
(1976) 02 MAD CK 0024

In the Madras High Court

Case No : W. Ps. No's. 2180 of 1972 and 2742 of 1975

Madras Rubber Factory Limited and Others

APPELLANT

Vs

Superintendent of Central Excise and Others

RESPONDENT

Date of Decision : 13-02-1976

Acts Referred:

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

Citation : (1979) 4 ELT 485

Judgement

1. Since the issues involved in all these writ petitions are practically the same, I find it convenient to dispose of them together.

2. The petitioners in W P. No. 2180 of 1972, are The Madras Rubber Factory Ltd., who are manufacturers of automobile tyres under the brand

name of ""Mansfield"". The tyres manufactured by the petitioners are sold to the consumers through dealers all over India. Their factory is situate at

Thiruvottiyur which is outside the Madras City. For the purpose of effecting the sale of their tyres, they have a separate sales and technical service

organisation independent of its manufacturing unit. In the year 1967, this sales organisation consisted of six sales divisions or districts, each one of

the division consisting of 2 or 3 States and as many as 25 sales depots including branches, functioning under the Divisional or District Office. The

petitioners do not enter into any sales of their tyres for delivery at the factory gate. On the other hand, they make the tyres available to their

consumers throughout India through their dealers, at a uniform price. For this purpose they have two prices, one the billing price" and the other the

"list price". The billing price is a uniform price at which the tyres are sold to the dealers anywhere in India These dealers will sell the tyres to the

consumers at the "list price" which includes the dealers" margin of profit. The list

price is also a uniform price prevailing throughout India so that the consumers who purchases Mansfield tyres anywhere in India, will pay the same amount, notwithstanding the fact that the expenses involved by way of foresight ,insurance, etc., would be widely divergent, depending upon the distance of the sale point from the factory. According to the petitioners 8.71 per cent of the billing price represents the following costs.

3. The Petitioners claimed before the Excise Authorities that a portion of the billing price which represents post-manufacture expenses as aforesaid

will not come under charging provision in Section 3 read with Section 4 of the Central Excises and Salt Act, 1944, hereinafter referred to as the

Act, and that therefore the levy under the Act should be restricted only to the manufacturing cost plus Manufacturer's profit. By an order dated 9-

7-1970, the Superintendent of Central Excise, Madras North, the first respondent herein, informed the petitioners that Section 4 of the Act did not

provide for any abatement of duty in respect of post-manufacturing expenses incurred by the Company from the assessable value and that, as such

the Company is not entitled to reduction of any post-manufacturing expenses. As against that order, the petitioners went on appeal to the Collector

of Central Excise, who, however, by his order dated 9-11-1970 confirmed the original order passed by the first respondent. His view was that

Section 4 of the Act provided for deduction only in respect of the trade discount, if any, and that there was no provision to deduct any other

element of cost from the ruling sale price. The petitioners thereafter appealed to the Government of India, the third respondent herein, who by its

order dated 7-4-1972 held that as there is no direct sale at the place of production, the sale depots of the petitioners throughout the country should

be taken to be the wholesale market for the purpose of Section 4 of the Act, and that the uniform prices charged at the various depots should be

taken to be the price in force at the nearest market. Thus the petitioners' claim for exclusion of the post-manufacturing expenses from the

assessable value determined for the purpose of excise duty having been rejected by all the authorities, they have approached this Court for the

issue of a Writ of Certiorari to quash those orders passed by the respondents.

* * *

9. According to the petitioners, for the purpose of determining the wholesale

cash price, the price which would have been charged by the

Petitioners if the tyres manufactured by them have been sold at the factory gate and it will normally be the aggregate of the manufacturing cost plus

the manufacturing profit and such notional price will not include the post-manufacturing expenses.

10 According to the learned Advocate-General appearing for the respondents the various depots established by the petitioners for effecting sales

of the tyres manufactured by them should be taken to be part of their factory and the sales effected at those depots should be deemed to be the

sales at the factory gate and therefore, the price charged for "the articles at the sales depots should be taken as the wholesale cash price,

irrespective of the fact whether such price includes the cost of transport, insurance or of any other services. It is said on behalf of the respondents

that the wholesale market price is the price charged for the goods article at the time when it enters the stream of trade, and that the goods having

entered the stream of trade on their sales effected in the sale depots, the price charged at the sale depots should be taken to be the wholesale cash

price.

* * *

14. The Excise Department itself has accepted the principle that post-manufacturing expenses cannot be taken note of for determining the

wholesale cash price while dealing with a case in the year 1967 where a similar claim was put forward by Bata Shoe Company. The Bata Shoe

Company had also a uniform price for their goods ruling at different places within the country as such, the uniform prices would include an ex-

factory processes. While dealing with the said case, the Central Board of Revenue ruled that the post-manufacture expenses could not be taken

note of for arriving at the value of the goods for assessment to excise duty. Basing on the said decision of the Board, instructions have been issued

to the Excise authorities as to how the wholesale cash price in the case of firms clearing goods from the manufacturing premises to their distribution

depots should be arrived at. Those instructions are found in the basic Manual of Departmental Instructions on Excisable Manufactured Products.

Those instructions are extracted below :

4. As regards point No. (ii) above, the Board has held that Section *ibid.* clearly

envisages the wholesale cash price prevalent at the factory gate, in other words for the purpose of assessment under that section, what is contemplated is an ex-factory price which includes full factory profits. It follows, therefore, that elements which are attributable to post-factory processes (which in this case were referable to the Sales Organisation as distinct from the manufacturing unit proper) should be excluded. In the matter of detail, the Board has observed that the following expenses could be considered as referable to sales organisation :

- (a) Distribution expenses when they are reasonable and pertain to salaries and emoluments of that portion of the staff who is wholly engaged in the organisational work of the Wholesale Depot;
- (b) Travelling expenses when they are reasonable and pertain to the inspection Staff of the Sales organization ;
- (c) Expenses on advertisement wholly attributable to the Sales Organisation ;
- (d) Insurance charges on footwear in transit to various customers and Sales Depots as well as those incurred on the stocks in Sales Depots.

Insurance charges on account of stores and stocks in the factory and on goods in transit from the factory to the wholesale depots will, therefore, be inadmissible.

- (e) Interest on the value of stocks at Sales Depots.
- (f) Expenses on account of octroi and Sales Taxes.

As regards the freight, while in theory the actual freight charges incurred between the factory of the nearest wholesale market and the place of actual consumption should be excluded from the value assessable to duty, rebate on account of the expenses incurred by the factory on freight charges should not be allowed, if such charges are voluntarily incurred by the factory with a view to maintain parity of prices at all places where the products are marketed."".

15. In view of these instructions, the petitioners' claim for exclusion of post-manufacturing expenses for determination of the assessable value of the goods, cannot straight away be denied, and it is not known as to why a different rule has been applied in the petitioners' case.

16. The learned Advocate General would, however, contend relying on the observations of the Supreme Court in *Atic Industries v. Asst.*

Collector, Central Excise, 1978 E.L.T. 444 that the value of the goods at the time when they first enter the stream of trade should be taken to be

the wholesale cash price and that should be adopted as the basis for finding out the wholesale cash price. But, I find that the reference to the

stream of trade"" was made by the Supreme Court while dealing with a chain of transactions among the wholesale dealers. While rejecting the

contention of the respondents that the sale price charged by the last wholesale dealer to the retail dealer alone should be taken as the wholesale

cash price, the Supreme Court pointed out that the only relevant price for assessment of value of the goods for the purpose of excise in such a case

would be the price which the manufacturer receives from the first wholesale dealer, that is, when the goods first enter the stream of trade and that

once the goods have entered the stream of trade and are on their onward journey to the consumer, whether along a short or a long course

depending on the nature of the goods and the conditions of the trade, excise is not concerned with what happens subsequently to the goods.

Having regard to the context in which the reference has been made by the Supreme Court to the words ""stream of trade"". I am not able to accept

the contention of the learned Advocate General that the price charged for the goods when it first enters the stream of trade should be treated as the

wholesale cash price without reference to the place of sale and the components of the sale price. In my view, the respondents are not justified in

their stand that they are entitled to levy duty on the billing price without making allowance for the post-manufacturing expenses.

17. The petitioners claim seven items of expenses as post-manufacturing charges as earlier detailed. The respondents have rejected the petitioners"

claim for exclusion in toto on the erroneous basis that they cannot be excluded. Now that it has been held that the petitioners are liable to pay

excise duty only in relation to the manufacturing cost plus manufacturing profit; all the writ petitions are allowed and the Superintendent of Central

Excise in each of the Writ Petitions is directed to determine the Excise duty after excluding the post-manufacturing expenses. There will be no

order as to costs.