(1962) 10 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No. 1190/62

Kerala Ceramics APPELLANT

Vs

Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 29-10-1962

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (1979) 4 ELT 453

Hon'ble Judges : P.T. Raman Nair, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.T. Raman Nayar, J.—It is the common case the determination of the value of the articles maufactured by the petitioner for the purpose of levying duty under the Central Excises and Salt Act, 1944, is to be made u/s 4(a) of the Act on the basis of the wholesale cash price at which the petitioner himself sells his wares at his factory, there being apparently no other wholesale sales of similar wares for determining the wholesale cash price for which like articles are sold or are capable of being sold. The petitioner''s case is that he makes wholesale sales only to his sole agents Messrs. Bawa Agencies (Private) Ltd. and that he has allowed them a trade discount of 19 1/4% which, under the Explanation to Section 4, should be deducted from the gross price in determining the wholesale price. In refusing to make this deduction, the 1st respondent assessing authority depended on the circumstance that there were sales by the petitioner to persons other than Messrs. Bawa Agencies in which sales no discount of any kind was allowed. But the price fetched in such sales could be the basis for determining the value of the articles u/s 4(a) only if those ales were wholesale sales in which case alone would that price be the wholesale cash price. The petitioner''s case is and this is not contradicted by the 1st respondent in his counter affidavit that these sales for which no discount was allowed were small sales (aggregating to less than 1% of the total sales) to his own workmen and other private parties and not to dealers. If that be true and the sales be direct sales in small quantities to consumers they can scarcely be called wholesale sales so as to make the price fetched the wholesale price. This aspect of the matter has not been considered at all by the 1st respondent and he has, in my view, acted arbitrarily in refusing to deduct the discount given by the petitioner - that the petitioner has given a discount of 19 1/4% to Messrs. Bawa Agencies is not denied - in determining the value of the articles. Of course, if any of the sales to persons other than Messrs. Bawa Agencies is a wholesale sale and no discount has been given for the sale, then the price fetched might well be the wholesale cash price for which the articles are capable of being sold and a trade discount paid to a favoured customer might be of no consequence. Even so, sales of negligible quantities might have to be left out of account. But, as I have said, the assessing authority has not considered this aspect of the matter at all, and has, without any material, jumped to the conclusion that the sales to persons other than Messrs Bawa Agencies were wholesale sales.

2. In the result I allow the petition and quash the demand notice Ext. P6 served on the petitioner in pursuance of the arbitrary assessment. This will not, of course, prevent the assessing authority from making a fresh assessment in accordance with law.

3. There will be no order as to costs.

