through related buyers" as follows:

1978-79

D	S. No.	Description of Goods	Particulars of the buyers	Price at which the goods sold by the related persons to dealers	Deduction S.T. C.E. duty Amt. Amt.	Value as claimed for approval		Value as approved
						6	7	
E	1	2	3	4	5	6	7	8
	Rs.							
F	1.	Projector Head	Major buyer M/s. International	12779 per pc.	372	2869	9544	9544
	2.	Sound Head	-do-	2807 per pc.	82	629	2096	2096
G	3.	Arc Lamp	-do-	6854 per pc.	200	1535	5119	5119
1979-80								
H	1.	Projector Head	-do-	13530.24 per pc.	570.24	3360	9600	9600

2.	Sound Head	-do-	3065.44	129.19	761.25	2175	2175	A
3.	Arc Lamp	-do-	7216.13	304.13	1792.00	5120	5120	

Thus, it is clear that the respondent had disclosed the correct facts including the price at which the goods were sold to related person and the difference in the price. In view of this declaration, it is futile to contend that there was any suppression of fact on the part of the respondent. The learned Attorney General does not seriously dispute this position. It follows that the larger period of limitation provided in Section 11-A of the Excise Act is not available to the Revenue. We, therefore, confirm the conclusion arrived at by the Tribunal on this aspect. For the period April 11, 1978 to September 29, 1979 the show cause notice was issued on April 13, 1982 which is far beyond the period of six months, therefore, the Revenue is not entitled to claim any difference of duty.

The appeal is allowed in part to the extent indicated above, in regard to 'related person' in other respect it is dismissed. There shall be no order as to costs.

R.P.

Appeal allowed.