

Assistant Collector of Central Excise and Others

Vs

Madras Rubber Factory Ltd.

Superintendent of Central Excise, Kottayam and Others

Vs

Madras Rubber Factory Ltd.

Union of India and Others

Vs

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Vs

Collector of Central Excise, Madras

Civil Appeal Nos. 3195 of 1979, 4731-32 and 793 of 1984 and Special Leave Petition (Civil) No. 10108 of 1980

(CJI P. N. Bhagwati, V. Khalid JJ)

20.12.1986

JUDGMENT

BHAGWATI, C. J. :-

1. The above cases are involving a company known as Madras Rubber Factory Ltd. (popularly known as MRF Ltd.). MRF has four factories at Kottayam (Kerala), Madras (Tamil Nadu), Arkonam (Tamil Nadu) and Goa (Union Territory) engaged in the manufacture of automotive tyres, tubes and other rubber factory products. Each of these factories are under jurisdiction of different Assistant Collectors. The 4 proceedings arising for our consideration are as under :

(i) Civil Appeal No. 3195 of 1979 is an appeal by certificate filed by the Union of India through the Assistant Collector of Central Excise, Kottayam against the judgment dated June 20, 1979 of the Division Bench of the High Court of Kerala from Writ Appeal No. 302 of 1978 allowing post-manufacturing expenses under the new Section 4 of the Excise Act. This relates to the Kottayam factory.

(ii) Civil Appeals No. 4731-32 of 1984 are appeals filed by Union of India through the Superintendent of Central Excise, Kottayam against the judgment dated April 1, 1976 of the Division Bench of the High Court of Kerala allowing post-manufacturing

expenses under the old Section 4 of the Excise Act.

(iii) SLP (Civil) No. 10108 of 1980 is another appeal of the Union of India against the judgment of the Additional Judicial Commissioner, Goa, Daman and Diu allowing post manufacturing expenses under the old Section 4 of the Excise Act in respect of the factory at Goa. In respect of new Section 4, the Union of India and MRF were agreed that the decision in Writ Appeal No. 302 of 1978 being the subject-matter of Civil Appeal No. 3195 of 1979 would be applicable to the factory at Goa.

(iv) Civil Appeal No. 793 of 1984 is MRF's appeal under Section 35-L of the Central Excises and Salt Act (as amended) against the order and decision dated February 1, 1984 of the Tribunal (CEGAT) deciding that the sale of tyres and other rubber products through their 42 depots throughout India were not retail sales but were in the nature of wholesale sales and MRF was not entitled to deductions under Rule 6-A of the Central Excise (Valuation) Rules, 1975 (hereinafter referred to as the "Valuation Rules").

2. These proceedings are now arising for our consideration after the pronouncement of the judgment by this Court in the case of Union of India v. Bombay International Ltd. decided on October 7, 1986 and the clarificatory order passed by this Court in the same case of Union of India v. Bombay Tyre International Ltd. This clarification was given by the Supreme Court on November 14 and 15, 1983. Pursuant to hearings held in this Court in several cases relating to post-manufacturing expenses and after the latter clarificatory order in the case of Union of India v. Bombay Tyre International Ltd., the Tribunal (CEGAT) decided the review notice and set aside the order of the Appellate Collector on February 1, 1984 and on February 9, 1984 the Civil Appeal No. 793 of 1984 was admitted. Format orders were passed by this Court in the pending appeals relating to post-manufacturing expenses. Even in the present matters format orders were passed on or around May 3, 1984. Format orders were also passed in the pending Writ Appeal No. 590 of 1979 pending before the High Court at Madras. In accordance with the format orders and within the time frame stipulated, amendments to price lists were to be filed by MRF Ltd. The present appeals are now to consider the various deductions claimed by MRF Ltd. and/or disallowed and/or not allowed by the Assistant Collector, or allowed by the Assistant Collector, in the various jurisdiction qua the factories of MRF Ltd. in the cross-appeals of the Union of India and the MRF Ltd.

3. For the sake of convenience, the deductions arising for consideration of this Court can be summarised as under :

- (i) TAC/Warranty discount
- (ii) Product discounts
- (iii) Interest on Finished goods and stocks carried by the manufacturer after clearance
- (iv) Overriding commission to Hindustan Petroleum Corporation
- (v) Cost of distribution incurred at duty paid Sales Depots
- (vi) Interest on receivables

- (vii) 1 per cent turnover discount allowed to RCS dealers
- (viii) Secondary packing cost on tread rubber
- (ix) Discount to government and other departments

4. The appeals further also raise the issue of whether the price to the Defence Department ex-factory gate (ex-factory) is to be considered as the wholesale cash price under old Section 4 as this was disallowed by the Assistant Collector, and further the issue as to the method of computation of assessable value where the selling price is a cum-duty price. This issue involves the consideration as to how excise duty has to be deducted, whether after deducting permissible deductions or otherwise. We propose to deal with the issues as follows. For the purpose of this judgment we are not repeating and setting out the text of the unamended Section 4 and the amended Section 4 as the same are extensively quoted in our judgment in *Union of India v. Bombay Tyre International Ltd.* Recapitulating our judgment in *Union of India v. Bombay Tyre International Ltd.* We held that : (SCC p. 506, para 50)

Broadly speaking both the old Section 4 (a) and the new Section 4 (1) (a) speak of the price for sale in the course of wholesale trade of an article for delivery at the time and place of removal, namely, the factory gate. Where the price contemplated under the old Section 4 (a) or under the new Section 4 (1) (a) is not ascertainable, the price is determined under the old Section 4 (b) or the new Section 4 (1) (b). Now, the price of an article is related to its value (using this in a general sense), and into that value are poured several components, including those which have enriched its value and given to the article its marketability in the trade. Therefore, the expenses incurred on account of the several factors which have contributed to its value up to the date of sale, which apparently would be the date of delivery, are liable to be included. Consequently, where the sale is effected at the factory gate, expenses incurred by the assessee up to the date of delivery on account of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely after-sales service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organisation expenses and after-sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee up to the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery.

5. In the clarificatory order in *Union of India v. Bombay Tyre International Ltd.* we clarified that discounts allowed in the trade (by whatever name called) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice. The allowance and the nature of discount should be known at or prior to the removal of the goods and shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.

6. In relation to the first head of deduction, namely TAC/Warranty discount, the petitioners contend that deduction on account of TAC/Warranty discount ought to be permitted as a deduction for

determining the assessable value. It is submitted by them that this discount relates to the claims of the customers on account of any defect in the tyre already sold and assessed to duty. Such claims are scrutinised by a committee of technical personnel of the assessee. The committee decides as to what amount of money should be refunded to the customers on account of the defect in the manufactured tyre already sold to the customers by which defect the tyre does not get its full life tenure. Instead of refunding the amount in cash the customers are permitted to buy a new tyre, the price of which new tyre would be reduced by the amount refundable to customers as per decision of the committee. The petitioners contend that the TAC/Warranty discount satisfies all the criteria of a trade discount stipulated in our order dated November 14/15, 1983 in that it is a discount established by practice since 1943, it is a discount given to the consumer of an MRF tyre in respect of a tyre purchased earlier, the factum of allowance is known in trade prior to removal, the nature of the discount is not arbitrary or ad hoc and easily determinable.

7. The revenue disputes this claim on the ground that it does not come within Section 4 (4) (d) (ii) of the Act since the claim is not in accordance with the normal practice of the wholesale trade at the time of removal of the goods in respect to which the claim is made and also on the ground that this is not normally claimable as trade discount.

8. We are inclined to accept the contention of the department. Even though the giving of TAC/Warranty is established by practice or capable of being decided, what is really relevant is the nature of the transaction. The warranty is not a discount on the tyre already sold, but relates to the goods which are being subsequently sold to the same customers. It cannot be strictly called as discount on the tyre being sold. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale.

9. In our order dated November 14/15, 1983 we have said that trade discounts of any nature should be allowed to be deducted provided, however, the discount is known at or prior to the removal of the goods. In the present case this condition precedent is not satisfied as the committee decides the claim subsequent to the removal of the tyre.

10. The petitioners have further contended that the Excise Act and Rules framed thereunder contemplate such an allowance and an abatement of duty on defective tyres. Counsel for the petitioners has drawn our attention to Rule 96 which reads as follows :

Rule 96. Abatement of duty on defective tyres. - If a manufacturer desires that certain tyres should, in consequence of damage sustained during the course of manufacture, be assessed on a value less than the standard selling price he shall declare in writing on the application for clearance of the goods, that such damage has been sustained and each such tyre shall be clearly and legibly embossed or indelibly stamped with the word "Second", "Clearance" or "Defective".

11. There is, however, a distinction between a compensation in the nature of warranty allowance on a defective tyre after it has been sold and removed from the factory gate and selling a defective tyre as a "seconds" or defective. In our view the analogy of Rule 96 is not applicable. A tyre being sold as a "seconds" or "defective" would be sold at a discount, such discount being known before the goods were removed/cleared, thereby also satisfying the pre-condition of Section 4 (4) (d) (ii) of the Excise Act. The assessable value and price list submitted would be one relating to "seconds" tyres. We, therefore, disallow the claim in respect of TAC/Warranty discount.

12. The next head of deductions arising for our consideration is in respect of product discounts. This head comprises of 3 types of discounts :

- (1) Prompt payment discount
- (2) Year ending discount
- (3) Campaign discount

13. We deal with each of the heads individually as under :

(i) Under the prompt payment discount scheme of MRF in relation to up-country Non-RCS bills in the replacement market except government and DGS & D accounts, a rate of 0.75 per cent on the total value of the invoice including sales tax, surcharge, etc. is offered if the bill is cleared/pay for within 26 days from the date of invoice. The Union of India disputes this claim on the ground that it is limited to only certain varieties of products as explained in the scheme document and is only for a limited period. We are not inclined to accept the contention of the Union of India in this regard. A prompt payment discount is a trade discount given to the dealers by MRF. It is established under the terms of sale or by established practice and is known at or prior to the removal of the goods. It squarely falls within our order of clarification in the case of Union of India v. Bombay Tyre International Ltd. The MRF is entitled to deduction on this account.

(ii) In the special year-end bonus to dealers MRF proposes and claims this deduction as a year discount. This bonus of Rs. 50 per tyre is for certain specific tyres and is receivable only on those invoice where payments are actually receivable within 45 days from the date of the date of the invoice. Under this scheme a declaration is to be received dealerwise and thereafter provision is to be made at the head office of MRF for the bonus. The allowance of the discount is not known at or prior to the removal of the goods. The calculations are made at the end of the year and the bonus at the said rate is granted only to a particular class of dealers. This is computed after taking stock of the accounts between MRF and its dealers. It is not in the nature of a discount but is in the nature of a bonus or an incentive must after the invoice is raised and the removal of the goods is complete. In the circumstances, we are of the opinion that MRF is not entitled to deduction under this head.

(iii) MRF proposed "Superlug Piggy-back Campaign Bonus" in March/April 1983 for invoices during a particular period whereby bonus of Rs. 50 per tyre for every Superlug tyre and/or any other particular variety of tyres is given. The bonus was again applicable only on invoices for which payments were received within 45 days. Details of bonus earnings per dealer were to be computed after taking stock of the accounts between MRF and its dealers and the bonus amount was to be credited after June 1983 or mid-July 1983. On the same reasoning as the year-ending discount/bonus scheme, the campaign bonus cannot be a permitted deduction to MRF. The allowance of the discount is not known at or prior to the removal of the goods. The quantum is unascertained at the point of removal. The discount is not on the wholesale cash price of the articles sold but is based on the total sales effected of a particular variety of tyre calculated after the removal. We accordingly reject this

claim of MRF.

14. Interest on finished goods from the date the stock are cleared till the date of the sale was disallowed by the Assistant Collector, Kottayam. This head has again been urged for our consideration as a proper deduction for determination of the assessable value. As quoted in our judgment in *Union of India v. Bombay Tyre International Ltd.*, we have held that expenses incurred on account of several factors which have contributed to its value up to the date of sale which apparently would be the date of delivery at the factory gate are liable to be included. The interest on the finished goods until the goods are sold and delivered at the factory gate would therefore necessarily, according to the judgment in *Bombay Tyre International* case have to be included but interest on finished goods from the date of delivery at the factory gate up to the date of delivery from the sales depot would be an expense incurred after the date of removal from the factory gate and it would therefore, according to the judgment in *Bombay Tyre International* case not be liable to be included since it would add to the value of the goods after the date of removal from the factory gate. We would therefore have to allow the claim of MRF Ltd. as above.

15. The text head of deduction relates to overriding commission to the Hindustan Petroleum Corporation which was disallowed. MRF entered into a contract with Hindustan Petroleum Corporation Ltd. for sale of their products through HPC dealer network. An overriding commission was agreed to, in consideration of HPC not agreeing to entering upon agreement with any other tyre manufacturing company vis-a-vis by reason of MRF undertaking not to enter upon any agreement with any other oil company. The discount proposed was as a percentage of sale effected through the HPC dealers on a half yearly basis. On the face of it, the overriding commission payable to HPC is a commission for sales. It is a compensation granted for the sale of MRF products through HPC dealers and is a commission for services rendered by the agent. It is not a discount known at or prior to the removal of the goods and we accordingly reject this claim of MRF Ltd.

16. Another head of deduction disallowed to MRF relates to interest on receivables (sundry debtors for sales). MRF has represented that this cost is inbuilt in the price and is incurred on account of the time factor between the time the goods are delivered and the time the monies are realised. The cost is incurred only where credit terms are given in case of up-country and other buyers where payment is made much after the sales are effected. They contend that it is nothing but an extension of the principle underlying Rule 4 of the Central Excise (Valuation) Rules. They contend that this is an adjustment in value required to be taken into account and provide for the difference in the time of delivery and the realisation of the sale value. As stated in our judgment in *Union of India v. Bombay Tyre International Ltd.*, it is only those expenses incurred on account of factors which have contributed to its value up to the date of delivery which are liable to be included in the assessable value. The interest cost and expenses on sundry debtors or interest on receivables is an expense subsequent to the date of sale and removal or delivery of goods and in our opinion MRF Ltd. would (sic not) be eligible to claim deduction on this account.

17. The next head which was urged for our consideration relates to the cost of distribution incurred at the duty paid sales depots. In our judgment in *Union of India v. Duphar Interfram Ltd.* (Civil Appeal No. 569 of 1981), we have held that the cost of distribution is not to be included in the assessable value in case the wholesale dealers take delivery of the goods from outside duty paid godown. The wholesale dealers having taken delivery of the goods manufactured by MRF Ltd. and there being a removal of the goods from the factory gate, the cost of distribution at duty paid sales depots cannot be taken into account for the purpose of determining the assessable value of the goods.

18. The next head of deduction disallowed to MRF relates to discount to government and other departments. In our view the Assistant Collector, Goa has rightly rejected the claim of MRF though the Assistant Collector, Kottayam allowed the claim of MRF Ltd. sells its products at a lower price as per contract with the government or its departments. Separate price lists for the government and other departments were filed by MRF distinct and different from the price lists in relation to dealers. The position that different price lists for different classes of dealers or different classes of buyers is specifically recognised under Section 4 (1) (a) proviso (i), of the Excise Act. Different prices can be declared with reference to different classes of buyers and each price is deemed to be a normal price of such goods. In this view of the matter, merely because the product is sold at a lower price to the government and its departments does not enable the MRF to contend that the difference in price with reference to an ordinary dealer and government is a discount to the government. The difference in price is not a discount but constitutes a normal price for the government as a class of buyer and no deduction on this head is liable (sic available) to MRF Ltd.

19. The next question which arises for our consideration relates to special secondary packaging charges for tread rubber. It has been the contention of the MRF that their case is covered by the judgment in *Union of India v. Godfrey Philips India Ltd.* The majority judgment in *Godfrey Philips India Ltd.* holds that on a proper construction of Section 4(4) (d) (i) of the Act read with the Explanation, the secondary packing done for the purpose of facilitating transport and smooth transit of the goods to be delivered to the buyer in the wholesale trade cannot be included in the value for the purpose of assessment of excise duty; and if a packaging is not necessary for the sale of the product in the wholesale market at the factory gate, the same cannot be included in the value for the purpose of assessment of excise duty. It has been brought to our notice that in a judgment delivered by the Bombay High Court Bharucha, J. of Bombay High Court in *Bombay Tyre International Ltd. v. Union of India* has considered the Judgment in *Godfrey Philips India Ltd.* with specific reference to the question of secondary packaging for tread rubber. It has been brought to our notice that such packaging consists of cardboard cartons or wooden cases. In that case the tread rubber as packed was produced before Bharucha, J. He has described that the tread rubber is a strip rubber approximately 6" wide and about 1" thick which is tightly wound into a roll. Each roll weighs between 15 kgs. and 40 kgs. The roll is not held together by any means. The roll is inserted into a loose and open polythene bag. That bag also cannot hold the roll together. The bag is placed in a cardboard carton or a wooden case. The cardboard carton is held together by rubber bands. The wooden case is nailed together. Though, it was contended that the cardboard cartons and wooden cases were in the nature of secondary packaging whose cost was not includible in the value of tread rubber, Bharucha, J. held that a roll of tread rubber cannot be sold without the cardboard carton or the wooden case. It is further stated that the secondary packing in which tread rubber is sold is in the course of wholesale trade. The secondary packing is not employed merely for the purpose of facilitating transport of smooth transit and is necessary for selling the tread rubber in the wholesale trade. Bharucha, J. refused to remand the matter to the authorities as the tread rubber as packed had been produced before him and he was of the firm view that the cardboard cartons and the wooden cases are not such secondary packing materials as can be excluded in computing the assessable value of the petitioner's tread rubber. In the circumstances that this very issue has been decided on a visual personal inspection of Bharucha, J. in the case of *Bombay Tyre International Ltd.* pronounced after the decision in *Godfrey Philips India Ltd.*, we are of the view that the cost of cardboard cartons and wooden cases or any other special secondary packing charges incurred by the MRF on tread rubber should not be excluded from the assessable value. Tread rubber is a product which if even slightly damaged becomes unfit or unusable. The vital element "cushion compound" which is applied to the bottom of the tread rubber and which helps the tread rubber to stick to the buffed surface of the old

tyre which is to be retreaded is very delicate. A polythene sheet is put over the layer of the compound before the same is rolled and put into another polythene bag to avoid sticking to the outer side of the tread rubber and getting contaminated by dust. It is stated that such production cannot be marketed without the polythene bags and/or cardboard boxes. These are the findings of the Assistant Collector, Goa and in the light of the cumulative decisions of the Assistant Collector, Goa and of the Bombay High Court, we are of the view that the secondary special packing charges for tread rubber cannot be deducted from the assessable value of tread rubber.

20. In relation to the determination of wholesale price of tyres on the basis of the ex-factory price for Defence supplies, with reference to the old section 4 in view of our judgment in *Union of India v. Bombay Tyre International Ltd.* in page 376-E of the reports, this Court has held that (SCC p. 492, para. 25) "in enacting the new Section 4 in supersession of the old section, no material departure was intended from the basic scheme for determining the value of the excisable article". It has been contended by the Union of India that even after our format orders referred to above, MRF has not submitted any statement of deductions/amendments in respect of price lists filed nor submitted any fresh price. It claims several deductions on percentage basis by furnishing calculations vis-a-vis the entire company but did not furnish itemwise or factorywise break up of such claims. Having held that there is no material departure in the basic scheme for determining the value of excisable articles in the old Section 4 and the new Section 4, there is nothing in the unamended Section 4 to justify an inference that the wholesale cash price of articles of similar description sold cannot be different for different classes of buyers in wholesale. Different prices can be normal prices for the purposes of determination of the assessable value of the article. We accordingly reject the contention of the MRF. Even though the MRF has not filed a separate price list for the factory gate clearances to Defence department under the old Section 4, in view of our now holding that there is no material schematic difference between old Section 4 and new Section 4, we permit MRF Ltd. to file revised price lists with reference to the class of buyers namely, Defence on a different basis for a different normal price and avail of all the necessary reliefs with reference to lower assessable value, if the same has not already been filed.

21. Insofar as the deductions claimed towards excise duty paid on processed tyre cord, the contention of the MRF has been upheld by the Goa Bench in Special Civil Appeal No. 28 of 1983 and the claim has been allowed to MRF for deduction from selling price of excise duty on processed tyre cord. This is in accordance with Section 4 (4) (d) (ii) of the new Section 4 and we accordingly confirm that MRF is eligible to this deduction.

22. The last important issue relates to the method of computation of assessable value in a cum-duty at a factory gate sale. The issue is whether excise duty should be first deducted or the permissible deduction should be first deducted from the selling price for the re-assessments before the Assistant Collectors. The assessment of excise duty both in relation to Section 4 and in relation to the Valuation Rules is now subject to the definition contained in Section 4 (4) (d) of the Excise Act. The value as defined thereunder is to be arrived at after the cost of packaging of a durable nature or a returnable nature as also amounts of duty of excise, sales tax and other taxes and trade discount allowed in accordance with the normal practice of wholesale trade is determined. It is thus implicit that no excise duty is payable on an element of excise duty in the price. The value as contemplated under Section 4 cannot include a component of excise duty. In the circumstances, where the computation of an assessable value has to be made from the factory gate sale price which is a cum-duty price, the first question which will have to be addressed is what are the exclusions and permissible deductions from such a sale price. The petitioners have contended that their cum-duty price was arrived at after calculating and adding excise duty payable i. e., before actual duty was

paid. They contend that their price lists for several articles is approved much in advance of the removal from the factory. They contend that when the assessable value is to be arrived at, the same amount of excise duty which was predetermined and added to the factory price is naturally to be deducted first and only thereafter the permissible deductions should be deducted to arrive at the value. For the purposes of argument, MRF sub-mitted the following the example for consideration :

They suggested that their selling price should be considered (cum-duty selling price) as Rs. 3200. They further submitted that the permissible deductions whether on account of trade discount or on account of cost of secondary packing or sales tax or other taxes should hypothetically be considered at Rs. 200. The rate of excise duty chargeable is 60 per cent ad valorem for automotive tyres. Assuming for the sake of argument that the value of the product is actually Rs. 2075. In accordance with the provisions of Section 4 (4) (d) permissible deductions are made. The assessable value would be Rs. 1875 being the difference of Rs. 2075 and Rs. 200. The excise duty at the rate of 60 percent would thereafter be computed on the sum of Rs. 1875 and would aggregate Rs. 1125. The selling price which is a cum-duty price would be the sum total of the assessable value, the permissible deductions and the excise duty. Putting this as a mathematical formulas the selling price (cum-duty price) is equal to assessable value plus permissible deductions plus excise duty. Cum-duty Paid Selling price = Assessable value + Excise duty + permissible deductions. Again excise duty is computed as a ratio of the assessable value where duty is as valorem. For the purposes of ascertaining of the assessable value if three of the components namely, the cum-duty selling price, the quantum of permissible deductions and the rate of excise duty are known, the proper and appropriate method of determining the assessable value would be the following formula :

Assessable value = cum-duty selling price - permissible deductions divided by (1 + rate of excise duty)

23. Thus in the instant case working backward, if the cum-duty selling price is known to be Rs. 3200 and the permissible deductions and known to be Rs. 200 and the rate of excise duty is known to be 60 per cent, the assessable value is computed as under :

Selling price - permissible deductions = Rs. 3200 - Rs. 200 = Rs. 3000.

Assessable value is equal to difference in selling price and permissible deductions divided by 1 plus 60/1000 which is equal to 3000/1.6 which is equal to Rs. 1875.

The excise duty at 60 percent ad valorem rate would be Rs. 1125 on the assessable value of Rs. 1875.

24. The mathematical formula enumerated above balances. For example, if the cum-duty paid selling price is equal to Rs. 3200, the assessable value is Rs. 1875 excise duty is Rs. 1125 and permissible deductions is Rs. 200, the aggregate of the assessable value, the permissible deduction and the excise duty is equal to the selling price (cum-duty paid).

25. Any other method of computation of excise duty or assessable value is erroneous. The petitioner's basis that the assessable value is to be arrived at by taking into consideration the same amount of excise duty which was hypothetically predetermined and added to the factory price and

that this element in an attempt to compute the assessable value should naturally be deducted first, is putting the cart before the horse. The excise duty is only known as a ratio of the assessable value when an ad valorem duty is included in the cum-duty paid selling price. The quantum of excise duty cannot be pre-deducted or predetermined till the assessable value is known. It is only the permissible deduction in concrete monetary terms and amount which are known. The cum-duty paid sale price being available for computation and known value of deductions permitted being also known, the assessable value and the excise duty as a ratio of the assessable value can be only decided by first deducting the permissible deductions, from the cum-duty paid selling price and thereafter computing the value in accordance with the equation mentioned above. This has both a legal and a mathematical basis. If the predetermined amount of excise duty as per the illustration given by MRF Ltd. is first deducted, the equation will not tally. For example, if from a hypothetical cum-duty price of Rs. 150 comprised of the value of the product at Rs. 100 and ad valorem excise duty @ 50 per cent at Rs. 50 the excise duty of Rs. 50 is first deducted and thereafter the permissible deduction of Rs. 5 is deducted, the assessable value arrived at would be Rs. 95. The rate of excise duty is 50 per cent and the excise duty @ 50 per cent of the assessable value of Rs. 95 would be Rs. 47.50 and not Rs. 50 as earlier deducted. There would be a constant difference of Rs. 2.50 in the computation. It is, therefore, an incorrect method of evaluating the assessable value in instances of cum-duty selling price. This interpretation is borne out by the definition contained in Section 4 (4) (d) of the Excise Act. MRF's contention that the excise duty should be deducted first and then the permissible deduction is incorrect. In ordinary cases where the factory price is not a cum-duty price, the first step in arriving at the assessable value is to deduct the permissible deduction and thereafter to compute the excise on an ad valorem basis. The excise duty cannot be computed unless the permissible deductions are first made. The assessable value is arrived at only after the permissible deductions are made. Excise duty is a ratio of the assessable value. Ad valorem excise duty is computed only on assessable value after arriving at such assessable value by making proper permissible deductions. Excise duty cannot be computed without proper determination of the assessable value, namely assessable value exclusive of permissible deductions. Even in the cum-duty sale price, the same principle must be followed to arrive at the assessable value. To compute an excise duty as a predetermined amount without making the permissible deductions for reducing the cum-duty selling price is a fallacy both legally and mathematically as demonstrated above. The ad valorem excise duty can only be computed after reducing the assessable value by permissible deductions and then applying the tariff rate to the assessable value. To reverse this sequence is to misinterpret the scheme and mode of levy of excise duty on the assessable value.

26. In the light of our aforesaid discussions and keeping in line with our previous format orders, we direct the assessing authorities to quantify and re-determine the permissible deductions in accordance with our present judgment. The assessee, MRF Ltd., already having been required to file the permissible deductions/amendments to the price lists within a period of one month in the last instance in May 1984 is once again required by us to file fresh price lists in the light of our present judgment within one month for all the periods under consideration. The assessing authorities after hearing the assessee would quantify the correct assessable value in the light of our judgment. In making the assessments for each of the periods, the authorities would include the set off in respect of further refunds, if any, allowable on account of fresh deductions permitted and/or already allowed to the assessee. MRF would be at liberty to obtain suitable directions in the pending Writ Appeal No. 590 of 1979 in the High Court of Madras in accordance with our judgment. We leave the parties to bear their own costs.

[Civil Appeal Nos. 4731-32 of 1984 with SLP (C) Nos. 10108 of 1980 and Civil Appeal No. 3195 of 1979]

ORDER

27. In respect of items claimed by the assessee which have been allowed by us in this judgment or where the allowance by Assistant Collector has been upheld, the quantum will be adjusted by giving appropriate credit in the Personal Ledger Accounts.

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