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A. INFRASTRUCTURE LTD.

v.

COMMISSIONER OF CENTRAL EXCISE, JAIPUR

MAY 5, 2004

B

[S. RAJENDRA BABU, C.J. AND G.P. MATHUR, J.]

Central Excise Act, 1944; Section 35L(b) :

C *Valuation—Goods manufactured and sold by the assessee to Government/Public Section Undertakings—Delay in payment of price—Deduction on interest accrued on receivable/advances and bank charges—Rejected by Revenue authorities—Affirmed by Central Excise and Gold Control Appellate Tribunal on ground that the contract did not specifically provide for stipulation as to payment of interest—On appeal, Held :*

D *Mentioning of a particular period of payment in the agreement to sale invoice indicates that the payment would not be made immediately—It could be termed as credit sale—Deductions could be allowed on interest charged thereto—However, the circumstances as noticed by the Tribunal itself could not be a decisive factor—Hence, the Tribunal ought not to have directed the authorities concerned to confine their investigation to the limited aspect of the matter but should have directed them to investigate the entire matter—Interest on receivable on account of time lapse in realization of price and also bank charges whether deductible from the price/valuation of the goods—Revenue authorities to examine—Tribunal's order modified accordingly.*

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Assessment—Bank charges—Deductions—Held : They are in the nature of post-manufacturing and post-clearing expenses and could be deductible from the assessable value of the goods.

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The question which arose for consideration in these appeals was as to whether interest accruing on advances and Bank charges are deductible from the price for the purpose of assessment of value of the goods.

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Allowing the appeals, the Court

HELD : 1.1. The question whether in a given case the price structure itself includes the interest charged or not is a matter for establishment on evidence. The fact that a particular period for payment is mentioned would indicate that the payment is not to be made immediately but at a subsequent date and that is credit sale and interest could be charged and deducted out of the sale price. But that circumstance, by itself, is not a decisive factor. Therefore, the Tribunal while remanding the matter should not have limited the investigation of the matter only to cases where the period has been subsequently stated in the invoice. Hence, the Tribunal ought not to have confined the investigation by the concerned authority after remand to only that aspect of the matter and should have investigated the entire matter. [112-F-G-H]

1.2. If the invoice price is the basis for valuation, bank commission or interest charges payable to the bank in the account of the customer are definitely in the nature of post-manufacturing and post-clearing expenses and should be deductible from the assessable value. It cannot be stated that such expenses would form part of the sale price. Further, bank charges included in the price on account of clearance of outstation cheques cannot form part of the price of the goods at the time of removal and as such excludible from the price while calculating the assessable value of the goods. Hence, the order of the tribunal is modified and the authorities to whom the matter have been remanded are directed to examine the question as to whether interest on receivables arises on account of time lapse between the delivery of goods and the realization of monies is deductible from the assessable value of the goods at the time of removal from the factory of the assessee and as to whether the bank charges includible in the price on account of clearance of outstation cheques. [113-A-B, D, F-G]

Commissioner of Central Excise, New Delhi v. Vikram Detergent Ltd., [2001] 2 SCC 417; Asstt. Collector of Central Excise & Ors. v. Madras Rubber Factory Ltd., [1986] Supp. SCC 751 and Shriram Fertilizers & Chemicals v. Union of India, (1997) 96 ELT 12 SC, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5756-59 of 2000.

A From the Judgment and Order dated 6.6.2000 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in E.O. Nos. 348-355/2000-A in A. Nos. E/1698-1701/99-A, E/1077/98-A, E/1278/99-A and E/14-15/2000-A.

B D.A. Dave, R.N. Karanjawala, Ms. Ruby, S. Ahuja, Ms. Seema Sundd, Mrs. Manik Karanjawala for the Appellant.

Ranjit Kumar, T.A. Khan and B.K. Prasad for the Respondent.

C The Judgment of the Court was delivered by

RAJENDRA BABU, CJ. : These appeals are filed under Section 35L(b) of the Central Excise Act, 1944 against an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the Tribunal). In that proceeding the appellant raised two issues, namely, (i) whether the interest accruing on advances are deductible from the price or not, and (ii) as to deduction of the bank charges and collection charges.

E During the relevant period, the appellant manufactured and sold the goods principally to Government and Public Sector Undertakings. On account of the fact that the payments were not effected against delivery or within any specified period, the payments of the prices became delayed averaging between 3 to 12 months and, therefore, the appellant claimed deduction in respect of interest of such receivables calculated for the period between the date of removal till the date of realisation of payment. The deduction so claimed was supported by Certificate of Chartered Accountant for the relevant period. Deductions were also claimed in the price list filed from time to time. The assessing authority, the appellate authority and Tribunal rejected the claim made by the appellant on the basis that the contract did not specifically provide for payment of such interest on sales on credit. The Tribunal stated the matter of law as follows :-

H "The interest so deductible is only the interest for the period mentioned in the invoice, otherwise it will lead to unintended consequences. In cases where payment to the manufacturer is indefinitely delayed or where the dealer refuses to pay the price,

the sale price will stand wiped off, because the interest may exceed price. In such a case, are not the goods liable to excise duty? The answer can only be emphatic 'no'. Excise duty is on the manufacturer of the goods. It is not depending on the issue as to whether the manufacturer gets the price of the goods from the dealer or not. So, the interest charged from the date of delivery till the realisation of the price should be understood with reference to the period fixed in the invoice. If the invoice provides a specific period up to thirty days for effecting payment, interest from the date of delivery till the expiry of that period of thirty days alone is deductible from the price mentioned in the invoice."

This part of the order is challenged apart from other aspects to which we will advert to a little later.

It is pointed out that this Court had occasion to examine the question as to the value of the goods on the date of removal whether interest on the price for the period during which the payment is deferred has to be deducted or not in the case of *Asst. Collector of Central Excise & Ors. v. Madras Rubber Factory Ltd.*, [1986] Supp. SCC 751. This decision again came up by way of review in the decision reported in *Government of India & Ors. v. Madras Rubber Factory Ltd. & Ors.*, [1995] 4 SCC 349. In the second judgment, this Court stated as follows :-

"The case of the assessee (Madras Rubber Factory) is that where the goods are sold to upcountry wholesale buyers and payments are received quite sometime later, it is indeed a case of sale on credit and, therefore, the interest charged from the date of delivery of goods till the date of realisation of the price thereof should be deducted from the value of the goods. The interest charged, it is submitted, is only in lieu of the time taken in making the payment by the upcountry wholesale buyer. *Since this is the amount received subsequent to the sale from the depots and does not fall within the ambit of any of the expenses held includable in Bombay Tyre International, it is clearly excludable.* The claim for this deduction is, therefore, allowed."

(emphasis supplied) H

- A** A circular was also issued by the Government which is to the effect that interest on receivables cannot be permitted to be deducted from the assessable value if the interest is not charged over and above the sale price of the goods. However, this aspect was not accepted by the Tribunal. It was held that if the assessee is claiming interest out of the price mentioned
- B** in the invoice, when the period for its payment is mentioned and when the invoice makes it clear that the sale is on credit, interest on the amount for the period of credit permitted must be a permissible deduction and it must be excluded from the price fixed in the invoice for finding out the assessable value.
- C** The question whether the interest that is payable on the sale price that is not yet paid by the customer is built into the price structure or not and, therefore, should be deducted from the value of the goods needs to be examined.
- D** This Court clearly stated in 1995 (77) ELT 433 that since the amount is received subsequent to the sale from the depots and does not fall within the ambit of any of the expenses held includible in *Bombay Tyre International*, it is clearly excludible and the claim for this deduction should, therefore, be allowed.
- E** In cases where buyers do not make payments immediately against delivery of the goods but payments are received subsequently it would indeed be a case of sale of credit and, therefore, interest is chargeable from the date of delivery of goods till the realisation of price thereof and should
- F** be deducted from the value of the goods. The question whether in a given case the price structure itself includes the interest charged or not is a matter for establishment on evidence. The fact that a particular period for payment is mentioned would indicate that the payment is not to be made immediately but at a subsequent date and that is credit sale and interest could be charged and deducted out of the sale price. But that circumstance, by itself, is not
- G** a decisive factor. Therefore, the Tribunal while remanding the matter should not have limited the investigation of the matter only to cases where the period has been subsequently stated in the invoice. Therefore, we are of the view that the Tribunal ought not to have confined the investigation by the concerned authority after remand to only that aspect of the matter
- H** and should have let the entire matter investigated as indicated by us.

Next we have to consider deduction of the bank charges and collection charges. We must make it clear that if the invoice price is the basis for valuation bank commission or interest charges payable to the bank in the account of the customer are definitely in the nature of post-manufacturing and post-clearing expenses and should be deductible from the assessable value. It cannot be stated that such expenses will form part of the sale price. The view taken by us finds support from the decision of this Court in *Commissioner of Central Excise, New Delhi v. Vikram Detergent Ltd.*, [2001] 2 SCC 417, which conclusion was arrived at by this Court after examining earlier decisions of this Court in *Asst. CCE v. Madras Rubber Factory Ltd.* [supra], *Shriram Fertilizers & Chemicals v. Union of India*, (1997) 96 ELT 12 (SC), and *Government of India v. Madras Rubber Factory Ltd.* [supra]. These three cases were adverted to by a Bench of three Judges to hold that the interest on receivables arises on account of time lapse between the delivery of goods and the realisation of monies is deductible from the assessable value of the goods at the time of removal from the factory of the assessee. For the same reason, bank charges included in the price on account of clearance of outstation cheques cannot form part of the price of the goods at the time of removal and as such excludable from the price while calculating the assessable value of the goods.

Therefore, we think, it is clear that the decision in *Commissioner of Central Excise, New Delhi v. Vikram Detergent Ltd.* case (supra) fully covers both the questions in this case and, therefore, we have no hesitation in modifying the order of the Tribunal to direct the authorities to whom the matters have been remanded to examine the question whether interest on receivables arises on account of time lapse between the delivery of goods and the realisation of monies is deductible from the assessable value of the goods at the time of removal from the factory of the assessee and also excludes the bank charges included in the price on account of clearance of outstation cheques.

The appeals stand allowed accordingly.

S.K.S.

Appeals allowed.

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