

PETITIONER:
M/S PAWAN BISCUITS CO. PVT. LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE PATNA

DATE OF JUDGMENT: 20/07/2000

BENCH:
B.N.Kirpal, D.P.Mohapatra

JUDGMENT:

Judgement
Kripal.J.

The appellant who is manufacturing biscuits is seeding to impugn the assessable value of the biscuits manufactured by it for M/S. Britannia Industries Ltd. (hereinafter referred to as 'Britannia') pursuant to an agreement which had been entered into between the two Companies.

It is not in dispute that the appellant was incorporated on 30.12.1982 and after making arrangements for obtaining finance it started a Unit from 3.1.1985 wherein it commenced commercial production of its own brand of biscuits.

On 15.12.1986, an agreement was entered into between the appellant and Britannia which required the appellant to manufacture biscuits for Britannia. The terms of the agreement, broadly speaking envisaged that the ingredients for the manufacture of biscuits as well as the recipe or method by which the biscuits were to be manufactured were to be supplied by Britannia. The ingredients so supplied were also to be regarded as belonging to Britannia for the manufacture of the biscuits. The appellant was required to make packages as directed by Britannia and then supply the same under Britannia's instruction. For the work done, the appellant was entitled to receive certain amount which was to be fixed from time to time. The agreement also contemplated that if the biscuits were not manufactured upto the required standard, then the same were to be destroyed and in respect of those biscuits on payment was to be made to the appellant and on the contrary, the appellant would become liable to pay for the cost of the ingredients which had not spoiled.

What is material in this agreement is that there was a clause which specifically provided that "relationship between the parties shall always be that of principal and principal and not principal and agent". The agreement also gave liberty to the appellant to continue to manufacture biscuits under other brands and to sell the same.

It is nobody's case that the Unit in question was established by or at the behest of Britannia. The Unit had come into existence before the agreement dated 15.12.1986 entered into between the parties.

The trouble for appellant arose when it received a show cause notice dated 16.11.1987 from the Assistant Collector requiring the appellant to show cause as to why the assessable value should not be approved on the basis of Britannia's wholesale cash price. A reference in the said show cause notice was made to the agreement dated 15.12.1986.

The appellant showed cause but the Assistant Collector by his order

dated 29.6.1988 came to the conclusion that the biscuits manufactured by the appellant were to be cleared and excise to be paid on the value of the said biscuits calculated after taking into consideration Britannia's wholesale price.

The appellant filed an appeal before the Collector (Appeals) and the Collector (Appeals) passed an order rejecting the said appeal and affirmed the order of the Assistant Collector dated 29.6.1988. In fact the Tribunal held that the appellant was an agent of Britannia and therefore it is the Britannia's wholesale price which is to be taken into consideration for arriving at the normal value for the purposes of computing the excise duty of the biscuits manufactured by the appellant.

After hearing the learned counsel for the parties, we are of the opinion that the point in issue is no longer res integra. This Court has time and again held that for the purpose of ascertaining assessable value post-manufacturing expenses have not to be taken into consideration. This Court in *M/s Ujagar Prints and Others (II) V. Union of India and Others* (1989) 3 SCC 488, was concerned with a number of issues raised by the appellant. The appellant was a processing house which inter alia processed the grey fabrics. Amongst other issues which were raised, one of the contentions urged on behalf of the appellant therein was that the grey fabric which was given for processing continued to belong to the customer and the processing house was only entitled to charge the processing charges. It was the case of the appellant therein that the price of the grey cloth, of which the processing house had never become the owner, could never be taken into consideration in arriving at the assessable value.

Repelling this contentions, this Court noticed that according to Sec. 4 of the Central Excise Act, the value of the article for the purposes of duty shall be deemed to be the wholesale cash price for which an article of the like kind and quality was sold or was capable of being sold at the time of removal of the article from the factory or premises of manufacture. It was then observed that in the case of processing houses they became liable to pay excise duty not because the manufacture of the goods.

It was held that it could not be contended, keeping in view the provisions of Sec 4 and the Central Excise (Valuation) Rules, 1975 that the assessable value of the processed fabric should comprise only of the processing charges disregarding the value of the grey cloth.

Justice Mukherji, in a separate but concurring judgment observed that the assessable value of the goods manufactured would include the value of the grey cloth in the hands of the processor plus the value of the job work done plus manufacturing profits and manufacturing expenses. The correct assessable value was to be the value of the fabric at the factory gate at the time when the manufactured goods leave the factory and enter the mainstream.

After the aforesaid judgment in *Ujagar Prints* case was delivered on 4.11.1988 a civil miscellaneous application for clarification was filed.

The Constitution Bench in a two paragraph order dated 27.1.1989 reported in (1989) 3 SEC 531, *M/s Ujagar Prints and Other (II) V. Union of India and Others*, clarified that the assessable value of the processed fabric would be the value of the grey cloth in the hands of the processor plus the value of the job work done plus manufacturing profit and manufacturing expenses whatever they pay. The factory gate was to mean the deemed" factory gate as if the processed fabric was sold by the processor. To make the position clear this Court gave the following example:-

It was further observed that the brand at which the processing house sells the goods "must be the value of the grey cloth or fabric plus the value of the job work done plus the manufacturing profit and the manufacturing expenses but not any other subsequent profit or expenses. It is necessary to include the processor's expenses, costs and charges plus profit, but it is not necessary to include the trader's profits who gets the fabrics processed, because those would be post manufacturing profits".

The present case is similar to Ujagar Prints case. In Ujagar Prints' case, it was the grey cloth which was given to the processor whereas in the present case it was the raw material for the manufacture of biscuits given to the appellant. After the biscuits are made, they are given back to or are delivered under the instructions of Britannia. The appellant was entitled to receive processing charges which would include its expenses plus profits for the purpose of determining the excise value. However, the cost of the raw material supplied by Britannia will have to be included in addition to the appellant's manufacturing costs and profit. What cannot be included on the ration of Ujagar Prints case is any profit of Britannia or expenses which are incurred after the manufacture of the biscuits by the appellant. Despite repeated attempts made by the learned counsel for the respondent, we are unable to distinguish this case from the ration laid down by this Court in the aforesaid two decisions of Ujagar Prints' case.

This appeal is accordingly allowed. The excise authorities will be at liberty to determine the amount of excise duty afresh in accordance with law. There will be no order as to costs.

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