Hindustan Milkfood Manufacturers Limited

Vs

Director of Entry Tax, West Bengal and Others

Civil Appeal No. 861 (N) of 1980

Hindustan Milkfood Manufacturers Limited and Another

Vs

Director of Entry Tax, West Bengal and Others

Writ Petition (Civil) No. 1415 Of 1979

(CJI Y. V. Chandrachud, A. N. SenA. Varadarajan JJ)

15.04.1983

JUDGMENT

VARADARAJAN, J.-

1. This Civil appeal by special leave is directed against the order of the Assistant Director, Entry Tax, Government of West Bengal, the second respondent, dated September 25th, 1979 dismissing the case of the appellant Hindustan Milkfood Manufacturers Limited in Appeal Case No. 3970-H of 1976-77. The appeal was filed under Section 27 of Taxes of Entry of Goods into Calcutta Metropolitan Area Act, 1972 (hereinafter referred to as the 'Act of 1972') against the assessment of entry tax made in Form V No. D-983001 at the Hussenabad Road Check Post in respect of 8736 kgs of Horlicks powder contained in 18 steel drums on the "best judgment assessment" basis with reference to the sale price of the product within the Calcutta Metropolitan Area. The appellant is a public limited company incorporated under the Companies Act, 1956 having its registered office at Patiala Road, Nabha. The Company is engaged in the manufacture and sale of dairy products including the milkfood popularly known as Horlicks. The appellant's product is manufactured in the factories located at Nabha in Punjab and Rajahmudry in Andhra Pradesh. The product is transported in bulk in several steel drums containing 182 kgs each. The appellant showed the value of the aforesaid 8736 kgs of powder imported into Culcatta at the Hussenabad Road Check Post in Form V as Rs 1,22,304 working out to Rs 14 per kg. The appellant's contention was that the value as per stock transfer invoice is Rs 5.9891 per kg and the delivered cost including freight and insurance is Rs 7.694 per kg at Calcutta, that the declaration and documents regarding the value, freight and insurance made by the appellant should have been accepted by the Assessing Officers at the Hussenabad Road Check Post and that G. P.-1 irrelevant for the purpose of assessment of entry tax and it should not have been made the basis for determination of the value of the product at the point of the entry. Memo No. 779/ETO/H-76 dated August 11, 1976 of the Entry Tax Officer of the concerned check post contains the orders of the Assessee Officer with their reasons for arriving at the assessable value shown in Form V mentioned above. The original documents were not produced before the Assessee Officers in spite of repeated reminders. Consequently the assessment was made on the "best judgment" basis.

2. In the appeal before the 2nd respondent it was argued for the appellant that the Taxes on Entry of Goods into Culcatta Metropolitan Area Rules, 1970 (hereinafter referred to as the 'Rules of 1970') framed under Section 34 of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 (hereinafter referred to as the 'Act of 1970') were ultra vires on the ground that they were framed under Section 34 of the Act of 1970 and cannot be applied for the purposes of the Act of 1972. It was also argued for the appellant that where a declaration is submitted and the document were shown by the dealer to the Assessing Officer he should have proceeded in accordance with Section 14 (1) of the Act of 1972 and that there was no omission or failure on the part of the dealer, and therefore, there was no scope for determining the value of the product on the "best judgment" basis as provided for in Rule 12 (2) of Rules of 1970. The Ordinance of 1972 replaced the Act of 1970. According to the 2nd respondent Section 1 (3) of that Ordinance and Section 37 (2) of the Act of 1972 provide for continuance of the operation of the Rules of 1970 and that those provisions can be validly applied under the present Act of 1972. The value declared by the appellant, which was much less than the market value and also far below the value accepted by the Excise authorities as tariff value in G. P.-1 as ascertained while the product came out of the factory at Nabha, was not accepted by the Assessing Officer for the reason given by him in the aforesaid memo dated August 11, 1976 and, therefore, he proceeded to ascertain the value on the approximate saleable value of the goods in the Calcutta Metropolitan Area with reference to the price list of the goods circulated by the appellant's selling agent as he is authorised to do under Rule 12 (2) of the Rules of 1970 if he is satisfied that the value mentioned by the assessee does not appear to be reasonable.

3. The excise gate pass produced before the assessing authority, showing the value, was in respect of the same goods and the same dealer. The copy produced by the appellant purported to be of C. No. CE/20/BPE/70 dated December 5, 1970 of the Superintendent, Central Excise and Customs, Patiala, and it was contended it was not a certified copy and the original was not paid at Nabha. But it was not a certified and the original was not produced and, therefore, it was held that it was not proved that the excise duty was not paid at the time of the removal of the goods from the factory at Nabha. In these circumstances the 2nd respondent held that the Assessing Officer considered the material made available before him and also examined the different aspects of the matter placed before him, that the saleable value ascertained by him is the wholesale price and not the retail sale price of the product and that the value ascertained by the Assessing Officer cannot be said to be arbitrary. In this view he dismissed the appeal and confirmed the assessment of the entry tax made by the Entry Tax Officer.

4. The writ petition has been filed by the appellant in the above civil appeal and a shareholder and attorney of that appellant for quashing Annexures III, V and VI to the writ petition and restraining the respondents (Director of Entry Taxes, Government of West Bengal and other) from levying or demanding entry tax on a basis other than the value of Horlicks powder declared by the the petitioners at the point of entry into Calcutta Metropolitan Area unless and until the procedure prescribed in terms of Section 17 of the Act of 1972 is adopted and the misstatement, of any, in the declared value is satisfactorily explained. Annexure III is a notice dated July 20, 1976 issued to the petitioners of the hearing fixed on July 30, 1976 for making fresh assessment of the entry tax in view of the High Court's order dated June 13, 1976 setting aside the assessment order in From V, No. 228479 dated June 30. 1974 and directing fresh assessment to be made within three months after giving reasonable opportunity to the petitioners of beings heard. Annexure V is the order of the Assistant Director, Entry Tax, West Bengal, the 2nd respondent in the aforesaid civil appeal, challenged in that civil appeal. Annexure VI is the Entry Tax Officer's notice dated May 24/31, 1979 calling upon the petitioners to appear before him on June 12, 1979 and produce accounts and other documents for the purpose of determining the short levy of entry tax in the assessment made on July

14, 1974 in respect of which a demand for payment in Part II of From V No. C 240284 has been issued to the petitioners.

5. The petitioners' case in the writ petition is that Horlicks powder manufactured by the petitioners in the factories located at Nabha and Rajahmundry is transported to several packing stations located, inter alia, at Howrah, in large steel drums containing 182 kgs of Horlicks powder in each drum. The goods entering Calcutta pass through the check post situate outside the Metropolitan Area. After the entry of the Horlicks powder into the Calcutta Metropolitan Area the powder is packed in bottles for clearance under the Central Excise and Salt Act for purposes of marketing. Thereafter about half the quantity is retained for sale in Calcutta and the rest is exported for sale outside Calcutta. According to the petitioners the goods arriving at the check post have no other value except the cost of manufacture, freight and insurance charges, and only after the Horlicks powder in drums enters the Calcutta Metropolitan Area the cost of bottling inputs, bottling expenses and manufacturing profits are added and excise duty is assessed and paid on the total value. After clearance from packing stations the goods enter the market for sale and absorb the element of business profits of the wholesalers and retailers besides taxes such tax. In the case of export of goods directly from Nabha or Rajahmundry, having regard to Central Excise Regulations, clearance is effected on payment of the excise duty on the invoice value which includes cost and profit of manufacture. Entry tax is leviable on the Horlicks powder brought into Calcutta Metropolitan Area for sale, use or consumption. The Act of 1970 came into force on or about November 16, 1970, The Rules of 1970 were framed in exercise of the powder conferred by Section 34 of the Act of 1970 as mentioned earlier which was replaced by Taxes on Entry of Goods into Calcutta Metropolitan Area Ordinance, 1972 (hereinafter referred to as the 'Ordinance of 1972') promulgated on March 22, 1972 Section 1 (3) of that Ordinance provides for the continued operation of the said Rules of 1970. The Ordinance of 1972 was replaced by the Act 1972. This Act of 1972 does not contain any provision for the continued operation of the Rules of 1970. The petitioners challenge the legality, validity and jurisdiction of the impugned levy and recovery of tax made on the 'best judgment' basis with reference to the sale price of the product within the Calcutta Metropolitan Area, disregarding the cost of the consignments of the petitioner' goods declared by the petitioners with the relevant documents including auditor's certificate and audited account of the petitioners.

6. In respect of the consignment of Horlicks powder imported from the factory at Nabha into the Calcutta Metropolitan Area, petitioner 1 had throughout submitted the requisite declaration in the prescribed form together with the relevant document such as invoice, consignment note and insurance cover envisaged in Rule 12 and cost sheets duly certified by the Auditors M/s A. F. Fergusan & Co., and disclosing the delivered cost of the Horlicks powder at Calcutta including the manufacturing cost, insurance and freight as Rs 4.9393 per kg in 1970-71, Rs 4.6922 per kg in 1971-72 and Rs 4.9913 per kg in 1972-73, The value declared for the Horlicks powder brought into Calcutta Metropolitan Area in bulk containers was Rs 5.9891 per kg for which insurance cover had been obtained. This value had at first been accepted at the time of entry of the goods into the Calcutta Metropolitan Area. But in the latter part of April and early part of May, 1974 the respondents declined the issue transport passes under Section 21 of the Act of 1972, in respect of Horlicks powder which was not intended for sale, use or consumption within the Calcutta Metropolitan Area and sought to levy entry tax thereon. Therefore, the petitioner filed Writ Petition No. 155 of 1974 in the Calcutta High Court and obtained interim injunction on May 6, 1974. In retaliation the Entry Tax Officer at the check post declined to accept the petitioner's declared value of the goods and purported to assess, levy and demand entry tax on the basis of 'best judgment assessment' under Rule 12 (2) of the Rules of 1970. The petitioners paid the entry tax as demanded to avoid confiscation of the goods and thereafter, filed Writ Petition No. 4133 of 1974 in the

Calcutta High Court challenging the assessment in respect of 10 consignment under Rule 12 (2) and the non-acceptance of the value declared by the petitioners in the prescribed form duly supported by relevant documents. The writ petition was disposed of by a short order dated May 13, 1976 directing fresh assessment to be made after giving opportunity to the petitioners without prejudice to the petitioner's right to challenge the fresh assessment in accordance with law. Accordingly, respondent 4 completed fresh assessment on August 11, 1976. Aggrieved by the said fresh assessment order dated August 11, 1976 and the subsequent assessment made on that basis the petitioners filed about 250 appeals of which 201 were disposed of by respondent 2 in terms of the order dated September 25, 1979 made in Appeal No. 3970-H of 1976-77, confirming the assessments, relying heavily on the tariff value appearing in form G. P.-1 for purposes of excise duty in respect of the consignment of Horlicks powder from the factory at Nabha in the course of export to Bangladesh, ignoring the fact that the excise duty was paid at Nabha only in respect of consignment cleared in the course of export and in all other cases it was paid only after the goods were put into marketable conditions after having been packed in unit containers at Calcutta. Respondents 2 and 4 rejected the documents produced by the petitioners for the purposes of assessment under Rule 12 (1) of the Rules of 1970 and resorted to 'best judgment assessment' under Rule 12 (2) of those Rules and assessed the taxable value on the basis of the retail sale price of unit bottles of 450 gms each in the local market at Calcutta though the petitioners never intended to sell and have never sold Horlicks powder in bulk containers as other than the delivered cost of the powder to the petitioners at the entry check post. The basis adopted by respondents 2 and 4 is ultra vires Sections 13 and 14 of the Act of 1972. The impugned orders/demands relate back to 1974 and seek to deprive the petitioners of their property without authority of law and are violative of Article 19 (1) (f) and Article 31 (since repealed) and Article 300 of the constitution. In these circumstances, according to the petitions the impugned appellate order dated September 25, 1979, assessment order dated August 11, 1976 and subsequent assessment orders and demands based thereon are illegal and without jurisdiction and are liable to be set aside.

7. No counter-affidavit has been filed in the writ petition which has been heard along with above civil appeal.

8. The appellant/writ petitioners manufacture Horlicks powder in their factories at Nabha in Punjab and Rajahmundry in Andhra Pradesh and get the Horlicks powder transported in bulk in steel drums, each containing 182 kgs, to various centers for the purpose of marketing. We are concerned in the appeal and the writ petition with 8736 kgs of Horlicks powder imported into the Calcutta Metropolitan Area in 1974 from the appellant's factory at Nabha such bulk containers. It is not disputed that Horlicks powder is a taxable item falling within "preserved provisions except food exclusively meant for babies" mentioned at Serial No. 4 (x) of the Schedule to the Act of 1972, which are liable for entry tax at six per cent ad valorem. The charging Section 6 (1) of the Act of 1972 lays down that save as otherwise provided in Chapter III, in which that section occurs, "there shall be levied and collected... a tax on the entry of other specified goods into the Calcutta Metropolitan Area for consumption, use or sale therein, from any place outside that area, at such rate not exceeding the rate specified in the corresponding entry in column 3 of the Schedule as the State Government may by notification specify." This Section 6 (1) of the Act of 1970, in which Serial No. 4 (x) of the Schedule is "preserved provisions" chargeable to entry tax at the same rate of six per cent ad valorem.

9. Under Section 13 of the Act of 1970 as also of the Ordinance and the Act of 1972 which are identical, every dealer of the specified goods shall on or before the entry of such goods into the Calcutta Metropolitan Area deliver to the Prescribed Authority a declaration in such for and

containing such particulars as may be prescribed relating to such goods except goods which are exempted by Section 6 (2), Section 7 and Section 8 from the payment of any tax leviable under the said Acts or Ordinance as the case may be. Under Section 14 (1) of the said Acts and Ordinance which are identical, where a declaration has been made by the dealer as require by Section 13, the Prescribed Authority shall, after making such verification of the goods as it may consider necessary assess the tax leviable on the entry of such goods into the Calcutta Metropolitan Area.

10. The Rules of 1970 have been framed in exercise of the power conferred by Section 34 of the Act of 1970. Under Rule 12 (1) for the purpose of determining the value of the goods where the tax under the Act levied ad valorem, every dealer shall declare the value in Form IV referred to in Rule 16 and such value shall include : (a) cost price of such goods as given in the bill or invoice or consignment note issued by the consignor or any document of like nature, (b) shipping document, (c) insurance, (d) excise duty and (e) sales tax, and such declaration should be submitted to the appropriate Assessing Officer along with a copy of the relevant bill, invoice or consignment note issued by the consignor or other documents of like nature in support of other charges, duties and fees, signed by the person issuing such bill, invoice, consignment note and other documents. Rule 12 (2) lays down that if the Assessing Officer is satisfied about the reasonableness of the value quoted in the documents submitted on behalf of the dealer, he shall accept the same and levy tax accordingly, and if the value is not ascertainable on account of non-availability or non-production of the bill, invoice or consignment note or other documents showing other charges, duties and fees or if such Assessing Officer is not satisfied about the reasonableness of the value shown or declared by the dealer, such Assessing Officer shall determine the approximate value of such goods in the Calcutta Metropolitan Area to the best of judgment and shall levy tax accordingly. Section 36 of the Ordinance of 1972 enabled the State Government, subject to the condition of publication, to make rules for carrying out the purposes of the ordinance. Section 1 (3) of the Ordinance of 1972 which came into force immediately on the cesser of operation of the Act of 1970 stated that any rule or order made, any notification issued, any direction given, anything done or any action taken under any of the provisions of the Act of 1970, shall on the cesser of operation of that Act continue in force and shall be deemed to have been made, issued, given, done or taken under the corresponding previous publication, to make rules for carrying out the purposes of that Act. Clause (1) of Section 37 of the Act of 1972 repealed the Ordinance. Clause (2) of that Section lays down that anything done or any action taken under the Ordinance shall be deemed to have been done under the Act of 1972 as if that Act had commenced on November 16, 1970, on which date the Act of 1970 came into force. Evidently, in view of this saving provision in the Ordinance and Act of 1972, notwithstanding the fact that there is a specific provision by way of Section 36 in the Act of 1972 for framing rules for carrying out the purposes of that Act, no fresh rules under the Act of 1972 have been framed and only the Rules of 1970 are continued and amendments have been made to some of those rules from time to time in exercise of the power conferred by Section 36 of the Act of 1972. Thus, on April 1, 1973 Rules 2 and 4 (1) have been amended; on January 15, 1974 Rule 4 (1) has been further amended; on February 1, 1974 Rule 3 was substituted by a new rule; on November 25, 1975 Rule 42 was added; and on September 20, 1976 of proviso to Rule 12 (1) has been added.

11. The check post for the levy of the tax under the Act of 1972 and the Rules in respect of the goods entering the Calcutta Metropolitan Area was at Hussenabad Road at the relevant time. The appellant's contention is that in respect of the Horlicks powder imported from its factory in Nabha into Calcutta Metropolitan Area, the appellant had throughout submitted the requisite declaration in the prescribed form together with the relevant documents such as invoice, consignment note, insurance etc. envisaged in Rule 12 and cost sheets duly specified by its Auditors M/s A. F. Fergusan and Co., disclosing the delivered cost of the Horlicks powder at Calcutta including the

manufacturing cost, insurance and freight as Rs 4.9393 per kgs in 1970-71, Rs 4.6922 per kg in 1971-72 and Rs 4.9913 per kg in 1972-73, and the value declared for the Horlicks powder brought into the Calcutta Metropolitan Area in bulk containers was Rs 5.9891 per kg, for which insurance cover had been obtained and the value was accepted until the latter part of April 1974. The appellant's complaint is that in view of the refusal of the respondents to issue transport passes under Section 21 of the Act of 1972 in respect of Horlicks powder which was not intended for sale, use or consumption within the Calcutta Metropolitan Area the appellant was obliged to file W. P. No. 155 of 1974 in the High Court at Calcutta and obtained interim injunction on May 6, 1974 and that in retaliation the Assessing Officer declined to accept the declared value of the said 8736 kgs of Horlicks powder for the reasons given by him in the memo dated August 10, 1976 and he proceeded to ascertain the value on the basis of the approximate saleable value of the goods in the Calcutta Metropolitan Area with reference to the price list of the goods circulated by the appellant's selling agent in that area and that he has no right to do so and was bound to accept the value declared by the appellant and proceed in accordance with Rule 12 (1) of the Rules and there was no scope for determining the value of the goods on best judgment' basis as provided for in Rule 12 (2).

12. The first objection of the appellant is that though Section 1 (3) of the Ordinance provided for the continued operation of the Rules of 1970, that Ordinance was replaced by the Act of 1972 and there is no provision saving or providing for the continued operation of the Rules of 1970 after the Ordinance ceased to be operative, and therefore, the Assessing Officer could not resort to Rule 12 (2) and adopt the 'best judgment' method for ascertainment of the value of the goods. We are of the opinion that there is no force in this contention. As a matter of fact this objection was not even referred to by the learned counsel for the appellant and writ petitioners before us in the course of his arguments. Admittedly, Section 1 (3) of the Ordinance of 1972 stated that any rule or order made, any notification issued, any direction given, anything done or any action taken under any of the provisions of the Act of 1970 shall on the cesser of operation of that Act continue to be in force and shall be deemed to have been made, issued, given, done or taken under the corresponding provisions of the Ordinance of 1972, and Section 37 (2) of the Act of 1972 lays down that anything done or any action taken under the Ordinance of 1972 shall be deemed to have been done under 1972 as if that Act had been passed on November 16, 1970, on which date the Act of 1970 came into force and though Section 36 of the Act of 1972 empowers the State Government, subject to previous publication to make rules for carrying out the of that power and only certain amendments have been made to certain rules of those of 1970 from time to time in exercise of the power conferred by Section 36 of the Act of 1972 as mentioned above. Therefore, it is clear that the Rules of 1970 have been kept alive by the provisions of Section 1 (3) of the Ordinance and Section 37 (2) of the Act of 1972, and that it is open to the Entry Tax Officer to resort to the 'best judgment' method for ascertainment of the value of the goods under Rule 12 (2) provided the requirements thereof are satisfied, namely, that the value is not ascertainable on account of non-availability or non-production of the bill or invoice or consignment note issued by the consignor or other documents of like nature or other documents showing other charges, duties and fees or that the Assessing Officer is not satisfied about the reason ableness of the value shown or declared by the dealer.

13. Now the question for consideration is whether or not the Assessing Officer was justified in resorting to the 'best judgment' method of ascertaining the value of the goods under Rule 12 (2) and the appellate authority was or was not justified in confirming the order of assessment made by Assessing Officer. The appellant showed. He value of the said 8736 kgs of Horlicks powder imported into the Calcutta Metropolitan Area at the Hussenabad Check Post as Rs. 1,22,304 working out to Rs 14 per kg, but wanted his declaration of the value as Rs. 7.694 per kg in the Calcutta Metropolitan Area, made up of Rs. 5.9891 being the value as per the stock transfer invoice,

freight and insurance to be accepted by the Assessing Officer. The appellant produced before the Assessing Officer a copy of the excise gate pass showing the value to be in respect of the same goods and in respect of the same dealer. The copy purported to be of C. No. CE/20/BPE/70 dated December 5, 1970 of the Superintendent of Central Excise and Customs, Patiala, and it was contended on behalf of the appellant before the Assessing Officer that excise duty was paid at Nabha. But the copy produced did not purport to be a certified copy and the original was not produced, and therefore, the Assessing Officer held that excise duty was not paid at the time of removal of the goods from the factory at Nabha. It is the appellant's contention that only in the case of export of goods directly from Nabha or Rajahmundry having regards to the central excise regulations, clearance of goods from the factory is effected on payment of excise duty on the invoice value which includes the cost and manufacturer's profit. But the copy produced was not a certified copy and the original gate pass was not produced. There fore, it could not be held that the Assessing Officer was not justified in rejecting the copy and holding that excise duty was not paid at the time of the removal of the concerned consignment from the factory at Nabha.

14. According to the appellant's case in the writ petition, when the goods arrive at the Hussenabad Cheek Post in bulk, packed in steel drums containing 182 kgs of Horlicks powder each, the goods have no other value except the cost of manufacture, freight and insurance and only after the Horlicks powder, packed in the steel drums, enters the Calcutta Metropolitan Area the cost of bottling inputs, bottling expenses, manufacturer's profits are added and excise duty is paid on the total value after the goods are put into marketable condition. It is also the appellant's case in the writ petition that the appellant never intended to sell and had never sold Horlicks powder in bulk containers in the Calcutta Metropolitan Area or elsewhere and that respondents 2 and 4 in the writ petition, namely. Assistant Director (Entry Tax) and the Inspector (Entry Tax), Hussenabad Check Post, rejected the documents produced for the purposes of assessment under Rule 12 (1) and wrongly resorted to the 'best judgment' method of ascertainment of the value under Rule 12 (2) and assessed the taxable value on the basis of the retail price of unit bottles of 450 gms each in the local market at Calcutta. It is not possible to accept the appellant's contention that the Horlicks powder packed in steel drums containing 182 kgs each had no value at the Hussenabad check Post apart from the cost of manufacture, freight and insurance. That may be so from the point of view of the manufacturer, but it cannot be the value of the goods in the Calcutta Metropolitan Area where the value should include in addition to the aforesaid items the cost of further transport into the Calcutta Metropolitan Area from the Hussenabad Check Post, excise duty if not already paid at the time of removal of the goods from the factory at Nabha, wholesaler's and retailer's profits and sales tax. Under Rule 12 (1) the value declared must include cost price of the goods as given in the bill, invoice or consignment note or any other document of like nature, shipping duties where applicable, insurance, excise duty and sales tax. It may be that the process of bottling and labelling is resorted to after the bulk consignment is received into the Calcutta Metropolitan Area for the purpose of convenience and it may also be that it may not from part of the value of the goods at the point of entry. The cost of bottling and labelling the Horlicks powder into unit bottles inside the Calcutta Metropolitan Area would be negligible. It may be that the appellant may be entitled to ask the Assessing Officer to take that also into consideration in the case of assessment under Rule 12 (1). But since the value declared by the appellant was far less than the value showed by the appellant company itself in From V as Rs. 1,22,304 working out to Rs 14 per kg as well as the value shown for the unit bottles in the price list of the appellant's selling agent in the Calcutta Metropolitan Area. It is not possible to hold that the Assessing Officer was not justified in rejecting the value declared by the appellant as Rs 7.694 per kg and resorting to ascertainment of the assessable value on the 'best judgment' basis as provided for in Rule 12 (2) on the basis of the approximate assessable value

of the goods in the Calcutta Metropolitan Area.

15. The learned counsel for the appellant invited our attention to this court's decision in C. I. T. W. B. I. v. Padamchanad Ramgopal" where in his investigation the Income tax Officer found two insignificant mistakes in the assessee's accounts for the year 1953-54. Those mistakes were (1) failure to bring into account an item of interest received and (2) incorrectness of an entry relating to the receipt of income. No mistake was found in the accounts relating to the assessment years 1954-55 to 1957-58 However, the Income Tax Officer rejected the accounts as unreliable and added to the returned income half the amount of gross receipts shown by the assessee under the head "interest" for each of the years as escaped income. The Tribunal accepted the addition made by the Income Tax Officer. But this Court held that the Income Tax Officer and the Tribunal erred in holding that the additions could be made in accordance with law and it was further held that the two mistakes afforded no basis for rejecting the accounts of the subsequent years and the method adopted for determining the escaped income was highly capricious. We think that the ratio of that decision will not apply to the facts of the present case. In Haji Lal Mohd. Biri Works, Allahabad v. State of U. P. which related to "best judgment" method of assessment under Section 18 (4) of the M. P. General Sales Tax Act. It has been held that the assessing authority while making 'best judgment assessment' should arrive at its conclusion without any bias and on a rational basis and that if the estimate made by the assessing authority is his bona fide estimate and is based on a rational basis the fact that there is no good proof in respect of that estimate does not render the assessment illegal there is no material in the present case for us to hold that the assessing authority had any bias against the appellant or that his estimate of the assessable value of the goods is not a bona fide estimate or that it has no rational basis. We find that the Assessing Officer had sufficient reason for not accepting the appellant's declaration regarding the value of the goods and that his assessment of the saleable value on the 'best judgment' basis is rational and based on the appellant's own selling agent's price list in the Calcutta Metropolitan Area. We find no merit in the appeal and writ petition. The appeal and writ petition, therefore, fail and are dismissed. The appellant shall pay the respondents' costs in the appeal. There will be no order as to costs in the writ petition.

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