

(1976) 02 KAR CK 0003
In the Karnataka High Court
Case No : Writ Appeal No"s. 8 and 11 of 1975

Union of India (UOI) and Others

APPELLANT

Vs

I.T.C. Limited and Others

RESPONDENT

Date of Decision : 20-02-1976

Acts Referred:

Central Excise Act, 1944 — Section 4, 4 (a), 4 (b)

Citation : (1979) 4 ELT 483 : (1976) ILR (Kar) 933

Hon'ble Judges : Sadanandaswamy, J;Chandrashekhar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sadanandaswamy, J.—These appeals arise out of the common order passed by the learned Single Judge in Writ Petitions Nos 1957 of 1974 and 1292 of 1973 respectively. The petitioner in W.P. No. 1957 of 1974 is the I.T.C. Limited (formerly known as India Tobacco Company Ltd.). It is a company engaged in the manufacture of cigarettes at several places in India. The petitioner in W.P. No. 1292. of 1973 is M.M. Rubber Company Private Limited. It is a company which manufactures rubber products. The petitioner in W.P. No 1957 of 1974 sells its goods to wholesalers in Bangalore as well as other places. Similarly the petitioner in W.P. No. 1292 of 1973 has got its Branch Offices at several places where the goods manufactured by it are sold to wholesalers. Until the decision of the Supreme Court in A.K. Roy and Another Vs. Voltas Limited, was rendered, the petitioners were paying excise duty on the basis of the list prices at which the goods were sold to wholesalers at different places in India. After the above decision was rendered, the petitioners claimed before the Central Excise Authorities that the computation of their liability under the Central Excises and Salt Act, 1944, on the basis of the prices at which the goods were actually sold to the wholesalers at different places in India was incorrect and inconsistent with the principles laid down in Voltas" case. They contended that while determining the basis for the levy of excise duty, the Central Excise" Authority should deduct

from the prices at which the goods were sold to wholesalers at different places, several items of expenditure incurred by them, which according to them were incurred subsequent to the manufacture of the goods. The Assistant Collector of Central Excise, Bangalore, passed an order on 1-4-1974 rejecting the contentions of I.T.C. Ltd. in respect of the periods referred to therein. In respect of the three other periods, he made a demand on that Company on the basis of the above said Order to file fresh price lists so that excise duty payable by it could be computed on the basis of the prices at which the goods were sold to the wholesalers at different places. I.T C. Limited filed Writ Petition No. 1957 of 1974, aggrieved by his Order dated 1-4-1974 and the three notices in respect of the subsequent periods.

2. M.M. Rubber Company (Private) Limited has challenged the notice dated 26-4-1973 issued by the Assistant Collector of Central Excise calling upon it to show-cause as to why it should not be made liable to pay excise duty in respect of 19.5 per cent of the list prices at which it sold its goods to the wholesalers, which according to the company was attributable to post-manufacturing expenses incurred by it.

3. The learned Single Judge held that the expenses incurred in connection with marketing and distribution of goods, interest on the value of goods attributable to the period between the time at which the goods leave the premises and the time at which the price is paid by the wholesaler and the freight charges for transporting the goods from the factory gate to the selling points, where the goods are sold to the wholesalers, clearly fell outside the scope of the manufacturing expenses in view of the enunciation made by the Supreme Court in *Voltas*" case -- 1977 E.L.T(177) and that a proportionate deduction from the list prices has to be made before arriving at the wholesale cash price. He also held that the Assessing Authority has to decide on the evidence produced before him to what extent the advertisement expenditure incurred by the petitioners can be traceable to the selling activity and to allow deduction to that extent on the basis of such a finding from the list prices. He, accordingly, allowed the writ petitions quashing the Order passed by the Asstt. Collector of Excise as well as the three notices issued to the petitioner in W.P. No. 1957 of 1974 and the notices issued to the petitioner in W.P. No. 1292 of 1973. He further directed the Assistant Collector of Excise to issue fresh notices to the petitioners in both the cases in the light of the decision in *Voltas*" case and the observations made by him and to determine the liability of the petitioner under the Act. The Union of India has come up in appeal against the above order.

4. The main question involved in these appeals is the meaning to be attached to the expression "wholesale cash price" in Section 4 of the Central Excises and Salt Act 1944. Section 4 of the Act provides :

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5. In *A.K. Roy and Another Vs. Voltas Limited*, Voltas Limited organised the sales

of the articles manufactured by them from its Head Office at Bombay as also its Branch Offices at Calcutta, Delhi, Madras, Bangalore, Cochin and Lucknow. From these offices it effected direct sales to consumers at list prices and the sales so effected came to about 90 to 95 per cent of its production of these articles in the factory in question during the relevant period Apart from these sales, it also used to sell the articles to wholesale dealers from different parts of the country in pursuance of the agreements entered into with them. The agreement with the wholesale dealers provided, among other things, that the dealers should not sell the articles sold to them except in accordance with the list prices fixed by the company, that the Company would sell them the articles at the list prices less 22 per cent discount. The question which fell for decision was whether the company was liable to be charged with excise duty on the basis of the price of retail sales made by it directly to the consumers from its Head Office and Branch Offices under Clause (b) of Section 4 or whether it was liable to be charged on the basis of the price payable by the wholesale dealers, after deducting the 22 per cent discount under cl. (a) of Section 4 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the "Act"). It was argued on behalf of the Excise Authorities that Section 4, Clause (a) visualises a wholesale market at the place of manufacture where articles of like kind and quality are sold or could be sold and that it also postulates a market where any wholesale purchaser can purchase the articles, and as no articles of a like kind and quality were sold, at or near place of manufacture, and as the wholesale sales were confined to the favoured buyers, there was wholesale market at the place of manufacture It was further argued that "Articles of a like kind and quality" is a phrase which suggests goods other than those under assessment and that one must disregard the price fetched by the sale of the goods themselves. Rejecting¹ the contention, it was held that a wholesale market does not always mean that there should be an actual place where articles are sold and bought on a wholesale basis. These words can also mean the potentiality of the articles being sold on a wholesale basis. So , even if there was no market in the physical sense of the term at or near the place of manufacture where the articles of a like kind and quality are or could be sold, that would not in any way affect the existence of market in the proper sense of the term provided the articles themselves could be sold wholesale to traders, even though the articles are sold to them on the basis of agreements which confer commercial advantages upon them. It was further held that the application of Clause (a) of Section 4 of the Act does not depend upon any hypothesis to the effect that at the time and place of sale, any further articles of like kind and quality should have been sold, and if there is an actual price for the goods themselves at the time and place of sale and if that is a "wholesale cash price", the clause is not inapplicable for want of sale of other goods of a like kind and quality.

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8. It is thus clear that the wholesale price must be determined on the basis of the cash payment representing only the manufacturing cost and manufacturing

profit, but excluding the selling cost and selling profits and that the price has to be fixed for delivery at the factory gate. Some of the items to be excluded are the interest involved in the wholesale price when credit is allowed to the wholesale buyer for a period of time, freight, octroi and other charges involved in the transport of the articles.

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17. The learned Single Judge was therefore justified in directing the wholesale cash price should be determined after eliminating the expenses incurred in connection with marketing and distributing of goods, interest on the value of goods attributable to the period between the time at which the goods left the factory premises and the time at which the price was paid by the wholesaler as well as the freight, octroi and other charges involved in the transport of the articles from the factory gate to the selling points. He was also justified in directing the Excise Authorities to determine what portion of the advertisement expenses incurred by the manufacturer can be allowed to be deducted depending upon how far it can be traceable to the selling operation and not attributable to the manufacturing operation or manufacturing profit. The items referred to above are not exhaustive but only illustrative of the nature of deductions which have to be made before arriving at the assessable value for the purpose of Section 4, Clause (b).

18. These appeals are accordingly dismissed. No costs.