UNION OF INDIA & ORS. A

v.

HIND LAMP LTD.

MAY 2, 1989

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.] B

Central Excises & Salt Act, 1944—Section 4(4)(c)—Valuation of goods for purposes of levy of excise duty—Whether Customer Companies can be regarded as 'related persons' as defined in Section 4(4)(c)—Whether the prices charged by the assessee company to its Customer Companies for its products or the prices charged by the Customer Companies for further sale to wholesale dealers and others should be the basis for determination of value of goods for levy of excise duty. C

The respondent company, a manufacturer of electric lamps, fluorescent-lamps and miniature lamps sold its entire products to five customer companies namely (a) Bajaj Electricals Ltd. (b) Philips India Ltd. (c) Crompton Greaves Ltd. (d) General Electric Co. of India Ltd. and (e) Mazda Lamps Co. Ltd. after putting the brand names of the said Customer companies as per their directions. The customer companies in turn sold these lamps under their respective names to wholesale dealers and others at prices higher than the prices charged to them by the Respondent Company. D F

Excise duty on electric lamps at first was a specific duty but later it was changed to *ad valorem* duty. After such change there was a controversy between the Respondent Company and the Central Excise authorities as to whether the prices charged by the Respondent Company to its customer companies or the prices charged by the customer companies when they in turn sold to wholesale dealers and others, should be the basis for determination of the value for levy of excise duty. As the Department insisted that latter shall be the value for levy of excise duty, the Respondent Company moved a Writ Petition in the High Court of Allahabad. The High Court by its order dated 14.5.74 allowed the Writ Petition holding that the prices at which the Respondent Company sold its products to the Customer companies should be the value for levy of excise duty and not the prices at which the customer companies sold these to wholesale dealers and others. Hence this appeal by the Excise authorities. F G H

A **Dismissing the appeal, this Court,**

HELD: The first part of Section 4(4)(c) refers to a person who is so associated with the assessee that each had interest, directly or indirectly in the business of the other and the second part of that definition B **refers to a holding company, a subsidiary company, a relative and a distributor of the assessee and any sub-distributor of such distributor. The sale by the assessee company was on principal to principal basis and the share holding company (Bajaj Electrical Ltd.) and so called to associate companies of the foreign share holding companies. Goods were supplied to the Customer companies in their brand names as in the case of *Atic Industries* case. In *Atic Industries* case there was no allega-** C **tion of extra commercial consideration and in the instant case also there was no such allegation. In *Atic Industries* case, same prices were charged from all the customers, similar is the position in the instant case. [876G-H; 877H; 878A-B]**

D **In view of the ratio of the decision of this Court in *Atic Industries* case the Judgment and order of the High Court is upheld and the appeal preferred by the Revenue dismissed. [879E]**

***Union of India* v. *Bombay Tyre International Ltd.*, [1984] I SCR 347; *A.K. Roy* v. *Voltas Ltd.*, [1973] 2 SCR 1089 and *Union of India* v.** E ***Atic Industries Ltd.*, [1984] 3 SCR 930, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2858 of 1977.

From the Judgment and Order dated 16.12.1976 of the Allaha- F bad High Court in Civil Miscellaneous Writ No. 179 of 1976.

A. Subba Rao, P. Parmeshwaran and Mrs. Sushma Suri for the Appellants.

H.N. Salve, Ravinder Narain, K.C. Dua, P.K. Ram and D.N. G Misra for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal by special leave from the judgment and order of the High Court of Allahabad H dated 16th December, 1976.

The question in this case was the valuation of goods for the purpose of levy of excise duty under the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act'). The respondent company had submitted its price list in Form IV to the Superintendent, Central Excise containing the price at which five companies to which it sold its entire output (hereinafter referred to as the Customer Companies) sold those products. The customer companies thereafter sold their products. The respondent challenged the direction of the Superintendent and had contended that for the purpose of levy of excise duty the value of its products should be the prices at which it sold those products to the customer companies and not the prices at which these in turn sold those products to wholesale dealers or others. The respondent company was registered under the Indian Companies Act, 1913. At the relevant time, there were five shareholders of the company, namely, Bajaj Electricals Ltd., Bombay, Crompton Parkinson Ltd., London, N.V. Philips, Eindhoven (Holland), General Electricals Co. Ltd., London and Mazda Lamp Co. Ltd., Licencester, England. Except M/s Bajaj Electricals Ltd., the aforesaid four companies are referred to as the foreign companies. The said Bajaj Electricals held 1,80,000 shares in the respondent company. It is called 'A' shareholder. The four foreign companies together held 1,80,000 shares. These are called 'B' share holders. The respondent company was engaged in manufacture of electric lamps, fluorescent lamps and miniature lamps. It sold its entire output of the products exclusively to the following customer companies:

(a) Bajaj Electricals Ltd.
(b) Philips India Ltd.
(c) Crompton Greaves Ltd.
(d) General Electric Co. of India Ltd.
(e) Mazda Lamps Co. Ltd.

On the lamps manufactured by the respondent company, it put the brand names of trade marks like Philips, Osram, Mazda, Crompton and Bajaj of the respective Customer Companies according to their directions. The Customer companies in turn sold these lamps under their names at prices higher than the prices charged by the respondent company. Excise duty on electric lamps and fluorescent lamps was levied for the first time in the year 1965. At first, excise duty on lamps was a specific duty. Later, excise duty on them was changed from specific to *ad valorem* duty. After such change, there was a controversy between the respondent company and the central excise authorities as to whether the prices charged by the respondent com-

A pany to its customer companies for its products or the prices charged by the customer companies when they sold them to wholesale dealers and others, should be the basis for determination of the value for levy of excise duty. Being aggrieved by the insistance of the Central Excise authorities that the latter prices should be the value for levy of excise duty, the respondent company approached the High Court of Allaha-
B bad by Civil Misc. Writ No. 2189 of 1973. The High Court by its order dated 14th May, 1974, allowed the writ petition and held that the prices at which the respondent company sold its products to the customer companies, should be the value for levy of excise duty and not the price at which the customer companies sold these to wholesale dealers and others. The Central Excise authorities, however, had
C taken the view that the aforesaid decision of the High Court which was rendered on the basis of the old section 4 as it stood before it was amended by the Amendment Act of 1973 did not apply to the levy of excise duty subsequent to the Amendment Act coming into force on 1st October, 1973. On the other hand, the contention on behalf of the respondent company was that the aforesaid amendment of the Act had
D not altered the legal position so far as the respondent company was concerned and that the decision of the High Court would be binding. It appears that the Central Excise Authorities were wrong in view of the observations of this Court in *Union of India* v. *Bombay Tyre International Ltd.*, [1984] 1 SCR 347, where this Court observed that it was not the intention of the Parliament while enacting the new section to
E create a scheme materially different from that embodied in the superseded s. 4. The object and purpose remained the same, and so did the central principle of the scheme. The new scheme was merely more comprehensive and the language employed more precise and definite. As in the old s. 4, the terms in which the value was defined remained the price charged by the assessee in the course of wholesale
F trade for delivery at the time and place of removal. See the observations at pages 377 and 378 of the said Report. The High Court referred to the decision of this Court in *A.K. Roy* v. *Voltas Ltd.*, [1973] 2 SCR 1089 and also in *Union of India* v. *Atic Industries Ltd.*, [1984] 3 SCR 930.

G The real question that arose in this case is whether the five customer companies can be regarded as 'related persons' as defined in section 4(4)(c). The definition of that consists of two parts. The first part refers to a person who is so associated with the assessee that each has interest, directly or indirectly in the business of the other and the second part of that definition refers to a holding company, a subsidiary
H company, a relative and a distributor of the assessee and any sub-

distributor of such distributor. The High Court held that in order for the respondent company to come within the first part of the definition, the respondent company and the customer companies must have interest, directly or indirectly, in the business of each other. Such of the customer companies which held shares in the respondent company, could be said, according to the High Court, to have interest in the business of the respondent company. But only one of the customers companies, namely, Bajaj Electricals Ltd., Bombay, held shares in the respondent company. The remaining four customer companies did not hold any shares in the respondent company.

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It was further contended before the High Court that those four customer companies were respectively associated companies of the four foreign companies and that hence those four customer companies must also be held to have interest indirectly, if not directly, in the business of the respondent company. The High Court found that in the absence of material, it was not possible to accede to the contention of the company. What is 'interest, directly or indirectly', has been explained in *Union of India & Ors.* v. *Atic Industries Ltd.,* (supra). In that case, the respondent-assessee, a limited company, was engaged in the business of manufacturing dyes. Its 50 per cent share capital was held by Atul Products Ltd. and the remaining 50 per cent by Imperial Chemical Industries Ltd., London which also had a subsidiary company fully owned by it, called Imperial Chemical Industries (India) Pvt. Ltd. The Imperial Chemical Industries (India) Pvt. Ltd. ceased to be a subsidiary company wholly owned by the Imperial Chemical Industries Ltd., London on 13th March, 1978, since 60 per cent of the share capital of Imperial Chemical Industries (India) Pvt. Ltd., was offered to the public in pursuance of the policy of the Government of India requiring that not more than 40 per cent of the share capital of an Indian company should be held by a foreign shareholder. Consequent upon this dilution of foreign shareholding, the name of Imperial Chemical Industries (India) Pvt. Ltd. was changed to Crescent Dyes and Chemicals Ltd. The assessee in that case at all material times sold the large bulk of dyes manufactured by it in wholesale to Atul Products Ltd. and Imperial Chemical Industries (India) Pvt. Ltd. which subsequently came to be known as Crescent Dyes and Chemicals at a uniform price applicable alike to both these wholesale buyers and those wholesale buyers sold these dyes to dealers and consumers at a higher price which *inter alia* included the expenses incurred by them as also their profit. The transactions between the assessee on the one hand and Atul Products Ltd. and Crescent Dyes and Chemicals Ltd. on the other were as principal to principal and the wholesale price

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charged by the assessee to Atul Products Ltd. and Crescent Dyes and Chemicals Ltd. was the sole consideration for the sale and no extra-commercial considerations entered in the determination of such price. In that case, this Court held that on a proper interpretation of the definition of "related person" in sub-section (4)(c) of sec. 4, the words "relative and a distributor of the assessee" do not refer to any distributor but these were limited only to a distributor who is a relative of the assessee within the meaning of the Companies Act, 1956. It was held that the definition of "related person" is not unduly wide and does not suffer from any constitutional infirmity.

Reliance was also placed on the observations of this Court in *Union of India & Ors.* v. *Bombay Tyre International Ltd.*, (supra). The first part of the definition defined "related person" to mean a person who is so associated with the assessee that each has interest, directly or indirectly, in the business of each other. It is not enough that the assessee has an interest, direct or indirect in the business of the person alleged to be a related person nor is it enough that the person alleged to be a related person has an interest, direct or indirect in the business of the assessee. To attract the applicability of the first part of the definition, 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 quality and degree of interest which each must have 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. After analysing the facts, this Court came to the conclusion that there was no relationship.

Shri Sibal placed before us a Chart indicating the similarity of the facts of *Atic Industries'* case (supra) and the facts of the present case. In *Atic Industries' case,* 50 per cent of share capital belonged to Atul Products Ltd. and 50 per cent to the Imperial Chemicals (London) Ltd., a foreign company. In the case of the respondent herein, 50 per cent share capital belonged to the Bajaj Electricals Ltd. (Indian Company) and 50 per cent belonged to Philips (17.67%), Mazda (14.86%), G.E.C. (10.59%) and Crompton (6.88%), all foreign companies. In case of Atic Industries, the sale of goods was on principal to principal basis and to a share holding company and to another company, which was initially a subsidiary of the foreign shareholding company and to which subsequently became "associate" company of the foreign shareholding company. In the instant case also, it was on principal to principal basis and to a shareholding company (Bajaj Electricals Ltd.)

and so called to associate companies of the foreign shareholding companies. Goods were supplied to customers in their brand name in the case of Atic Industries as in the instant case. In *Atic Industries'* case, there was no allegation of extra commercial consideration and in the instant case also there was no allegation of extra-commercial consideration. In *Atic Industries'* case, same prices were charged from all the customers, similar is the position in the instant case. A B

In the aforesaid view of the matter and in view of the ratio of the said decision, Shri Sibal sought to urge that the High Court was right in the view it took. In our opinion, Shri Sibal is right. There is a lurking doubt that the five customer companies were the favoured customers, but no investigation seems to have been carried out. The High Court while allowing the writ petition held that it was open to the Central Excise Authorities to examine whether or not the five customer companies were the favoured customers and whether the price at which the respondent company sold its products to these were the normal prices at which such goods were ordinarily sold by a manufacturer in the course of wholesale trade for delivery at the time and place of removal. Apparently, no such scrutiny was done. C D

In that view of the matter, the judgment and order of the High Court of Allahabad must be upheld and in view of the ratio of the decision in Civil Appeal No. 859, this appeal must fail without order as to costs. E

R.N.J. Appeal dismissed.