M/S. UNITED GLASS, BANGALORE

v.

COLLECTOR OF CENTRAL EXCISE

JANUARY 5, 1995

[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

Central Excises & Salt Act, 1944/Central Excise (Valuation) Rules 1975; S.4(1)—Rules 6,7—Distillery—Purchasing bottles from an outside company—Later setting up a bottling unit—Prices declared by the bottling unit—Tribunal directing adoption of price approved for the earlier supplier—Where the price declared by the new unit is higher than the earlier supplier's, the higher price declared should be adopted—Held, valid.

The appellant is a manufacturing unit within the Khoday Group of Industries, its holding company being Khoday Distilleries Ltd. The appellant is a division of Khoday Brewing and Distilling Industries Private Limited which is also held by Khoday Distilleries Ltd. The bottles required by this group of industries were purchased from Alembic Glass Industies. In 1978, the appellant-unit was established for the purpose of manufacturing bottles required by the Khoday Group of Industries.

The appellant filed price lists which were approved provisionally by the excise authorities. On scrutiny the authorities found that the value indicated was much below the cost of production and that the date furnished was vague and incomplete. It was also found that some bottles were sold to others also. Show cause notices were issued to the appellant, proposing to re-determine the values of bottles under Rule 7 of the Central Excise (Valuation) Rules, 1975 i.e., under clause (b) of S.4(1) of the Central Excises and Salt Act. After hearing the appellants, the Assistant Collector confirmed the values proposed in the show cause notices. The appeal preferred by the appellant was allowed by the Collector (Appeals). He directed the Assistant Collector to adopt the sale price charged by the appellant to others as the basis and to finalise the value under S.4(1)(a) of the Act.

The Collector of Central Excise went in appeal and the Tribunal allowed the same. It directed that for the period 1.7.1979 to 30.6.1983 wherever the prices declared were lower than that of Alembic for the

A comparable bottles, the prices as approved for Alembic should be adopted.

In this appeal, the appellant contended that the Tribunal should have directed that prices of Alembic alone should be uniformly adopted as the value of all types of bottles manufactured by the appellant and it could not have directed the determination on a dual and mutually inconsistent
B basis, viz. Where the prices of Alembic were higher than the prices declared, the prices of Alembic should be adopted but where the prices of Alembic were lower, the appellants prices should be adopted.

The respondent contended that where the appellant itself has
C declared higher values it cannot object if those values are accepted.

Dismissing the appeal, this Court

HELD : 1. It is obvious that Rule 7 of the Central Excise (Valuation) Rule, 1975 is in the nature of a residuary rule. It applies only when the
D valuation cannot be determined under the other Rules. The Tribunal has directed the valuation to be made under Rule 6(b)(i). The said provision is attracted where the manufacturer does not sell the goods in question but uses or consumes them himself in the manufacture of other articles. In such a case, the Rule says, that the value of the comparable goods manufactured
E by the assessee or by any other assessee should be adopted. [54-E]

2. The bottles manufactured by the appellant are of different values, i.e., of different sizes and shapes. The value of each type of bottles is different. Price lists filed by the assessee indicate the value of each type or category of bottles separately and the authorities too have to determine
F the value of each type/category of bottles separately. Different classes or categories of goods may call for different method of valuation to be adopted. If so, there is nothing illegal if the Tribunal directs that in case of those categories of bottles where the price declared by the appellant is higher than the price declared by Alembic, the price declared by the
G appellant should be adopted. The appellant cannot object if the price declared by him is adopted. He cannot say that the price declared by him for the several classes/ categories of bottles represents a package and that Revenue must other accept it as a whole or reject it as a whole. Valuation may have to be done separately for each class/category of bottles. The manufacturer is expected to declare the price of each class, category or
H type of goods separately for the purpose of valuation and that is what the

appellant did indeed. There is thus nothing illegal in what the Revenue has done. [54-G-H, 55-A-C] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2466 of 1989.

From the Judgment and Order dated 30.1.89 of the Central Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Order No. 29/89-A, E.A. No. 2033/86-A with E-Cross No.400/87-A and E.Misc. No. 59/88-A. B

V. Lakshmi Kumaran, A.R.Madhav Rao, T. Ramesh and V. Balachandran for the Appellant. C

Joseph Vellapally, R. Sasiprabhu and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by D

B.P. JEEVAN REDDY, J. The appeal is preferred against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal allowing an appeal filed by the Collector of Central Excise against the decision of the Collector (Appeals).

The appellant, M/s. United Glass, Bangalore, is not a separate legal entity. It is a manufacturing unit within the Khoday Group of Industries. Khoday Distilleries Limited (K.D.L) is said to be the holding company. One of the companies held by K.D.L. was Khoday Brewing and Distilling Industries Private Limited (K.D.B.I.) of which the appellant is a division. There is a partnership firm, Khoday, RCA. The partners of the said firm are all members of the Khoday family which controls the K.D.L. and K.D.B.I. The main business of this group of industries is manufacturing and bottling of beer and other alcoholic liquors. E F

Until 1978, the bottles required by the said group of industries for bottling beer and other alcoholic liquors were purchased from M/s. Alembic Glass Industries which has a plant near Bangalore. In the year 1978, however, the said group of industries established their own unit for manufacturing the bottles, the appellant herein. The controversy in this appeal relates to the determination of the value of the bottles manufactured by the appellant. The period concerned is July 1, 1979 to June 30, 1983. G H

A Two price lists were filed by the appellant, one on October 24, 1979 and the other on September 10, 1981. They were approved provisionally. On scrutiny, the excise authorities found that the value indicated by the appellant was much below the cost of production and that the data furnished in that behalf was vague and incomplete. It was also found that in the early years of production, some bottles were sold by the appellant to B others also, besides supplying to the other units in the group. Accordingly, two show cause notices dated February 8, 1984 and June 16, 1984 were issued proposing to re-determine the values of the bottles under Rule 7 of the Central Excise (Valuation) Rules, 1975, i.e., under clause (b) of Section 4(1) of the Act. The show cause notices contained the relevant data in C support of the valuation which the authorities proposed to adopt. After hearing the appellant, the Assistant Collector confirmed the values proposed in the show cause notices. The appeal preferred by the appellant was, however, allowed by the Collector (Appeals) who directed the Assistant Collector to adopt the sale price charged by the appellant to others D as the basis and to finalise the value under Section 4(1)(a) of the Act. Against the decision of the Collector (Appeals), the Collector of Central Excise went in appeal to the Tribunal, which allowed the appeal on the following findings :

(a) That the price declared by the appellant was far below the cost E price and is totally unacceptable. The price declared was only a fraction of the price charged by M/s. Alembic Glass Industries for similar glass bottles.

(b) The sales of bottles to others was only of inferior quality and 'reject' bottles. The sale was to dealers in second-hand bottles F (Kabariwalas) and, therefore, that price cannot be adopted as the basis for valuation under Section 4(1)(a).

(c) In view of the refusal/failure of the appellant to produce the relevant data and material called for by the authorities, it must be held that G the value in this case cannot be determined under Section 4(1)(a). It has to be done only under Section 4(1)(b). The appropriate rule under which the valuation has to be determined in this case is Rule 6(b)(i) of the Valuation Rules.

The appeal was accordingly allowed with the following directions: H "during the material period (1-7-79 to 30-6-83) wherever the prices

declared by the respondents were lower than those of M/s. Alembic for the comparable bottles, the prices as approved for M/s. Alembic should be adopted as the basis of assessment for the glass bottles manufactured by the respondents and supplied to other units in the Khoday Group. The department would be entitled to finalise the assessments on this basis and make consequential recoveries of duties from the respondents. The respondents are directed to pay the differential duties so demanded forthwith."

Sri Lakshmi Kumaran, learned counsel for the appellant submitted that once the Tribunal held that the valuation of the bottles manufactured by the appellant cannot be done under Section 4(1)(a) but should be done under Section 4(1)(b) and that the price of comparable bottles manufactured by Alembic Glass Industries should be taken as the basis, the Tribunal should have directed that prices of Alembic alone should be uniformaly adopted as the value of all types of bottles manufactured by the appellant. It could not have directed the determination on a dual and mutually inconsistent bases, viz., where the prices of Alembic are higher than the prices declared by the appellant, the prices of Alembic should be adopted but where the prices of Alembic were lower than the prices declared by the appellant, the appellant's prices should be adopted. The learned counsel submitted that the course adopted by the Tribunal is inequitable besides being illegal. Sri Joseph Vellapally, learned counsel for the Revenue, on the other hand, justified the approach of the Tribunal as wholly consistent with the Rules and submitted further that where the appellant itself has declared higher values, it cannot object if those values are accepted.

Sub-section (1) of Section 4, which is relevant for our purposes, reads thus:

> "*S.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 –
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> (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

A 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
B 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:

C

(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 clause (iii)
D 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 in normal price thereof;

(iii) where the assessee so arranges that the goods are
E 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
F 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
G 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."

Under Section 37 of the Act, the Central Government has framed the Central Excise (Valuation) Rules, 1975 which govern the valuation of
H excisable goods under Section 4(1)(b). Rules 6 and 7, which are relevant

for our purpose, read thus : A

"R.6. If the value of the excisable goods under assessment cannot be determined under rule 4 or 5, and –

(a) where such goods are sold by the assessee in retail, the value shall be based on the retail price of such goods reduced by such B amount as is necessary and reasonable in the opinion of the proper officer to arrive at the price at which the assessee would have sold such goods in the course of wholesale trade to a person other than a related person :

Provided that in determining the amount of reduction, due C regard shall be had to the nature of the excisable goods, the trade practice in that commodity and other relevant factors.

(b) where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production or D manufacture of other articles, the value shall be based –

(i) on the value of the comparable goods produced and manufactured by the assessee or by any other assessee:

Provided that in determining the value under this sub-clause the E proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors and, in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods,

(ii) if the value cannot be determined under sub-clause (i), on the F cost of production or manufacture, including profits, if any, which the assessee would have normally earned on the sale of such goods;

(c) where the assessee so arranges that the excisable goods are generally not sold by him in the course of wholesale trade except G to or through a related person and the value cannot be determined under clause (iii) of the proviso to clause (a) of sub-section (1) of section 4 of the Act, value of the goods so sold shall be determined–

(i) in a case where the assessee sells the goods to a related H

person who sells such goods in retail, in the manner specified in clause (a) of this rule;

(ii) in a case where a related person does not sell the goods but uses or consumes such goods in the production or manufacture of other articles, in the manner specified in clause (b) of this rule;

(iii) in a case where a related person sells the goods in the course of wholesale trade to buyers, other than dealers and related person, and the class to which such buyers belong is known at the time of removal, on the basis of the price at which the goods are ordinarily sold by the related person to such class of buyers.

R.7. If the value of excisable goods cannot be determined under the foregoing rules, the proper officer shall determine the value of such goods according to the best of his judgment, and for this purpose he may have regard, among other things to any one or more of the methods provided for in the foregoing rules."

It is obvious that Rule 7 is in the nature of a residury rule. It applies only when the valuation cannot be determined under the other Rules. The Tribunal has directed the valuation to be made under Rule 6(b)(i). The said provision is attracted where the manufacturer does not sell the goods in question but uses or consumes them himself in the manufacture of other articles. In such a case, the Rule says, adopt the value of the comparable goods manufactured by the assessee or by any other assessee. Sri Lakshmi Kumaran also agrees that this is the proper Rule applicable though he arrives at this Rule through clause (c) of Rule 6(b). What he contends is that once the Revenue adopts the value of another assessee manufacturing similar goods, that alone should be the basis and that the Revenue cannot adopt or shift to another basis. It is not possible to agree. The submission of the learned counsel ignores the fact that the bottles manufactured by the appellant are of different values, i.e., of differet sizes and shapes. The value of the each type of bottles is different. Price lists filed by the assessee indicate the value of each type or category of bottles separately and the authorities too have to determine the value of each type/category of bottles separately. Different classes or categories of goods may call for different method of valuation to be adopted. If so, there is nothing illegal if the

Tribunal directs that in case of those categories of bottles where the price declared by the appellant is higher than the price declared by Alembic, the price declared by the appellant should be adopted. As pointed out rightly by Sri Vellapally, the appellant cannot object if the price declared by him is adopted. He cannot say that the price declared by him for the several classes/categories of bottles represents a package and that Revenue must either accept it as a whole or reject it as a whole. As stated above, valuation may have to be done separately for each class/category of bottles. The manufacturer is expected to declare the price of each class, category or type of goods separately for the purpose of valuation and that is what the appellant did indeed. There is thus nothing illegal in what the Revenue has done.

The appeal accordingly fails and is dismissed. No costs.

G.N. Appeal dismissed.