CASE NO.:
Appeal (civil) 7310-7312 of 2003

PETITIONER:
Escorts Ltd.

RESPONDENT:
Commissioner of Central Excise,Delhi - II

DATE OF JUDGMENT: 25/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by the Customs, Excise & Gold (Control) Appellate Tribunal (in short the 'CEGAT') in Appeal Nos. E/1574 & 3180/93\026A & E/1668/94-A. The factual background in a nutshell is as follows:

Show cause notice was issued on 29.04.1993 to the appellant in respect of the period 1.10.1992 to 11.3.1993 alleging contravention of the various provisions of Central Excise Rules, 1944 (in short the 'Rules') read with Section 4(1) of the Central Excise and Salt Act, 1944 (in short the 'Act'). A reference was made to Rule 6(b) of the Central Excise Valuation Rules, 1975 (in short the 'Valuation Rules') and it was indicated that there was a short levy of duty amounting to Rs.38,08,127.40/-. A reply to the said notice was furnished on 29.05.1993 by the noticee (hereinafter referred to as the 'Assessee') taking the stand that there was no contravention as alleged.

On consideration of the materials on record and the show cause noticee's reply the Collector of Central Excise, New Delhi, confirmed the demand of the aforesaid amount. It was held that the stand taken by the assessee in the reply was without substance.

The assessee preferred appeals before CEGAT which by its order dated 5.10.1998 dismissed the appeals. The matter was brought before this Court taking the stand that the appeals were disposed of without grant of an opportunity being heard to the assessee. By order dated 24.8.2001 this Court set aside the order passed by the CEGAT and remanded the matter for fresh consideration on merits without expressing any view on the merits of the case. Thus the matter was heard afresh by CEGAT.

According to the CEGAT the issue involved is one relating to determination of the value of goods captively consumed by the assessee. It took note of the fact that there was admittedly 2% direct sale in the spare market though 98% of the production was being captively consumed. It was noted that how the value of goods captively consumed is to be ascertained has been settled by this Court in Ashok Leyland Ltd. v. Collector of Central Excise, Madras (2002 (10) SCC 344) it was noted that as per the said decision, since price is ascertainable by way of direct sale, the question of applying Section 4(1)(b) of the Act would not arise. The valuation of the goods captively consumed is to be based on the market price of the goods directly sold. Therefore,

the appeals filed by the assessee were dismissed, but that part of the order passed by the Collector, which related to penalty, was set aside.

Mr. V. Lakshmi Kumaran, learned counsel appearing for appellant submitted that the Tribunal was wrong in applying the decision in the Ashok Leyland's case (supra) as the factual position was different. Department based its case on Rule 6 of the Valuation Rules which has application only when prices are unascertainable. As the judgment in that case can be applicable only in a situation where the goods sold in the spare parts market are identical and complete in all respects to the goods captively consumed, admittedly, since in the present case, the goods captively consumed are different and not identical to the goods sold in the spare parts market, the principles laid down in Ashok Leyland's case (supra) will not apply.

In response Mr. R. Mohan learned Additional Solicitor General, appearing for the Revenue, submitted that the assessee did not bring out any factual difference so far as the present case is concerned vis-a-vis what was decided in Ashok Leyland's case (Supra). Therefore, the CEGAT's decision does not warrant any interference.

In Ashok Leyland's case (supra)it was, inter alia, held as follows:

"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 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 marked 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 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 not 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."

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statutory definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

This aspect has been highlighted in Collector of Central Excise, Calcutta v. M/s Alnoori Tobacco Products and Anr. (Civil appeal nos. 4502-4503 of 1998 decided on 21.7.2004)

It is correct as contended by learned counsel for the assessee \026 appellant that the department's case rested on Rule 6 of the Valuation Rule. CEGAT did not consider the applicability of Ashok Leyland's case (supra) in the background of Rule 6 of the Valuation Rules though it has substantial bearing on the dispute. In the aforesaid circumstances without expressing any view on the merits we remit the matter to the CEGAT for considering the factual aspect and the applicability of Ashok Leyland's case (supra) to the facts of the present case. The appeals are allowed to the extent indicated above without any order as to costs.