

(1997) 12 SC CK 0064
In the Supreme Court Of India
Case No : Civil Appeal No. 258 of 1991

Aluminium Industries Ltd.

APPELLANT

Vs

Collector of Central Excise, Bhubaneswar

RESPONDENT

Date of Decision : 04-12-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4(1)

Citation : AIR 1999 SC 1554 : (1998) 99 ELT 486 : (1998) 9 SCC 404

Hon'ble Judges : S. C. Sen, J; M. Srinivasan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The dispute in this case is about the valuation of aluminium rods. There is no dispute that at the material point of time there was a price control order in force relating to aluminium rods. This was done by a notification issued by the Government of India on 18-10-1978. The grievance of the appellant is that although the law is well settled that the controlled price should be taken as the normal price at which the goods are sold in wholesale trade, the Tribunal has departed from that principle. The reason given for discarding the controlled price as the normal price was stated in the following words:

"The Appellate Collector has categorically observed that from the records it was seen by him that the appellants realised extra amount of Rs 805 per M.T. as conversion charges in addition to the price fixed under the Aluminium (Control) Order."

2. It has been pointed out on behalf of the appellant that factually the Tribunal has overlooked the point that the extra amount of Rs 805 per M.T. was charged because of job work done by the assessee. That apart, what the assessee has charged in a particular case becomes irrelevant when the price control order is in force. If somebody has sold an article at a price higher than the controlled price it cannot be taken to be the normal price. The law on this point is laid down by

Section 4 of the Central Excises Act, 1944 which lays down rules of valuation of excisable goods. Clause (a) of Sub-section (1) of Section 4 provides that the goods should be valued with reference to the normal price thereof. This is 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 of the goods where the buyer is not a related person and the price is the sole consideration for the sale.

3. Therefore, what is to be seen is the price at which the goods are normally sold. If there is a price control order in force, it is expected that the goods would ordinarily be sold at the controlled price. The point is placed beyond doubt by proviso (ii) to Section 4(1)(a) of the Central Excises Act, 1944, which is as under:

"4. (1)(a)(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) 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 the normal price thereof;"

4. By virtue of this proviso a legal fiction has been created. The price fixed under any law for the time being in force has to be taken as the normal price of the goods. In that view of the matter, in the instant case, the price fixed by the notification dated 18-10-1978 will have to be taken as the normal price of the aluminium rods manufactured by the appellant.

5. The judgment under appeal is set aside. The appeal is allowed. There will be no order as to costs.