(1976) 12 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 163 (Tax) of 1976

I.T.C. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 16-12-1976

Acts Referred:

Central Excise Rules, 1944 — Rule 178
Central Excises and Salt Act, 1944 — Section 4

Citation : (1977) 1 ELT 29

Hon'ble Judges : R.M. Sahai, J;D.M. Chandra Shekhar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The short question, on the undisput facts, that arises for consideration, is the manner of determination of assessable value u/s 4 of the Central Excises and Salt Act, 1944. Admittedly the petitioner carries on the business of manufacturing and sale of cigarette and smoking tobaccos of diverse kinds thaoughout India and owns and operates five cigarette factories "in different States including that one Saharanpur in Uttar Pradesh. Under the Self Removal Procedure introduced, with effect from 1968, the petitioner used to submit price lists to the respondents from time to time as required under Rule 178 (c) of the Central Excise Rules, 1944. Such lists detailed the prices for sales from the factory to distributors, from distributors to wholesale dealers, from wholesale dealers to retailers and upto point of time sale to consumers. For the purpose of Section 4 of 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 and Another Vs. Voltas Limited, , the petitioner took the stand from 1-3-1973, onwards, that the prices charged by them for sale 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 u/s 4 of the Act.

(a) Marketing and distribution expenses.

(b) Advertising expenses.

(c) Freight on cigarette and smoking mixture.

(d) Interest.

4. Counsel for the petitioner has urged that for the purposes of deter mining the wholesale cash price of the products of the petitioner Within the meaning of Section 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 profit have to be deducted therefrom.

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

Determination of value for the purposes of duty.--Where, under the Act, any article is chargeable with duty at a 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 manufacturing 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 an article of the like kind and quality is sold or is capable of being sold by the manufacturer or producer or his agent, at the time of the removal of the article chargeable with duty from such factory or other premises for delivery as the place of manufacture or production or if such is not sold or is not capable of being sold at such place, at any other place nearest thereto".

6. 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 on due to commercial reasons the article has to be carried by, the manufacturer to the nearest wholesale market it is bound to incur expenses such as freight, octroi etc. It was held in Voltas'' case (at page 231 of A.I.R.).

"The section makes it clear that the excise is levied only the amount representing manufacutring costs plus the manufacturing profit and exclude post manufacturing operation, namely, selling profit. The section postulates that the wholesale price should be taken on the basis of cash payment thus eliminated 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 did not dispute that the post manufacturing expenses and profit have to be excluded in determining the assessable value under Seciton 4 of the Act as was made clear by the Supreme Court in Volta''s case. We may also point out that in the case of this very petitioner, a Dvision Bench of Karnatak High Court in Writ Appeals Nos. 8 to 11 of 1975 (Union of India v. I.T.C, Ltd.) following the decision in Voltas''s 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 costs and selling profit and that price has to be fixed for delivery at the factory gate. Some of the items to be excluded are the interest involved in the wholesale price when a credits is allowed to the wholesale buyer for a period of tie, 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 Writ Appeal No. 293 of 1974 (Indian tobacco Co. Ltd. v. Union of India) and by the High Court of Kerala in O.P. Nos. 1290 and 1524 of 1973 (Madras Rubber Factory v. Superintendent of Central Excise) decided on 1st April, 1976 by the Madras High Court in Writ Petition Nos. 784 and 7143 of 1974, 2274, 2275 and 5163 of 1975 (Wazir Sultan Tobacco Co. v. Union of India).

8. It is clear from Section 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 petitioner 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 exists and in view of Section 4 such expenses shall be representing only the manufacturing cost.

9. Counsel for the respondent urged that the decision in Voitas''s case has to be understood in the light of the subsequent observations made by the Supreme Court in Atic Industries Ltd. Vs. H.H. Dewa, Asstt. Collector of Central Excise and Others, 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 purposes of assessment of excise u/s 4(a). According to him, no other amount can be deducted out of the price charged by the manufacturer to the wholesale dealer. He has urged that Atic Industries'' case is

a latter decision and it has narroew down the principles enumerated in Voltas'' case. He has urged that there is a conflict in two decisions and we should follow the principles laid down in Atic''s case. The Voltas''s case (Supra) according to him should be confirmed to the facts of the case. In support of his argument he has placed reliance or The Regional Manager and Another Vs. Pawan Kumar Dubey, and The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others, .We are unable to appreciate the relevance of those two decisions. It is difficult to agree with the submission of the learned Senior Standing Counsel that there is a conflict between two Supreme Court decisions. As a matter of the fact the Supreme Court in Atic Industries case followed the principles laid down in Volta''s 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 and it must not be loaded with post manufacturing costs or arising from manufacturing operation....It the price charged by the wholesale dealer who purchases the goods from the manufacturers 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 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 articles manufactured by the petitioner is made at Saharanpur. The wholesale market for those articles exist at certain other places. For purposes of transporting those articles to 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 Aries'' ease 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 manufacturer or producer consists of only manufacturing costs or manufacturing profit 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 expenditure he is certainly entitled to claim deduction of the same while determining the wholesale cash price for the levy of excise duty u/s 4 of the Act.

13. The respondents have the 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 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 petitioner 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 list in the light of the observations made by us above. The parties shall bear their own costs.