

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NOS. 3282-3290 OF 2001

Commissioner of Central Excise, Meerut

Appellant (s)

Versus

M/.s. Century Laminating Co. Ltd. & Ors.

Respondent (s)

(With appl(s) for stay and with office report)

Date: 25/04/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Mohit Choudhary, Adv.
Mr. B.V. Balram Das, Adv. for
Mr.P. Parmeswaran, Adv.

For Respondent(s)

Mr.M. Chandrasekharan, Sr. Adv.
Mr. Hari Shankar, Adv.
Mr. V.J. Francis, Adv.
Mr. Anupam Mishra, Adv.
Mr. Jenish, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed with costs.

(J.S. Rawat)
AR-cum-PS

(Kanwal Singh)
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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O R D E R

Commissioner of Central Excise, Meerut [for short "the Revenue"] has filed the present appeal under Section 35L(b) of the Central Excise Act 1944 (for short "the Act") against Final Order No. 1407-15/99-A dated 1st October, 1999 passed by The Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, Bench-A in Appeal Nos. E/628-636/98-A [for short "the Tribunal"]. By the impugned order the Tribunal has allowed the appeal filed by the respondent-assessee (for short "the assessee") and set aside the order in original passed by the Commissioner.

The assessee is a Company registered under the Companies Act, 1955 in the name and style of M/s. Century Laminating Co. Ltd. the assessee's factory is located in Hapur, U.P. It manufactures decorative laminates. The period with which we are concerned in these appeals is from 1st February, 1991 to 30th September, 1995. Goods manufactured in the factory were sold to wholesale dealers at the factory gate as also through various depots situated in the various parts of the country. 25% of the products were sold to wholesale dealers at the factory gate while the remaining 75% were transferred to the depots and sold therefrom. In respect of the sale-transactions with 116 wholesale dealers, Price Lists in Part-I were submitted to the Central Excise authorities which were approved by them. The sales were effected at the price shown in the Price Lists so approved. Since the

sales made at the depot were at a higher price compared to the price shown in Part-I Price List, investigation was taken up by the authorities to find out whether price shown in Part-I Price List, evidenced the correct sale consideration. On getting certain materials, show cause notice dated 28th February, 1996 was issued, questioning as to why central excise duty in the sum of Rs.8,16,85,476.22 on a differential value of Rs.25,17,37,667.24 paise and differential duty short-paid on the items mentioned in para 13.1 therein should not be recovered under Section 11A(i) of the Act read with rule 9(2) of the Central Excise Rules, 1944 (for short "the Rules") . Extended period of limitation was also invoked and penalty was proposed to be levied on the assessee.

The assessee and its directors filed their detailed objections. According to them the authorities could levy duty on the goods on the basis of wholesale price in relation to the sales effected at the factory gate so long as that price is one coming under Section 4(1)(a) of the Act. The Assessing Authority rejected the pleas raised by the assessee and confirming the demand as per notice, also imposed penalty.

Assessee being aggrieved against the aforesaid decision of the Assessing Authority, filed appeals before the Tribunal. Tribunal accepted the appeals and set aside the judgment impugned before it. It was held that since the wholesale price was ascertainable at the factory gate, as per the statutory provisions (then existing), duty has to be levied on the basis of that price only. We do not find any infirmity in the decision of the Tribunal.

In Union of India and Others v. Bombay Tyre International Ltd &

Others [1984 (1) SCC 467 (Page 492, paras 26 & 27)] , this Court held:

"26. Accordingly, we hold that pursuant to the old Section 4 (a) the value of an excisable article for the purpose of the excise levy should be taken to be the price at which the excisable article is sold by the assessee to a buyer at arm's length in the course of wholesale trade at the time and place of removal. Where, however, the excisable article is not sold by the assessee in wholesale trade but, for example, is consumed by the assessee in his own industry the case is one where under the old Section 4(a) the value must be determined as the price at which the excisable article or an article of the like kind and

quality is capable of being sold in wholesale trade at the time and place of removal.

27. Where the excisable article or an article of the like kind and quality is not sold in wholesale trade at the place of removal, that is, at the factory gate, but, is sold in the wholesale trade at a place outside the factory gate, the value should be determined as the price at which the excisable article is sold in the wholesale trade at such place, after deducting therefrom the cost of transportation of the excisable article from the factory gate to such place....."

This decision has been followed in a catena of cases and we may refer to the

decision in Indian Oxygen Ltd. v. Collector of C.E. [1988 Suppl. SCC

658] = [1988(36) ELT 723 (S.C.)], wherein this Court, relying upon the

aforesaid decision in Bombay Tyre International case (supra), held:

" ... The said Section 4(1) provides that where the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale. "Place of removal" under Section 4(4)(b) has been defined to mean a factory or any other place or premises of production or manufacture of the excisable goods or a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from which such goods are removed."

It may be clarified that the Legislature in the year 1996 had introduced

sub-clause (iii) to Clause (b) of Sub-section (4) of Section 4 [after a further amendment by Act 32 of 2003 the same is now Section 4 (3) (c) (iii)] by which the depot sales were also included in the definition of "place of removal". In the present case, the period involved is prior to the aforesaid amendment and, therefore, the said amendment would not be applicable.

For the reasons stated above, the appeals are dismissed being without any merit, with costs.

.....J.

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(ASHOK BHAN)

New Delhi;
.....J.
April 25, 2006.

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(LOKESHWAR SINGH PANTA)