
(1980) 01 MAD CK 0020
In the Madras High Court

In Re : Madras Rubber Factory Limited, Madras

Date of Decision : 01-01-1980

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 4, 4(4)

Citation : (1980) 01 MAD CK 0020

Hon'ble Judges : J.S. Natarajan, J

Bench : Single Bench

Judgement

S. Natarajan, Appellate Collector

1. This is an appeal by M/s. Madras Rubber Factory Limited, Madras. against the orders of the Assistant Collector of Central Excise, Madras III

Division, vide his C. No. V/16/17/1/75, dated 24-1-78. In this order, the Assistant Collector has directed that the assessable value of all products

manufactured by the appellants will be on the basis of their total sale price or billing price less actual cost of transportation and element of Excise

duty contained therein. He has argued that Section 4 of the Central Excise Act allows deduction of only transportation charges less duty element

from the assessable value and that the law does not permit the post manufacturing expenses to be excluded from the assessable value.

2. The appellants have mainly contended that even though Section 4 of the Central Excise Act has been amended with effect from 1-10-75. the

charging section, i.e., Section 3 of the Central Excise Act has not been amended and therefore, the law laid down by the Supreme Court of India

in *Voltas*" [1977] E.L.T. J 177 and *Attie Industries* 1978 E.L.T. (J 444) cases will remain unaffected and therefore, when their prices are uniform

to all their consumers, post-manufacturing expenses should be deducted from their prices to arrive at the normal price u/s 4 of the Central Excises

Act. In this connection, they have also drawn my attention to the Judgment of the Kerala High Court in a similar case of their Unit situated in

Kerala and also to the case of Nagpaul Petro-Chem Limited [1979 E.L.T. (J 117)] of the Madras High Court and also to the Judgment of the

High Court of Patna in Tata Engineering and Locomotive Company Limited vs. Superintendent of Central Excise, Jamshedpur 1977 E.L.T. (J 14)

and the Judgment of the Supreme Court of India dated 23-4-79 dismissing the SLP filed by the Union of India against the Judgment of the High

Court of Patna.

3. I have gone through the records of the case and the points put forth by the appellants in the appeal petition and the those advanced at the time of

Personal Hearing. The issue relates to the period from 1-10-75. The appellants are manufacturing tyres and tubes and rubber products falling

under Tariff Items 16 and 16A of the First Schedule to the Central Excise and Salt Act, 1944. It is seen from their contentions that there is no sale

of their products at the time and place of removal that their products are transported to various depots from where they are sold to the consumers

according to their requirements, that they have more than 5700 outlets and there exists no agreement between the appellants and the purchasers

and that they have uniform price for delivery at any place of destination and this uniform price is inclusive of the post manufacturing expenses. In

view of the foregoing submissions of the appellants, they requested for the approval of the price under Rule 6 of the Central Excise (Valuation)

Rules, 1975 stating that the prices quoted by them in the price-lists are retail prices. I do not find from the discussions of the Assistant Collector

that the department has any evidence to reject the appellants' contention that the prices quoted by them are retail. IN the impugned order, there is

an argument from the Assistant Collector that the sales to Industrial consumers and State Transport Organisation, Government etc., should be

deemed as wholesale transactions in view of the definition of wholesale trade u/s 4(4)(e) of the Central Excises Act, 1944. Section 4(4)(e) of the

Central Excises Act states that wholesale trade means sales to dealers, industrial consumers; Government local authorities and other buyers who or

which purchase their requirements otherwise than in retail. I fail to see how, when the appellants have stated that they have a uniform retail price to

all including the Industrial Consumers, transport organisation, etc., such price could be a wholesale price under sub-section 4(4)(e). Therefore the prices at which the goods are delivered at a uniform price in all their depots are nothing but retail prices. Consequently, Rule 6(a) of the Central Excise (valuation) Rules, 1975 would come into play and the normal price has to be determined under this Rule. Further, the appellants, in respect of a similar issue relating to their unit at Kerala have taken up the matter with the Kerala High Court and in accordance with the decision of the Division Bench of the Kerala High Court, the assessable value of their similar products from the unit at Kerala has been fixed after allowing the post manufacturing expenses. In view of this position, and in view of the Judgment of the Madras High Court (in whose jurisdiction the appellants' factory is situated) in the case of Nagpaul Petro-chem. Limited, allowing the post manufacturing expenses to be deducted, the lower authority should allow the post manufacturing expenses in this case after necessary verification and fix the assessable value as per Rule 6(a) of the Central Excise (Valuation) Rules, 1975. The appeal is accordingly disposed of.