

(1978) 10 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 1720 and 1721 of 1978

Union Carbide India Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-10-1978

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4, 4(1), 4(2)

Citation : (1979) CENCUS 62 : (1979) 4 ELT 86

Hon'ble Judges : Mohan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohan, J.—These writ petitions raise an interesting question as to the interpretation of Section 4(2) of the Central Excises and Salt Act,

1944 (Central Act 1 of 1944 - hereinafter referred to as the Act). The following facts may be stated in order to appreciate the controversy involved.

2. The petitioner is a company registered under the Indian Companies Act, 1913, and having its registered office at No. 1 Middleton St. Calcutta.

It is engaged in the manufacture, among other things, of electric dry batteries, for which purpose it has factories in several places in India, Two of

such factories are in Tiruvottiyor and Guindy, Madras. Electric dry batteries are goods which are excisable under the Act under Item No. 31(1) of

the First Schedule to the Act.

3. The batteries manufactured by the petitioner are removed from the factory on payment of excise duty in accordance with the self-removal

procedure to their sales godowns situated in different parts of India from where

they are sold to wholesalers. In other words, no delivery of these goods is made at the place of removal i.e., the factory. The petitioner is required under the Central Excise Rules to submit to the excise authorities what are called price lists and classification lists in respect of various types of batteries manufactured by it. Accordingly the petitioner submitted detailed price list to the third respondent, namely, the Assistant Collector of Central Excise, Madras, along with a letter dated 22nd September, 1975. In the said letter the petitioner explained the basis adopted by the petitioner for arriving at the assessable value u/s 4 of the Act read with Rule 4 of the Valuation Rules. The price of battery is uniform all over India, but the freight paid by the petitioner varies from the distance from the factory to the different places of delivery. Hence, the petitioner furnished for each type of battery different assessable values, The petitioner was called upon to furnish further particulars which were duly furnished. The third respondent by his order dated 6th of November 1975 declined to admit the claim of the petitioner for deduction of the cost of transportation from the place of removal, namely, the factory, to the places of delivery. Aggrieved by the same, the petitioner preferred an appeal to the second respondent, the Appellate Collector of Customs, and Central Excise, Madras, who by an order dated 19th March 1976, rejected the appeal of the petitioner confirmed the view taken by the third respondent. It is under these circumstances, the present writ petitions have been preferred to quash the order of the second respondent dated 19th March 1976 in so far as the transport charges incurred by the petitioner have not been excluded from the price for arriving at the assessable value.

4. It is the case of petitioner that the excise authorities have committed an error in holding that a uniform price has been charged irrespective of the distance from the factory to the various destinations. In fact, a uniform price given which is to prevail throughout India. But so far as transportation charges for which exclusion was sought u/s 4(2) of the Act, they were separately noted and given. They are not uniform. They vary according to the destinations. In the counter affidavit of the department sworn by the Assistant Collector of Central Excise, it is stated that the petitioner is admittedly charging uniform price throughout the country in respect of sales from their godown irrespective of their location or distance from the

factory, that the petitioner has different assessable value in respect of each such sales after deducting the respective freight charges, that it is evident

that the wholesale dealers are not charged that price which includes only the element of actual freight paid inasmuch as they charged equalised

freight irrespective of the location and distance from their sales godown and that, therefore, Section 4(2) has no application in view of the fact that

the petitioner is charging uniform price. It is further stated that the cost of freight has been uniformly distributed and included in the cost structure.

5. Mr. S. Ramasubramaniam, appearing for the petitioner, draws my attention to Section 4(2) of the Act, and would submit that the fundamental

mistake committed by the original as well as the appellate authority is their understanding that the petitioner had charged uniform freight. In fact, it is

not so. What has been submitted to them is the uniform wholesale price which is bound to be the same throughout India. In fact, broken up figures

including freight were furnished which freight varied depending upon the distance. If only the authorities had taken care to look into the detailed

figures given by the petitioner such a mistake would not have occurred. If the petitioner had incurred actual transportation or freight charges, they

are entitled to the deduction in respect thereof in view of the imperative terms of Section 4(2) of the Act.

6. Mr. Chengalvarayad, learned counsel for the department, in seeking to support the impugned orders, would argue that when once a uniform

price has been given and the freight goes into that structure, there is no possibility of such a freight being deducted for the purpose of computation

of excise duty. From this point of view, no exception could be taken to the impugned orders, either that of the original authority or that of the

appellate authority.

7. Having regard to the controversy, let me now extract the relevant portion in the appellate order to find out whether he had correctly appreciated

the contention of the writ petitioner and whether he is correct in his conclusion. In paragraph 3 of the order it is stated as follows : --

It is found that the appellants have been charging uniform selling price for each type of battery which is valid throughout the country which includes

the freight or transportation element also. Had the appellants been charging actual transportation charges from the factory to their selling depots,

there could have been no objection to allow the charges to be deducted from the selling price. However, the fact is that there is no separate transportation or freight charges depending on the distance or the mode of conveyance but a uniform or equalised freight is added in respect of all the consignments despatched to their depots in any part of the country. In view of this, such equalised freight no longer retains its separate identity as a freight and transportation charges, but gets merged with the cost price of the goods and cannot be excluded for the purpose of fixing the assessable value".

8. The learned counsel for the petitioner produces before me a tabulated statement appended to this judgment which was claimed to have been

filed before the assessing authority. Column No. 6 shows the list price at which the wholesales are supplied. It is bound to be uniform because

unless the same is notified to the marketing public, the dealers would not be in a position to know. What is important for our purpose is column

No. 8. There is no uniform freight charged. On the contrary, it varies from place to place. For instance, 93 paise is charged to Bombay, while 83

paise alone is charged as far as Calcutta is concerned. The notified price can include freight or transportation charges. There could be no legal

objection to that. What a manufacturer manufactures is goods, he alone knows the cost of manufacture to which he is entitled to add discount,

transport charges etc, and notify a price for the information of the dealer. Merely because such a price is uniform, there is nothing to indicate u/s

4(2) of the Act that freight becomes not excludable. At this stage, Section 4(2) of the Act may be extracted as below --

Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined

with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place

of delivery shall be excluded from such price.

9. A reading of the above will show that there are three elements involved in this Sub-section (1). The price of the excisable goods for delivery at

the place of removal is not known. (2) The value thereof is determined with reference to the price for delivery at a place other than the place of

removal (3) The cost of transportation being incurred from the place of removal

to the place of delivery. It is not the case of the department that at the factory gate the price of the batteries manufactured by the petitioner is known. This is not to be confused with the list price. The list price is the price at which the wholesalers will be supplied with the goods by the selling depots. Therefore, the price is determined only at the place of delivery and not at the place of removal. The transportation charges have actually been incurred as seen from column No. 8 of the statement. So all these three elements are fully satisfied in the present case. The entire confusion arose because the excise authorities were of the view that the list price is uniform; it cannot be otherwise. From this point of view, I am unable to appreciate the orders of the excise authorities. I hold that the petitioner will be entitled to the benefit of Section 4(2) of the Act, and the transport charges incurred by the petitioner as shown in the statement will stand excluded for computation of the assessable value. The claim relating to packing charges is conceded by the department and interim orders have already been passed in favour of the petitioner, and therefore, I need not determine that question. The bonds executed by the petitioner pursuant to the interim orders of this court will stand cancelled.

10. In the result, the writ petitions are allowed with costs. Counsel's fee Rs. 250, one set.