

**(2002) 03 KAR CK 0063**  
**In the Karnataka High Court**  
**Case No : W.A. No. 5624 (T-Tax) of 1999**

H and R Johnson (India) Ltd.

APPELLANT

Vs

Central Board of Ex. and Cus.

RESPONDENT

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**Date of Decision :** 14-03-2002

**Acts Referred:**

Central Excise Act, 1944 — Section 4 A  
Central Excise Rules, 1944 — Rule 173C (2A)  
Finance Act, 2000 — Section 95

**Citation :** (2002) 83 ECC 393 : (2002) ECR 516 : (2002) 144 ELT 506

**Hon'ble Judges :** R.V. Raveendran, J;K.L. Manjunath, J

**Bench :** Division Bench

**Advocate :** Arshad Hidayatullah, M.R. Srinivasan and G.K.V. Murthy, for the Appellant; Ashok Harnahalli, Sr. CGSC, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.V. Raveendran, J.—The appellant is a manufacturer of ceramic glazed tiles falling under Chapter 69 of the Central Excise Tariff Act, 1985. It has a unit at Kunigal, falling within the jurisdiction of Second Respondent.

2. The appellant sells glazed tiles all over the country in packages. The maximum retail price (MRP), is fixed by the appellant depending on the local sales tax, entry tax, cost of transportation, degree of competition and other relevant circumstances. As a consequence, the MRP declared by the appellant on its packages varies from State to State. The appellants stamps/prints only one retail price on the package depending on the State/Region in which it is sent for sale; and after deducting the prescribed abatement from such declared MRP, it pays the applicable excise duty.

3. Some Manufacturers, instead of declaring the maximum retail price applicable to the particular area/State, on the package, declare several maximum retail prices that may be applicable to different Regions/States, by printing/endorsing them on the packages.

4. The Department is of the view that excise duty is leviable not on the basis of the respective maximum retail price printed on the packages with reference to the region where it is sold, but on the basis of the highest of the MRPs, that are printed by the appellant on the packages meant for different areas. In other words, if the appellant prints different MRPs on packages for sale in different regions in the country (that is say Rs. 55/- for Karnataka, Rs. 60/-, for Maharashtra, Rs. 70/- for Delhi and Rs. 80/- for Mizoram) the Department wants the appellant to pay excise duty on all the goods of that type manufactured by it, with reference as the maximum of such retail prices (that is on a MRP of Rs. 80/-). The second respondent therefore issued a Notice dated 12-7-1999 to the appellant informing the appellant that Central Board of Excise & Customs ("CBEC" for short) had issued a circular dated 8-6-1999 containing instructions regarding filing of declarations. u/s 4A of the Central Excise Act 1944 and calling upon the appellant to file a declaration in the form prescribed as per the said Circular ensuring that the retail sale prices mentioned therein are given effect from 1-7-1999. The appellant was further informed as follows :

"Further, it is seen from the price circular and declarations filed by you in this office from time to time, that from 1st June 1998, you are following the system of different retail sale prices for different regions/States. The highest of such retail sale price shall be mentioned in Column 5 of the Declaration, irrespective of the region/State to which the goods are cleared and duty discharged accordingly, after deducting the allowable statement from such declared retail sale price to arrive at the assessable value. Failure to file the above mentioned Declaration immediately and failure to pay duty based on the highest retail sale price declared therein, will entail stringent action as per Central Excise procedures, as also seizure /confiscation of the goods u/s 4A of the Central Excise Act, 1944, without further notice."

5. By the said circular dt. 8-6-1999 issued by C.B.E.C., in exercise of power under Rule 173C(2A) of the Central Excise Rules, 1944, the format of the declaration was prescribed. As per the format, the manufacturer is required to declare only the highest of the retail sale prices at which unit packages are to be sold to the ultimate consumers, where different retail sale prices are made applicable for different regions/States; [vide Note (2) to the format]. In view of the said format, the appellant is required to mention only one retail sale price, i.e., highest of the retail sale price in the format and consequently pay excise duty on the basis of the said Highest Retail Price (less amount of abatement) even in regard to packages which are sold at a lower price and in regard to which the declared retail price is also lesser than the highest retail price.

6. Feeling aggrieved, the appellant filed W.P. No. 22915/1999 for a declaration that Note No. 2 to the Proforma of Declaration appended to the Circular dated 8-6-1999 by the first respondent was ultra vires the provisions of Section 4A of the Central Excise Act, 1944 and as a consequence thereof to quash the communication dated 2-7-1999 issued by the second respondent.

7. The learned Single Judge who heard the said petition dismissed the petition by order dated 20-7-1999. He held that having regard to Explanation 2 to Section 4A, if there are more than one retail price for any excisable goods, the maximum of such retail price has to be taken to be retail price and the said Explanation 2 is wide enough to cover different packages having different maximum retail prices declared on the package as the maximum of such retail prices.

8. Feeling aggrieved, the appellant has filed this appeal. The appellant has urged the following grounds :

(a) Even though Explanation 2 envisages payment of excise duty on the maximum retail price declared on a package, the second note to the declaration has made it compulsory for the assessee to pay excise duty based on the maximum out of all the retail prices applicable to different regions/States even though different MRPs may not have been declared on the packages. Therefore, insistence of payment of excise duty on the basis of maximum of all retail prices even if all the rates are not declared on a package is contrary to the provisions of Section 4A.

(b) As per Explanation 2 to Section 4A of the Act if more than one retail price is declared on a package, the excise duty has to be paid on the basis of the maximum of such retail prices. That means, the question of adopting the maximum of retail prices as the basis for arriving at the assessable value arises only if a package contains more than one retail price. It follows from this that if a package contains only one retail price, Explanation 2 is not applicable to such a case and it will be sufficient compliance with the provisions of Section 4A if excise duty is paid on the retail price declared on the package after deducting the applicable abatement from it.

(c) As per the Note No. 2 to the declaration annexed to the said circular dated 8-6-1999, even if only retail price is declared on a package, it cannot be the basis for arriving at the assessable value and the assessee has to take into consideration the different retail prices applicable to different regions/States and pay excise duty on the maximum of such retail prices. In other words, as per the said circular, the retail price declared on the package is irrelevant and what is relevant is the maximum of all retail prices declared in the declaration filed with the department as per the proforma annexed to the said circular. But, Explanation 2 only speaks of maximum retail price declared on a package and there is nothing in it to make an assessee to take into consideration a price not declared on the package for discharging its duty liability. Therefore, the said Note No. 2 is contrary to be provisions of Explanation 2 to Section 4A of the Act.

(d) The said note has the effect of discriminating between assessees who have sales in different States vis-a-vis assessees who have sales in only one State. The assessee having sales in different States is penalised when compared to another assessee situated in the same State having sales in particular State. The said circular is arbitrary and discriminatory and therefore violative of Article 14 of

the Constitution of India.

(e) The said Note 2 has made sales to nearer regions/States prohibitive for the assessee as higher excise duty has to be paid on goods sold in those States just because the assessee has made sales in distant States at higher M.R.Ps. As a result of this, free flow of trade and commerce throughout the country is impeded. Therefore, the said note is violative of Article 301 of the Constitution of India.

9. On the other hand, the department contends that while Sub-sections (1), (2) and (4) refer to retail sale price declared on the package. Explanation 2 does not refer to declaration on the package but merely refers to "retail sale price declared". The department therefore contends that the retail sale price referred to in Explanation 2 is not the retail price declared on the package but the retail price declared in the declaration under Rule 173C(2A). The department also contends that if different Retail Sale Prices are applicable to different Regions/States, the Manufacturer is required to declare under Rule 173C(2A), only the highest of the several retail sale prices and that price shall alone be deemed to be the retail sale price for purpose of Section 4A, in respect of goods sold in all regions. We may mention that the dispute relates only to the period from 1-8-1998 to 11-5-2000 as Explanation 2 has been amended with effect from 12-5-2000.

10. To appreciate the rival contentions, reference to the relevant provisions of the Act and the Rules will be necessary.

10.1 Section 4A of the Central Excise Act, 1944 relates to valuation of excisable goods with reference to retail sale price. The relevant portions of said section as it stood at the relevant point of time is extracted below :

"SECTION 4A. Valuation of excisable goods with reference to retail sale price. -  
(1) The Central Government may, by notification in the official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of Sub-section (2) shall apply.

(2) Where the goods specified under Sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in Section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under Sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

XXX XXX XXX Explanation 2 : Where on any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section."

10.2 Rule 173C(2A) of the Central Excise Rules, 1944 requiring the assessee to file a declaration declaring retail price of goods is extracted below :

"(2A) Every assessee who produces, manufactures or warehouses goods notified u/s 4A of the Act shall file with the proper officer a declaration in such form and in such manner and at such interval as the Central Board of Excise and Customs may specify, declaring the retail sale price of such goods, amount of abatement, if any on such sale price and such other particulars as may be specified by the said Board."

11. Sub-section (2) of Section 4A provides that where the goods specified in Sub-section (1) are excisable goods and are chargeable to duty with reference to value, then said value shall be deemed to be the retail sale price declared on such goods (less amount of abatement). If Sub-section (2) of Section 4A is read with Sub-section (1), there will be no doubt as to what is the basis for charging Excise Duty, as it refers to the retail sale price declared on such goods (Packages) less abatement. As the appellant declares only one retail sale price on the packages, it will be liable to pay excise duty on the respective retail sale price printed on the packages less abatement. In other words if the retail sale price of the goods to be sold in Karnataka is Rs. 55/-, the excise duty will be payable on Rs. 55/- less abatement in respect of such goods cleared for Karnataka, and if the retail sale price of the goods is Rs. 60/- in Maharashtra, excise duty will be payable on Rs. 60/- less abatement in respect of goods cleared for sale in Maharashtra, and so on.

12. But the department contends that having regard to Explanation 2 to Section 4A read with Rule 173C(2A) of the Central Excise Rules, 1944 if a manufacturer declares different retail sale prices for different areas, then the maximum of such retail sale prices will apply to goods of that category sold in all areas/regions. We find no substance in the contention of the department. Explanation 2 as noticed above provides that where on any excisable goods more than one retail price is declared, the maximum of such retail price shall be deemed to be the retail sale price for purpose of the said Section 4A. The words "where on any excisable goods more than one retail sale price is declared" should be read with reference to what is contained in Sub-sections (1) to (4) of Section 4A. The purpose of an explanation is to explain the meaning of words contained in the section. While construing explanations, a construction that is consistent with the purpose of the section should be placed on the explanation.

13. When we read Explanation 2 along with Sub-sections (1) to (4) of Section 4A it becomes clear that the words "where on any excisable goods more than one retail price is declared" refers to a situation where more than one retail sale price is declared on the package. If only one retail sale price is printed (i.e. declared)

on the packages meant for sale in a region, then, that price alone would be the retail sale price for purposes of calculating the excise duty in respect of the goods cleared for that region and not some other higher retail sale price that is printed on the packages which are meant for sale in some other region. On the other hand, if more one retail price is printed/ declared on the same package, then the highest of the several retail sale prices printed/declared on the packages, shall be the retail sale price for purposes of Section 4A.

14. We find support for this view from the new Explanation 2 to Section 4A which was substituted with effect from 12-5-2001 by Section 95 of Finance Act, 2000. New Explanation 2 reads thus :

"Explanation 1: (a) Where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

(b) Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates."

The new Explanation 2 makes it clear that where different retail sale prices are declared on different packages for sale of excisable goods in different areas, each such retail price shall be a retail sale price for purpose of valuation of the excisable goods to be sold in the area to which the retail sale price relates. In fact, this is exactly the contention of the appellant. One of the recognised principles of interpretation of statutes is that if there is ambiguity in an earlier legislation, a subsequent legislation may fix the proper interpretation which is to be put upon the earlier [vide : State of Bihar Vs. S.K. Roy, ]. Even though the amendment to Section 4A was not with retrospective effect, the substituted Explanation 2 to Section 4A gives a clear indication as to how the earlier Explanation 2 is to be read, particularly when the amendment is not with reference to the charging provision contained in Section 4A, but only to the explanation.

15. It is no doubt true that the format of declaration prescribed under Rule 173C(2A) requires the manufacturer to declare as the "retail sale price" only the highest of several sale prices that are applicable to different regions/States. But the contention of the Department that Explanation 2 to Section 4A refers to the retail sale price declared in the form of declaration prescribed under Rule 173C(2A) cannot be accepted. The form of declaration prescribed under Rule 173C(2A) does not determine the liability. The form cannot be so worded as to put a different meaning on Section 4A(2) or Explanation 2 to Section 4A. Further, if the form of declaration prescribed requires declaration of only one price, the question of Explanation 2 to Section 4A referring to the retail sale price declared in the form of declaration would not arise, as Explanation 2 refers to declaration

of more than one retail sale price. When the format of declaration contemplates only one retail sale price being declared and Explanation 2 contemplates more than one retail sale price being declared on the excisable goods, it necessarily follows that Explanation 2 refers to the retail sale price declared on the packages and not in the declaration under Rule 173C(2A). Once it is held that Explanation 2 refers to the retail price on the package and not on the format prescribed under Rule 173C(2A), the contention of the Department will have to be rejected as the appellant declares only one retail sale price on the packages sold in one region or State and therefore that alone will be the retail sale price for purpose of Section 4A in regard to such goods sold in such region. The question of applying retail sale price that is declared in some other area or region will not arise.

16. We therefore, allow this appeal and set aside the order dated 20-7-1999 in W.P. No. 22915/1999 passed by the learned Single Judge. W.P. No. 22915/ 99 is allowed moulding the relief suitable as follows :

(i) We declare that where the appellant has declared different retail sale prices on different packages (of excisable goods) for sale in different areas, each such retail sale price shall be the retail sale price for purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates. The Respondents are directed to act accordingly in regard to sales by appellant during the period 1-8-1998 to 11-5-2000.

(ii) In view of the aforesaid declaration it is unnecessary to declare Note 2 to the proforma is ultra vires the provisions of Section 4A or to quash the letter dated 2-7-1999 from the second respondent to furnish a declaration in the format prescribed.