

IN THE SUPREME COURT OF INDIA@@  
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CIVIL APPELLATE JURISDICTION@@  
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CIVIL APPEAL NO. 4995 OF 1995@@  
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Ashok Leyland Ltd. ...Appellant(s)

versus

Collector of Central Excise, Madras ...Respondent(s)

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This appeal is against an order of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), dated 20th January, 1995.

Briefly stated, the facts are as follows:

The appellants are manufacturers of motor vehicles. They also manufacture components of motor vehicles. The components are manufactured at their factory near Madras. Some of the components are then transferred from their factory at Madras to their own units at Hosur, Alwar and Bhandara. A small percentage of the components are also sold by them in the open market as spare parts for the vehicles. The question for consideration is what is the value to be taken for payment of excise duty in respect of the components which have been removed by the appellants from their factory at Madras and transferred to the Units at Hosur, Alwar and Bhandara.

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The Assistant Collector, Collector and the CEGAT have held that the value has to be determined in accordance with Section 4(1)(a) of the Central Excise Act, 1944 (the Act). It has been held that ascertainable sale price is available. According to the appellants, in respect of the components which are transferred by them to their sister units, the value has to be ascertained under Section 4(1)(b). According to the appellants, for such components there is no ascertainable sale price.

For a consideration of this question, the relevant provisions of the Act need to be set out.

Sections 4(1)(a), 4(1)(b) and 4(4)(e) read as follows:

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SECTION 4. Valuation of excisable goods for@@  
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purposes of charging of duty of excise--(1) Where@@  
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under this act, 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----

(a) 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 :

Provided that---

(i) where, in accordance with the normal practice of the wholesale trade in such goods,

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such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons), who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason, that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

SECTION 4(4)(e)-- "wholesale trade" means@@  
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sales to dealers, industrial consumers, Government, local authorities and other buyers, who or which purchase their requirements otherwise than in retail."

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Thus it is clear that Section 4(1)(b) will only apply

if normal price is not ascertainable. In cases where price is ...4/-

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not ascertainable, the valuation must be made on the basis of Rules 3 to 6 of the Central Excise (Valuation) Rules, 1975.

Mr.V.Sridharan, learned counsel appearing for the appellants, submitted that the decisions of the authorities cannot be sustained. He submitted that the price in respect of the components, transferred to the units at Hosur, Alwar and Bhadara, cannot be ascertained at all. He submitted that Section 4(1)(a) of the Act has to be read along with the proviso. He points out that the appellants are supplying to the dealers at a price of Rs.24.75 less a 20% discount and that they are supplying the same parts to Defence at the price of Rs.24.75 less a 23% discount. He further points out that the appellants are supplying the same parts to the Civil Departments of the Government at the price of Rs.24.75 less a 25% discount. He submits that the dealers, Defence and Civil Department are all persons who are included within the definition of the term "wholesale trade" in Section 4(4)(e) of the Act. Learned counsel submitted that the goods are being sold by the assessee to these parties at different prices. He submitted that, therefore, so far as these classes of buyers are concerned, the price for each such class will be the price at which the goods are sold to them. He submitted that there being different prices for different parties, there is no normal price at which the goods are ordinarily sold. He ...5/-

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points out that the goods are not being sold to the different units at Hosur, Alwar and Bhandara. He submits that in respect of the components sent to the units at Hosur, Alwar and Bhandara, the price cannot be ascertained as there is no normal price. He submitted that for these components the price was an unascertainable price. Learned counsel submitted that for the components which are transferred to different units the price would have to be determined under Section 4(1)(b) of the Act. He submitted that a price has to be determined under Section 4(1)(b) of the Act read with Rule 6(b)(ii). He submitted that the value has to be determined on the basis of the cost of production or manufacture including profits, if any, that the assessee would normally have earned on such sale.

Mr.Sridharan further submits that no other construction can be placed as, in the automobile industry, there is in existence a two-tier price structure wherein normally components or parts are sold to the original equipment manufacturer at one price and sold in the market to the consumer at a different price. He points out that the fact that there is a two-tier system in the automobile industry has been accepted by the Collector.

Mr.Sridharan seeks support for his submissions from a judgment given by the CEGAT in the appellant's own case on ...6/-

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13th October, 1999. He has taken us through that judgment. The Tribunal has, in respect of engines sent to their different units, accepted the contention that the price must be deemed to be an unascertainable price. In this behalf, the Tribunal has observed as follows:

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"8. On careful consideration of the facts of this case as well as the case-laws cited, we are of the clear opinion that all the removals from the factory gate of engines as OE to manufacturing units of respondents would be deemed to be removals to a separate class of buyers when compared to removals for wholesale sale as spare parts. The law in this case is now well settled one, that removals to original equipment manufacturers is to be considered as removals to a separate class of buyers than removals in wholesale trade. Therefore, we find that the position that emerges in the case of these removals is that (a) removals are to separate class of buyers i.e. industrial consumers who used the said item for further manufacture of motor vehicles. There is no dispute on this fact, and (b) these removals are not on sale basis but on stock transfer basis. Therefore, we find that these removals cannot be governed by Section 4(1)(a) there being no sale involved to this class of buyers in any other instances. Hence the fixation of assessable value has to be done under Section 4(1)(b) resorting to the Central Excise Valuation Rules."

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In our view, the provisions of the Act are very clear. Excise duty is payable on removal of goods. As there may be no sale at the time of removal, Section 4 of the Act lays down how the value has to be determined for the purposes of charging of excise duty. The main provision is Section ..7/-

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4(1)(a) which provides that the value would be the normal price thereof, that is, the price at which the goods are ordinarily sold by the assessee to a buyer in the course of a wholesale trade. Section 4(4)(e) clarifies that a sale to a dealer would be deemed to be wholesale trade. Therefore, the normal price would be the price at which the goods are sold in the market in the wholesale trade. Generally speaking, the normal price is the one at which goods are sold to the public. Here the sale to the public is through the dealers. So the normal price is the sale price to the dealer. The proviso, which has been relied upon by learned counsel, does not make any exception to this normal rule. All that the proviso provides is that if an assessee sells goods at different prices to different classes of buyers, then in respect of each such class of buyers, the normal price would be the price at which the goods are sold to that class. The proviso does not mean or provide that merely because the assessee sells at different prices to different classes of buyers, the price of that commodity becomes an unascertainable price. The price of that commodity will remain the normal price at which those goods are ordinarily sold by the assessee to the public, in other words, the price at which they are sold in the market. The mere fact that sale is also made to the Defence or to the Civil Department of the Government at different prices would ...8/-

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not mean that the price becomes an unascertainable price. In the case of the appellants, a price is ascertainable. They admittedly sell in the market at a particular price. Section 4(1)(b) would not come into play and would not apply at all.

Section 4(1)(b) of the Act would only apply if the price cannot be ascertained. In this case, as indicated above, the price is ascertainable and, therefore, the question of application of Section 4(1)(b) does not arise. If Section 4(1)(b) does not apply, Rule 6 will also not apply.

In our view, if the decision of the Tribunal, relied upon by Mr.Sridharan, lays down what it purports to lay down, then it must be stated that the reasoning cannot be sustained at all and it would not be a good law. However, it is pointed out to us that in that case the facts were different. It is submitted that what was supplied to various units were incomplete engines whereas what was sold in the market were complete engines. We do not express any opinion as to whether on those facts a different view can be taken.

Another reason why the arguments of Mr.Sridharan cannot be accepted is that if such an argument is to be accepted, then in every case, in order to get out of an ascertainable value, a person who captively uses his goods for his own consumption and also sells in the market, would then make small sales at different prices to different parties and

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then claim that the price must be deemed to be unascertainable for the goods captively used.

In this view of the matter, we see no substance in the appeal. The appeal stands dismissed. There will, however, be no order as to costs.

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(S.N. VARIAVA)@@

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(B.N. AGRAWAL)@@

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New Delhi, @@

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November 13, 2002. @@

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ITEM NO. 101

COURT NO. 11

SECTION III

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No. 4995 of 1995 @@

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Ashok Leyland Ltd.

Appellant (s)

VERSUS

Collector of Central Excise, Madras  
(With office report)

Respondent (s)

WITH

C.A. No. 5613/2002 - (With office report)

Date : 13/11/2002 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s)  
in CA 4995/95

Mr. V.Sridharan, Adv.  
Mr. A.R.Madhav Rao,  
Mr. T.Viswanathan, Adv.  
Mr. Alok Yadav, Adv.  
Mr. V. Balaji, Adv.  
Mr. P.N.Ramalingam, Adv.

in CA 5613/02

Mr. V.Sridharan, Adv.  
Mr. A.R.Madhav Rao,  
Mr. T.Viswanathan, Adv.  
Mr. Alok Yadav, Adv.  
Mr. V.Balachandran, Adv.

For Respondent (s)  
-CCE

Ms. Nisha Bagchi, Adv.  
Mr. B.Krishna Prasad, Adv.

UPON hearing counsel the Court made the following  
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C.A.No.4995/95:@@  
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Heard the learned counsel for the CCE for about  
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fifteen minutes and the learned counsel for the assessee from  
10.45 a.m. to 12.35 p.m.

The appeal is dismissed. No order as to costs.

C.A.No.5613/02:@@  
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Ms.Nisha Bagchi, learned counsel, undertakes to file  
Vakalatnama on behalf of the respondent.  
Adjourned for two weeks.

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(N. Annapurna)  
Court Master

(Jasbir Singh)  
Court Master

(Signed order in C.A.No.4995/95 is placed on the file.)