

CASE NO.:
Appeal (civil) 9140 of 1996

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, NEW DELHI

RESPONDENT:
GURU NANAK REFRIGERATION CORPN.

DATE OF JUDGMENT: 27/03/2003

BENCH:
SYED SHAH MOHAMMED QUADRI & ASHOK BHAN

JUDGMENT:
JUDGMENT

2003 (3) SCR 57

The following Order of the Court was delivered :

SYED SHAH MOHAMMED QUADRI, J. Heard the learned counsel for the parties.

In this appeal against the final order No. 601 of 1995-A of Customs Excise & Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in appeal No.E/1745/83-A dated 03.11.1995, the only point that arises for our consideration is : whether the Tribunal is right in reversing the order of the Assistant Collector as confirmed by the Collector.

To appreciate the controversy in this appeal it is necessary to refer to Section 4 of the Central Excise Act, 1944 (for short, 'the Act') as it stood during 1975-76, which, insofar as it is relevant for our purpose, read as follows :-

"4. Valuation of excisable goods for purposes of charging of duty of excise-

(1) Where 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 places of removal, where the buyer is not a related person and the price is the sole consideration for the sale :

Provided that- xxx xxx xxx

(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.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) For the purposes of this section, -(a) to (d) xxx xxx xxx

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

From a perusal of clause (a) of sub-section (1), quoted above, it is clear

that the duty of excise is chargeable on any excisable goods with reference to value which shall, subject to the provisions of that section, be deemed to be normal 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 provided that the buyer is not a related person and the price is the sole consideration for the sale. It is not in dispute that the buyer is not a related person and the price is the sole consideration for sale. It is also the common case that the respondent-assessee sold the refrigeration machinery parts in wholesale trade at the price which was approved by the excise authorities. Where normal price within the meaning of clause (a) of subsection (1) is ascertainable, the provisions of clause (b) cannot be resorted to. The show cause notice was issued to the assessee on the ground that the cost of production of the goods was more than the cost of wholesale price, so why the differential duty on the basis of costs of production of the goods should not be recovered from it. The reasoning in the show cause notice was adopted by the Assistant Collector in confirming demand as well as by the Collector in rejecting the appeal. But the Tribunal set aside the order of the Collector and allowed the appeal by the order impugned in the appeal before us by the Revenue.

A perusal of the show-cause notice shows that it does not contain an allegation that the wholesale price to the buyers was for consideration other than the one at which it purported to be sold or that it was not at arms length. There is also no allegation that there was any flowback of the money from the buyer to the assessee. In the absence of these factors it cannot be contended that normal price was not ascertainable. There is no valid reason to doubt the genuineness of the sale price. It can therefore be safely be concluded that the goods were sold at the normal price within the meaning of Section 4(1)(a) of the Act. In our view, the Tribunal is right in accepting the wholesale price as the correct price following the judgment of this Court in *Union of India and Ors., v. Bombay Tyre International Ltd. etc.*, (1983) 14 E.L.T. 1896. We hold that clause (b) of sub-section (1) of Section (4) of the Act would not be attracted to determine the nearest ascertainable equivalent of the normal price of the goods for assessment of excise duty on the facts of this case. We do not find any illegality in the order of the Tribunal in setting aside the order of the Collector. The appeal is therefore dismissed. No costs.