(1995) 03 MAD CK 0040

In the Madras High Court

Case No : W.A. 742 of 1991 with W.P. No. 3110 of 1991, 13730, 13722, 13733, 19458, 19459, 1331, 1334 to 1340 of 1992 and W.P. 3523, 4770 of 1991 etc.

Union of India APPELLANT

Vs

Lakshmi Machine Works Limited RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:
Central Excises and Salt Act, 1944 — Section 4

Citation : (1995) 51 ECC 107 : (1995) 77 ELT 799

Hon'ble Judges : K.A. Swami, C.J;Raju, J

Bench : Division Bench

Advocate : Mr. K. Jayachandran, ACGSC, for the Appellant; Mr. Mohan Parasaran, for the Respondent

Judgement

K.A. Swami, C.J.—In the writ petitions, the petitioners have sought for queshing the show cause notices as well as the trade notices and the

circular issued by the Central Board of Excise and Customs. The question for consideration is as to whether the interest accrued on the advances

received by the assessees should be added to the assessable value. The Central Board of Excise and Customs has issued he circular stating that it

should be added and there is no need to establish separately the nexus between the deposit and the price. It is on the basis of this circular, the

show cause notices in question have been issued.

2. In our view, the question is no more res integra. In Metal Box India Ltd. Vs. The Collector of Central Excise, Madras, the Supreme Court

considered the following question :-

In any case, even on merits, the Tribunal had patently erred in law in allowing the Department''s appeal and in restoring the loading of purchase

price by the ad hoc interest on advances made by Ponds (I) Limited to the assessee.

The question was answered as follows :-

On the facts on record, therefore, it must be held that the Tribunal was perfectly justified in taking the view that charging a separate price for the

metal containers supplied to M/s. Ponds (I) Limited could not stand justified u/s 4(1)(a) proviso and therefore, to that separate price charged from

the Ponds (I) Limited, the extent of benefit obtained by the assessee on interest free loan was required to be reloaded by hiking the price charged

from M/s. Ponds (I) Limited to that extent. Contention No. 2 also, therefore, fails and is rejected.

Therefore, it is necessary for the Department to point out the extent of benefit obtained by the assessee on the interest free-loan. It is only the

benefit that has been drawn by the assessee has to be loaded by hiking the price charged. That being so, the circular issued by the Board cannot

be sustained. Consequently, the show cause notice issued on the basis of the said circular cannot be held to be correct. In view of the fact that the

question of limitation may arise, we instead of quashing the show cause notices in question, direct that the proceedings initiated by issuance of show

cause notices in question shall be determined on the basis of the judgment of the Supreme Court in Metal Box India Ltd. v. Collector of Central

Excise, Madras. Therefore, it is for the Excise Department to show the extent of benefit obtained by the assessee on the interest free loan obtained

by him and to that extent only, the price has to be loaded for the purpose of determining the assessable value.

3. It is also necessary to point out that the adjudicatory proceeding is a quasi-judicial proceeding, therefore, the Authority shall have to adjudicate

uninfluenced by the circular issued by the Central Board of Excise and Customs. The Authority has to determine the same independently

uninfluenced by such circular. To avoid any such confusion, we are of the view that the circular should be quashed.

4. Accordingly, these writ petitions are disposed of in the following terms :- The circular dated 13th June, 1990 bearing F. No. 6/1/90-CK-1

issued by the Central Board of Excise and Customs is quashed. The respondents are directed to proceed with the proceedings initiated by the

show cause notices in question and to modify the show cause notices, if need be, in the light of the decision of the Supreme Court in Metal Box

India Ltd. Vs. The Collector of Central Excise, Madras, .

5. The order of the learned single Judge passed in Writ Petition 74 of 1991 shall stand modified in terms of this judgment and the order in so far as

it quashes the show cause notice, is set aside and the proceedings are to be continued in terms of the judgment. The writ appeal is accordingly

disposed of. The W.M. Ps. are also disposed of. However, we make no order as to costs.

