
(2004) 05 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No's. 5756-59 of 2000

A. Infrastructure Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Jaipur

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35L(b)

Citation : (2004) AIRSCW 3160 : (2004) 93 ECC 673 : (2004) 167 ELT 369 : (2004) 5 SCALE 388 : (2004) 6 SCC 55 : (2004) 2 SCR 108 Supp : (2004) 4 Supreme 8

Hon'ble Judges : S. Rajendra Babu, C.J.;G. P. Mathur, J

Bench : Division Bench

Advocate : D.A. Dave, R.N. Karanjawala, Ruby S. Ahuja, Seema Sundd and Manik Karanjawala, for the Appellant; Ranjit Kumar T.A. Khan and B.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

S. Rajendra Babu, C.J.—These appeals are filed u/s 35L(b) of the Central Excise Act, 1944 against an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the Tribunal). In that proceeding the appellant raised two issues, namely, (i) whether the interest accruing on advances are deductible from the price or not, and (ii) as to deduction of the bank charges and collection charges.

2. During the relevant period, the appellant manufactured and sold the goods principally to Government and Public Sector Undertakings. On account of the fact that the payments were not effected against delivery or within any specified period, the payments of the prices became delayed averaging between 3 to 12 months and, therefore, the appellant claimed deduction in respect of interest of such receivables calculated for the period between the date of removal till the date of realisation of payment. The deduction so claimed was supported by Certificate of Chartered Accountant for the relevant period. Deductions were also

claimed in the price list filed from time to time. The assessing authority, the appellate authority and Tribunal rejected the claim made by the appellant on the basis that the contract did not specifically provide for payment of such interest on sales on credit. The Tribunal stated the matter of law as follows :-

"The interest so deductible is only the interest for the period mentioned in the invoice, otherwise it will lead to unintended consequences. In cases where payment to the manufacturer is indefinitely delayed or where the dealer refuses to pay the price, the sale price will stand wiped off, because the interest may exceed price. In such a case, are not the goods liable to excise duty ? The answer can only be emphatic 'no'. Excise duty is on the manufacturer of the goods. It is not depending on the issue as to whether the manufacturer gets the price of the goods from the dealer or not. So, the interest charged from the date of delivery till the realisation of the price should be understood with reference to the period fixed in the invoice. If the invoice provides a specific period up to thirty days for effecting payment, interest from the date of delivery till the expiry of that period of thirty days alone is deductible from the price mentioned in the invoice."

3. This part of the order is challenged apart from other aspects to which we will advert to a little later.

4. It is pointed out that this Court had occasion to examine the question as to the value of the goods on the date of removal whether interest on the price for the period during which the payment is deferred has to be deducted or not in the case of Assistant Collector of Central Excise and Others Vs. Madras Rubber Factory Ltd., . This decision again came up by way of review in the decision reported in Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, . In the second judgment, this Court stated as follows :-

"The case of the assessee (Madras Rubber Factory) is that where the goods are sold to upcountry wholesale buyers and payments are received quite sometime later, it is indeed a case of sale on credit and, therefore, the interest charged from the date of delivery of goods till the date of realisation of the price thereof should be deducted from the value of the goods. The interest charged, it is submitted, is only in lieu of the time taken in making the payment by the upcountry wholesale buyer. Since this is the amount received subsequent to the sale from the depots and does not fall within the ambit of any of the expenses held includable in Bombay Tyre International, it is clearly excludable. The claim for this deduction is, therefore, allowed."

(emphasis supplied)

5. A circular was also issued by the Government which is to the effect that interest on receivables cannot be permitted to be deducted from the assessable value if the interest is not charged over and above the sale price of the goods. However, this aspect was not accepted by the Tribunal. It was held that if the assessee is claiming interest out of the price mentioned in the invoice, when the

period for its payment is mentioned and when the invoice makes it clear that the sale is on credit, interest on the amount for the period of credit permitted must be a permissible deduction and it must be excluded from the price fixed in the invoice for finding out the assessable value.

6. The question whether the interest that is payable on the sale price that is not yet paid by the customer is built into the price structure or not and, therefore, should be deducted from the value of the goods needs to be examined.

7. This Court clearly stated in *Government of India and Others Vs. Madras Rubber Factory Ltd. and Others*, that since the amount is received subsequent to the sale from the depots and does not fall within the ambit of any of the expenses held includible in *Bombay Tyre International*, it is clearly excludible and the claim for this deduction should, therefore, be allowed.

8. In cases where buyers do not make payments immediately against delivery of the goods but payments are received subsequently it would indeed be a case of sale of credit and, therefore, interest is chargeable from the date of delivery of goods till the realisation of price thereof and should be deducted from the value of the goods. The question whether in a given case the price structure itself includes the interest charged or not is a matter for establishment on evidence. The fact that a particular period for payment is mentioned would indicate that the payment is not to be made immediately but at a subsequent date and that is credit sale and interest could be charged and deducted out of the sale price. But that circumstance, by itself, is not a decisive factor. Therefore, the Tribunal while remanding the matter should not have limited the investigation of the matter only to cases where the period has been subsequently stated in the invoice. Therefore, we are of the view that the Tribunal ought not to have confined the investigation by the concerned authority after remand to only that aspect of the matter and should have let the entire matter investigated as indicated by us.

9. Next we have to consider deduction of the bank charges and collection charges. We must make it clear that if the invoice price is the basis for valuation bank commission or interest charges payable to the bank in the account of the customer are definitely in the nature of post-manufacturing and post-clearing expenses and should be deductible from the assessable value. It cannot be stated that such expenses will form part of the sale price. The view taken by us finds support from the decision of this Court in *Commr. of Central Excise, New Delhi Vs. M/s. Vikram Detergent Ltd.*, which conclusion was arrived at by this Court after examining earlier decisions of this Court in *Asst. CCE v. Madras Rubber Factory Ltd.* [supra], *Shriram Fertilizers & Chemicals v. Union of India* (1997) 96 ELT 12 (SC) and *Government of India v. Madras Rubber Factory Ltd.* [supra]. These three cases were adverted to by a Bench of three Judges to hold that the interest on receivables arises on account of time lapse between the delivery of goods and the realisation of monies is deductible from the assessable value of the goods at the time of removal from the factory of the assessee. For the same reason, bank charges included in the price on account of clearance of

outstation cheques cannot form part of the price of the goods at the time of removal and as such excludable from the price while calculating the assessable value of the goods.

10. Therefore, we think, it is clear that the decision in Commissioner of Central Excise, New Delhi v. Vikram Detergent Ltd. case (supra) fully covers both the questions in this case and, therefore, we have no hesitation in modifying the order of the Tribunal to direct the authorities to whom the matters have been remanded to examine the question whether interest on receivables arises on account of time lapse between the delivery of goods and the realisation of monies is deductible from the assessable value of the goods at the time of removal from the factory of the assessee and also excludes the bank charges included in the price on account of clearance of outstation cheques.

11. The appeals stand allowed accordingly.