
(1976) 06 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 4936/74

Premier Tyres Limited

APPELLANT

Vs

Assistant Collector of Central Excises and Another

RESPONDENT

Date of Decision : 22-06-1976

Acts Referred:

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

Citation : (1979) 4 ELT 490

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Judgement

T. Chandrasekhara Menon, J.—In this O.P. the Premier Tyres Limited (hereinafter referred to as the Company) seeks a writ of mandamus for directing the Assistant Collector of Central Excise, IDO, Ernakulam, 1st respondent to dispose of the representations made by the company, copies of which are marked as Exts. P2 and P3 and pass orders accepting assessable values mentioned in Ext. P4, P4(a) to P4(c) and ill the meantime to direct the 1st respondent to refrain from assessing the recovery of excise duty on the post-manufacturing cost and selling profits on the products of the Company. Another prayer is for the issue of a writ of mandamus for directing the 1st respondent to allow clearance on the basis of Ex. P4 series price lists without making any alteration. There is also a prayer for a writ of certiorari for directing the respondents to transmit all papers and documents relating to the orders of assessments for each of the years commencing from 1962 including the orders of assessments and levy and collection of duty to this court so that the same shall be quashed. A direction is also sought for to the respondents for refunding the excess amount collected from the petitioner on the assumption that excise duty is chargeable on post-manufacturing cost and selling profits.

2. The petitioner-company is a public limited company. For the purpose of effecting sales of the products the petitioner has a separate sales organisation independent of its manufacturing unit. It is alleged that the petitioner does not

have ex-factory price for tyres, etc., manufactured by it. It does not enter into sales of its tyres and other products for delivery of the same at the factory gate. It has sales depots and storage depots throughout India and all the tyres are sold through these depots. These depots-sell these products to dealers and government and semi-government enterprises at the net dealer price list which is inclusive of post-manufacturing expenses such as distribution expenses, uniform freight etc. Net dealer price is the same where-ever it is sold in India. The dealers who buy from the depots are selling tyres and other products to the consumers at the approved retail price which includes the dealers margin of profit. The list price is also the uniform price prevailing throughout India so that consumers who purchase the premier tyres and other products anywhere in India will pay the same amount, notwithstanding the fact that the expenses involved in the nature of freight, insurance etc., would be widely different depending upon the distance of the sale point from the factory.

3. The net dealer price of the petitioner in regard to the tyres and other products includes equalised freight, insurance expenses and distribution expenses referable to sales organisation alone, travelling expenses of sales and inspection staff and advertisement expenses, wholly attributable to sales promotion and all interests upon the finished goods stored at the depots outside the factory. It is alleged that all these expenses represent the post-manufacturing expenses of the petitioner's products. Hence-the net-dealer price by which the sales are affected by the sales depots. include a particular amount which could be representing only the post-manufacturing expenses being the average of the total expenses involved under the heads mentioned above.

It is alleged that all the tyres and other products manufactured by the petitioner is capable of being sold in wholesale at the place of manufacture or production. The, petitioner is in fact not selling any tyres and products for delivery at the factory but the tyres are however capable of being sold in wholesale for delivery at the factory. According to the petitioner in the matter of payment of excise duty the value to be arrived at is the price at which the tyre and other products are capable of being sold for delivery at the place of manufacture or at the factory gate at Kalamassery and such value would not include the post-manufacture expenses coming under the heads already mentioned. In the case of the petitioner all the expenses of promoting the sale of tyres and other products are being borne by petitioner and not by the dealers and the trade discount which would generally be given by the manufacturer to the seller/dealer who would promote the sales of the commodity in the sales of the petitioner would actually represent the post-manufacturing expenses which are borne by the petitioner.

4. Section 3 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) provides for levy of excise duty on all excisable goods which are produced or manufactured in India at the rate set-forth in the First Schedule to the Act. Determination of assessable value for the purpose of assessment is dealt with in Section 4 of the Act. According to the petitioner as per the provisions in

Section 4 of the Act the company would not be liable to pay excise duty on the post-manufacturing expenses. However, the Central Excise department had been insisting upon the petitioner paying the excise duty on the billing price which would represent the factory price; including the elements representing the post-manufacturing expenses included in the dealer price.

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10. In respect of the question raised in this O.P. the matter is now concluded by the decision of the Supreme Court in A.K. Roy and Another Vs. Voltas Limited, . A division Bench of this court has to consider this, question in writ appeal Nos. 461 and 462 of 1973 - 1979 E.L.T. J 89(SC). There, the learned Chief Justice speaking for the Bench emphasised certain aspects which are clearly discernible from the working of the section itself. His Lordship said :

"The wholesale cash price is a price for which an article is actually sold or is capable of being sold. This necessarily implies that there need not be actual sale of the article, in order to visualise wholesale cash price for that article. The other aspect which we wish to emphasise is that the sale contemplated by the section must beat the time of the removal of the article chargeable with duty from the factory, or any other premises of manufacture or production. These, we think, are very important aspects for if the price should be at the time of the removal of the article chargeable for delivery at the place of manufacture, by no stretch of imagination, can that price comprehend any freight or insurance or amounts expended for promotion of sale by a manufacturer who may have sales organisation elsewhere and who may choose to carry his goods from the place of manufacture to distant parts in India. What we have said above is on all fours with the observations of the Supreme Court in A.K. Roy and Another Vs. Voltas Limited, ."

11. The Court extracted the following passages from the Judgment in A.K. Roy and Another Vs. Voltas Limited,

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On the basis of the Supreme Court decision the court said that

"It is evident that the billing prices for which the articles manufactured by the respondents are sold to the various depots all over India do not represent the manufacturing cost plus the manufacturing profit alone. The goods have to be taken to far off places and to nearby places and it appears that the respondent has struck an average as the uniform cost of transport which is added and the billing price fixed for sale to the depots wherever they are situated. This is only a means by which a uniform price is fixed for the goods to be supplied to the depots, wherever they are situated in India. But the important aspect is that that price, termed the billing price, reflects not only the manufacturing cost and the manufacturing profit but the freight, insurance and the sale promotion cost and the portion of the cost attributable to overheads as far as the sale organisation is

concerned. This was the specific contention of the respondent and the contention is acceptable. On the working of the section and as it is interpreted by the Supreme Court, there is no justification for taking the billing price, unless it be as contended by the learned Advocate General that it is possible to postulate that on the facts of the case, it is the latter part of Section 4(a) of the Act that should apply."

12. In that case the Advocate General contended that the respondent does not effect any sales of the manufactured articles at the site of manufacture, and it was also contended that there is no material and not even an averment that there are sales of articles of like kind and quality at the site of manufacture. On this basis, it was contended by the Advocate General that the authorities were right in taking the billing price which represented the wholesale cash price at the nearest place where such market existed. In dealing with these contentions, the court said that "this argument fails to take note of two specific relevant factors, (1) that in the O.P. it had been categorically stated that the articles manufactured by the respondent are capable of being sold at the time of removal of the articles at the place" of manufacture and (2), the Supreme Court has further held that market does not mean that there should be a physical market in the sense that there is a place to which the articles could be taken and where such or like articles could ordinarily be sold. If the articles are capable of being sold at the time of removal and at the site of manufacture even in the absence of any evidence of actual wholesale cash price for such sales, such cash price of sales will have to be ascertained by reference to established factors".

13. In this O.P. there is also a specific averment that all the tyres and other products manufactured by the petitioner is capable of being sold in wholesale at the place of manufacture or production.

14. In the light of the above discussion. I would issue a writ of mandamus directing the 1st respondent - Assistant Collector of Central Excise. IDO Ernakulam, to dispose of Exts P2 and P3 representations and pass orders in the matter in accordance with law in the light of the decision of the Supreme Court in A.K. Roy and Another Vs. Voltas Limited, and Writ Appeal Nos. 461 and 462 of 1975 - 1979 E.L.T. 189(App). The 1st respondent in the meantime will refrain from assessing and recovering the excise duty on the post-manufacturing cost and selling profits on the products of the petitioner-company. In regard to the payment already made on the basis of the assessments it is necessary that the respondents should make re-assessments in respect of the tyres concerned and if any amount is found due to the petitioner company that should be refunded.

15. O.P. is disposed of as above; but I make no order as to costs.