

(1976) 12 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 163 (Tax) of 1975

I.T.C. LIMITED

APPELLANT

Vs

UNION OF INDIA and Others

RESPONDENT

Date of Decision : 16-12-1976

Acts Referred:

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

Citation : (1977) 6 CTR 207

Hon'ble Judges : R. M. Sahai, J

Bench : Division Bench

Judgement

R. M. Sahai, J. - The short question, on the undisputed facts, that arise for consideration, is the manner of determination of assessable value under S. 4 of the Central Excise & Salt Act, 1944. Admittedly, the petitioner carries on the business of manufacturing and sale of cigarette and smoking tobaccos of diverse kinds throughout India and owns and operates five cigarette factories in different State including the one at Saharanpur in Uttar Pradesh. Under the Self Removal Procedure introduced, with effect from, 1968 the petitioner used to submit price list to the respondents from time to time as required under Rule 173 (c) of Central Excise Rules, 1944. Such lists details the prices for the factory to distribution, from distributors, to wholesale dealers, from wholesale dealers to retailers and up to point of time sales to consumers. For the purposes of S. 4 the prices charged by the distributors to wholesale dealers were taken to be the value for assessment purpose.

2. It appears that as a result of Supreme Court decision in A. K. Roy & Ors. vs. Voltas Ltd. the petitioner took the stand from 1-3-1973, onwards, that the prices charged by them for sales to distributors should be taken as wholesale prices and not the prices charged by distributors to wholesale dealers.

3. The petitioner submitted a price list along with the statement showing

turnover and selling costs and other manufacturing expenses. It was claimed that the expenses incurred under the following heads were post manufacturing expenses and, therefore, they do not form part of the wholesale cash price for the purposes of determining assessable value under S. 4 of the Act :

- (a) Marketing and distribution expenses
- (b) advertising expenses
- (c) Freight on Cigarette and smoking mixture,
- (d) Interest.

4. Post manufacturing costs were worked out by the auditor of the petitioner by applying the principles laid down by the Central Board in Bata Shoe Co.s case.

5. Counsel for the petitioner has urged that for the purposes of determining the wholesale cash price for the purposes of the products of the petitioner. Within the meaning of S. 4 the relevant prices are the prices which the petitioner charges to its distributors and that to arrive at the wholesale cash prices the post manufacturing expenses and profits have to be deducted therefrom

6. S. 3 creates charge and levies duty on manufacture or production. S. 4 of the Act which provides for the mode of determination of value of an excisable article for the purpose of levy of duty reads :

"Determination of value for the purposes of duty :- Where, under this Act, any article is chargeable with duty at rate depended on the value of the article, such value shall be deemed to be -

(a) the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold at the time of the removal of the article chargeable with duty from the factory or any other premises of manufacture or production, for delivery at the place of manufacture or production, or if a wholesale market does not exist for such article at such place, at the nearest place where such market exists, or

(b) where such price is not ascertainable the price at which and article of the like kind and quality is sold or is capable of being sold by the manufacturer or producer of his agent, at the time of the removal of the article chargeable with duty from such factory or other premises for production, or if such is not sold or is not capable of being sold at such place, at any other place nearest thereto."

But it is not every price but the price at the factory gate or at the time of removal on which duty is levied. There may be no difficulty where entire produce is sold at factory gate but where either the nature of trade is such or due to commercial reasons the article has to be carried by the manufacture to the nearest wholesale market it is bound to incur expenses such as freight, octroi etc. It was held in Voltas case at page 1231 :

"The section makes it clear that the excise is levied only on the amount

representing manufacturing cost plus the manufacturing profits and excludes post manufacturing operation, namely, selling profit. The section postulates that the wholesale price should be taken on the basis of cash payment thus eliminating the interest involved in wholesale price which gives credit to the wholesale buyer for a period of time and that the price has to be fixed for delivery at the factory gate thereby eliminating freight, octroi and other charges involved in the transport of the articles."

The learned Senior Standing Counsel appearing for the Union of India not dispute that the post manufacturing expenses and profit have to be excluded in determining the assessable value under S. 4 of the Act as was made clear by the Supreme Court in Voltas case. We may also point out that in the case of this very petitioner, a Division Bench of Karnataka High Court in Union of India & Ors. vs. I.T.C., Ltd., following the decision in Voltas case said that :

"It is thus clear that the wholesale price must be determined on the basis of cash payment representing only manufacturing cost and manufacturing profit but excluding the selling cost and selling profit and that price has to be fixed for delivery at the factory gate. Some of the items to be excluded are interest involved in the whole-sale price when credit is allowed to the whole sale buyer for a period of time, freight octroi and other charges involved in the transport of the articles".

7. We are in respectful agreement with the view taken by Karnataka High Court. Similar view has been taken by the Maharashtra High Court in India Tobacco Co. Ltd. vs. Union of India and others any by the High Court of Kerala in Madras Rubber Factory vs. Superintendent of Central Excise decided on 1st April, 1976 by the Madras High Court in Wazir Sultan Tobacco Co. Ltd. vs. Union of India.

8. It is clear from S. 4 that where a wholesale market for any article does not exist at the place of the factory then the wholesale cash price for such article would be the price at the nearest place where such market exists. It is urged that as the petitioners themselves admit that there is no wholesale market at Saharanpur, the petitioner have, therefore, to incur certain expenses for transporting the goods to the place where such market and exists in view of S. 4 such expense shall be representing only the manufacturing cost.

9. Counsel for the respondent urged that the decision in Voltas case have to be understood in the light of the subsequent observations made by the Supreme Court in Atic Industries vs. Dave, Assistant Collector, Excise and has urged that the wholesale cash price charged by the manufacturer to the wholesale dealer less trade discount would represent the value of the goods for the purpose of assessment of excise under S. 4(a). According to him, no other amount can be deducted out of the price charged by the manufacture to the wholesale dealer. He has urged that Atic Industries case is a latter decision and it has narrowed down the principles enumerated in Voltas case. He has urged that there is a conflict in the two decisions and we should follow the principles laid down in Atics

case. The Voltas according to him should be confined for the facts of the case. In support of his argument he has placed reliance on Regional Manager vs. P. D. Dubey and M. K. Sabba vs. Faizal Bhai Abdul Bhai. We are unable to appreciate the relevance of those two decisions. It is difficult to agree with the submissions of the learned Senior Standing Counsel that there is a conflict between two Supreme Court decisions. As a matter of fact the Supreme Court in Atic Industries case followed the principles laid down in Voltas case and added at page 967 :

"The value of the goods for purpose of excise must take into account only the manufacturing cost and the manufacturing profit and it must not be loaded with post manufacturing costs or arising from post manufacturing operation If the price charged by the wholesale dealer who purchases the goods from the manufacturer and sells them in wholesale to another dealer were taken as the value of the goods. It would include not only the manufacturing cost and the manufacturing profit of the manufacturer but also the wholesale dealers selling cost and selling profit and that would be wholly incompatible with the nature of excise."

10. Both the decisions lay down the same principle, namely manufacturing cost and manufacturing profit should not be loaded with post manufacturing cost and profit. The principle has been applied to different set of facts. We, therefore, do not find any merit in this submission of the learned Senior Standing Counsel.

11. It is not denied that no sale of article manufactured by the petitioner is made at Saharanpur. The wholesale market for those articles exist at certain other places. For purposes of transporting those places the petitioner has to incur certain expenses, like freight and octroi. To sell the goods at each of those places the petitioner has to maintain an establishment and incur expenditure thereon. In view of the law laid down in Voltas case and Atics case such expenses should be regarded as post manufacturing expenses.

12. The Central Excise authorities have not applied their mind and examined whether expenses incurred and claimed by the petitioner or part thereof were post manufacturing expenses. If the sale price charged by a manufacturing or producers consist of only manufacturing costs or manufacturing profits no exception can be taken; but if it includes expenses incurred on freight, advertisement, distribution interest or such other items as can be put in the category of post manufacturing claim deduction of the same while determining the wholesale cash price for the levy of excise duty under S. 4 of the Act.

13. The respondents have to ascertain whether the price lists submitted by the petitioner showing post manufacturing expenses is correct or not. In case it is found that the expenses incurred or part thereof are post manufacturing expenses and further the petitioner is entitled to deduct the same and the authorities shall levy excise duty after granting deduction of such expenses.

14. The result is that the petition succeeds and the order dated 30th July 1973,

11th February 1974, 3rd June 1974, 7th February, 1974 and 4th February, 1974 are quashed. Respondents are directed to ascertain the expenses incurred by the petitioner on four heads and finalise the price 1st in the light of the observations made by us above. The parties shall bear their own costs.