Kirloskar Brothers Ltd., Dewas (M.P.)

Vs

Union of India and others

Civil Appeal No. 1773 of 1981

(S. Ranganathan, V. Ramaswami, Yogeshwar Dayal JJ)

10.03.1992

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. This Civil Appeal arises from the order dated 27th November, 1980 passed by the Division Bench of the Madhya Pradesh High Court in proceedings under Article 226 of the Constitution of India. The proceedings under Article 226 of the Constitution were directed against an order dated 19th January, 1977 passed by the Government of India in exercise of the powers conferred upon them under Section 36 of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act').

2. The proceedings before the Central Government arose out of the review of an order in appeal passed by the Appellate Collector of Central Excise, New Delhi dated 14th July, 1975. The Appellate Collector by the aforesaid order had accepted various appeals filed by M/s. Kirloskar Brothers Limited, appellant before us against various orders passed by the Assistant Collector, Central Excise, Indore.

3. The material facts giving rise to this litigation are as follows:-

> The appellant carries on business of manufacturing power-driven pumps and monoblock pumps at Dewas. For manufacturing mono block type P.D. pump sets and power driven pumps, the appellant purchases electric motors from another company M/s. Kirloskar Electric Co. Ltd. The Superintendent Central Excise issued eight show cause notices to the appellant calling upon them to show cause why the short levy as mentioned in the notices should not be recovered from the appellant. The period to which the alleged short levy related was from 17th March 1972 to 31st March, 1973.

4. The grounds on which the amount referred to in the notices issued was proposed to be recovered were-(i) less determination i the assessable value of pumps due to non conclusion of Central Excise duty paid on electric motors used in the manufacture of pumps, and (ii) deduction of irregular trade discount on wholesale cash price while determining the assessable value of the articles in question.

5. The Assistant Collector of Central Excise held that the excise duty paid by the appellant on electric motors fitted to the pumps could not be deducted while computing the assessable value of the pump sets for purposes of assessment under the Act.

6. With regard to the question of trade discount the Assistant Collector held that in terms of

explanation to Section 4 of the Act deduction in respect of trade discount on wholesale cash price of the articles to be removed from the factory has to be allowed the trade discount allowed has to be at uniform rate as held by the Supreme Court; once the wholesale price is fixed and the quantum of trade discount is decided it must be given uniformly to all wholesalers irrespective of their relations with the manufacturers. The Assistant Collector observed:-

> "The party had admitted that they have three types of wholesale dealers and each of them allowed trade discount at different rate. The first category of wholesale dealers numbering about 15 got the maximum trade discount. A perusal of the list of these 15 wholesale dealers reveal that most of them are merely selling Depots of the party who get the maximum trade discount in comparison to other types of wholesale dealers of the party. The Hon'ble Supreme Court has held that the wholesale price has to be ascertained only on the basis of transactions at 'arms length'. Their Lordships have further opined that if there is a relative of the manufacturer and if he is charged specially low price, the price charged would not constitute the wholesale cash price for levying the excise duty. The maximum trade discount allowed to a particular class of wholesale dealers which is mostly consisted of their own selling depots therefore, does not represent the trade discount in its true sense in terms of Section 4 according to which the trade discount has to be allowed at a uniform rate and not arbitrarily. Therefore, the fixation of wholesale cash price after allowing the maximum trade discount to a particular type of wholesale dealers cannot be treated as a transaction made at arms length in an ordinary course of business and, therefore, not in keeping with provisions of Section 4 of the Act and consequently cannot represent the correct wholesale cash price in terms of Section 4 of the Act for assessment purposes."

7. The Assistant Collector held that the wholesale cash price minus the trade discount, which is uniformly given to all wholesale dealers, would represent the assessable value for assessment purposes. Accordingly the Assistant Collector directed that duties short levied, as pointed out in the show cause notices, should be paid by the appellant.

8. Aggrieved by the orders of the Assistant Collector the appellant preferred an appeal before the Appellate Collector who held that the assessable value of the pumps had to be arrived at after deduction from the wholesale cash price of the excise duty payable not only on the pumps which are manufactured but also the excise duty paid on the electric motors which were used as a component of the pumps. The Appellate Collector further held that in determining the assessable value of PD pumps a discount of 30 per cent declared by the appellant and allowed to wholesale dealers was liable to be deducted from the wholesale cash price of the pumps under the provisions of Sectioin 4 of the Act. In this view of the matter the Appellate Collector allowed the appeal and quashed the demand notices. While allowing the appeals the Appellate Collector, dealing with the deduction of trade discount observed as follows :-

> "With regard to the second issue i.e. admissibility of trade discount of 30% declared by the appellants and approved by the jurisdictional Central Excise Officer, it was contended by the appellants that according to the pattern of their sale they had appointed 16 area dealers for sales of their products over a particular area. These area dealers had also appointed sub-dealers within their respective jurisdiction. Thus where the sales were made by the area dealer himself the full discount of 30% was allowed to him while if the goods were despatched on the advice of the area dealer to any of his sub-dealer, the discount adviced by him to be granted to the subdealers

was passed on to the sub-dealers while the discount remaining out of the 30% was passed on by a credit voucher to the area dealer. In either case the full discount of 30% was being passed on to the trade on all wholesale transactions. The above contention of the appellants was verified from the sales invoices produced by them in respect of wholesale transactions and it was noticed that the above contention of the appellants is correct. It was also noticed that some sales were also made in small lots by the appellants to the dealers falling outside the jurisdiction to of the area dealers. These sales represented 1% to 9.7% of the total sales and could be regarded as sales to retailers. In their case the discount passed on was less than 30% discount allowed in the case of wholesale dealers. It was explained that in view of the fact that such dealers did not have the facility and the technical know-how for providing after sale service the discount allowed to them was lesser than that allowed to the dealers (wholesale dealers) who were required to afford the services after sales. However, in view of the fact that such sales are meager and are in much smaller lots, they did not materially change the situation."

(Emphasis supplied)

9. When this order came to the notice of the Central Government the Central Government suo motu issued show cause notice to the appellant proposing to set aside the order of the Appellate Collector, which appeared to it to be not correct in law, and restore the orders passed by the Assistant Collector of Central Excise, Indore. The reasons for the proposed revision were contained in the show cause notice dated 21st June, 1976, the relevant part of which, for facility of understanding, is reproduced hereunder:-

"6. In terms of the explanation to Section 4 of the Central Excises and Salt Act, 1944 in determining the price of any article under that section a deduction is admissible from the wholesale cash price towards the amount of duty payable at the time of the removal of the article chargeable with duty from the factory or other premises. It appears to the Central Government that the deduction contemplated therein is in respect of the duty leviable on the article which is being cleared from the factory and not the duty paid or leviable on the raw materials or component which went into the manufacture of that excisable article. In other words what is allowed deduction is only that duty leviable on the finished excisable article and not the total duty incidence. To hold otherwise appears to be repugnant to the correct construction of the expression "amount of duty payable at the time of removal of the article chargeable with duty from the factory."

7. It, therefore, appears to the Central Government that in holding that the deduction was admissible not only in respect of the duty leviable on the PD Pumps but also in respect of the duty paid on the electric motor the Appellate Collector has in his decision.

8. The second question to be determined by the Appellate Collector wins the admissibility of a trade discount of 30% which the party was granting in respect of sales to their area dealer or through area dealers to sub-dealers which to another category of dealers called independent dealers a less amount of trade was granted. The case records reveal that the party had three types of wholesale dealers namely the following:-

(a) Area dealers which number about 15 get the maximum trade discount.

(b) The sub-dealers of these area dealers. These sub-dealers usually get the goods from the area dealers at the particulars. discount and can also get the goods directly from the party on a discount advised by the area dealers and the balance discount out of the total 30% discount is passed on thereafter to the area dealers and;

(c) The last category of dealers who operate in area covered by the area dealers and get a less amount of discount.

9. It also appears that approximately 90% of the goods are sold through the area dealers their sub-dealers and only the rest through or ine other independent dealers.

10. The Appellate Collector held that the sales to dealers other than the area dealers were only up to 10% of the total sales an as such these could be regarded as a sales to retailers. Accordingly the Appellate Collector held that since a substantial quantity of goods was sold through the area dealers or their sub-dealers the price charged to them was the correct wholesale cash price and that the 30% trade discount given to them was admissible and sales to other dealers which were in small quantity could be ignored and could be treated as sales to retailers.

11. It appears to the Central Government that the Appellate Collector failed to take note of the fact that the sales to these independent dealers in their respective areas, however, small in quantity were nonetheless sales to wholesale dealers. These could not be categorised as retail sales which are essentially different from wholesale sales. These independent dealers were as much wholesale dealers as the area dealers. Further the Appellate Collector also failed to take note of the fact that the so-called area dealers in a large number of cases where no other than the party's own selling depots and the price charged to them could not prima facie be accepted as genuine unless there was compelling evidence to establish that the transaction was at arm's length. It accordingly appears to the Central Government that the wholesale cash price charged to the independent dealers and discount given to them is alone a genuine wholesale cash price and that the genuine wholesale cash price is ascertainable the quantum of sale however meagre is irrelevant. By holding that the discount given to the area dealers was admissible and that sales to independent dealers being meagre could be treated as retail sales and thus ignored, it appears to the Central Government that the Appellate Collector has erred in his decision."

10. The appellant filed a reply dated 30th August, 1976 and inter alia contended :-

"we deal with these two points separately as below:-

Assessable Value of Monoblock Pumps

At the out right we wish to state that the grounds of appeal advanced, against the various orders in appeal issued by the Assistant Collector, Central Excise, Indore before Appellate Collector, Central Excise and Customs, New Delhi, will form part of our reply and we would rely on them. We presume that the records of the case are already with you and there is no need to reproduce here our arguments

However without prejudice to whatever stated in above referred Appeal Memo we wish to state as under:-

(A) Central Excise duty is an indirect tax and this tax is not taken into consideration for assessment purposes. In accordance with the explanation given in Section 4 it is

true that what is clear by us is a Monoblock Pump and not electric motor lone and not a mere pump. Since we are paid Central Excise duty to our suppliers of electric motor, we have to recover the same from the parties to whom monoblock pumps are sold.

(B) Had we sold only an Electric motor, the same recovery of duty would have been made separately by us and our cost would have been the price paid to supplier exclusive of central excise duty.

(C) Just because the motor is used in the manufacture of Monoblock Pumps, it does not deprive us of our right to recover the duty on the Electric Motor paid by us when this is ascertainable.

(D) The same would be the case in respect of other components of Monoblock Pumps, viz. Steel, paint, shafting, material etc. However, we are not in a position to ascertain the duty paid on these Raw Materials. That is why we have to recover the total amount including the cost and Central Excise duty paid on the Raw Material, so that the Central Excise duty paid on them will automatically be recovered. Such an amount has to go into the total value. But in respect of the items of the raw materials if we can ascertain the central excise duty paid, we can certainly recover the same in form of duty and not by way of the cost of the material.

(E) The whole principle of costing is to see what an article produced by any manufacturer has cost him. If the duty is ascertainable, there is no reason as to why it should be, go into the cost necessarily. There is no law to warrant such a procedure.

(F) The inclusion of Central Excise duty as the cost of Monoblock Pumps, it would further complicate the matters. In that event we will not be in a position to recover the full as we have to discount on the full duty paid on the electric motor as we have to allow the proportionate trade discount on the duty element. This would tantamount depriving us of our right to recover the full amount of Central Excise duty paid by us.

(G) Further without prejudice, if the duty is so included what would be the amount to be included and at what stage. It will have to be decided whether the whole of the duty on electric motor i.e. 15% is to be included in the cost or the balance available from the said duty amount after availing of the set off admissible under Notification No. 84/ 72. as amended by No. 113/72.

Under these circumstances, we would request you not to force us to include the element of Central Excise duty paid on Electric motors, in the value of our Monoblock Pumps for purposes of assessments.

(ii) Wholesale Cash Price and Quantum of Discount

At the outright we wish to state that the grounds of appeal advanced against the various orders in appeal issued by the Assistant Collector, Central Excise, Indore before the Appellate Collector, Central Excise and Customs, New Delhi will form part of our reply and we would rely on them. We presume that the records of the case are already with you and there is no need to reproduce there our arguments.

However, without prejudice to whatever stated in above referred appeal memos we would like to state as follows:-

ii (A) It is contended in the Show Cause Notice that the wholesale, cash price, charged to the independent dealers and the discount given to them is alone a genuine wholesale cash price and that once the wholesale cash price is ascertainable the quantum of the sale, however, meagre, is irrelevant. Further also contended that the so-called dealers n a large number of cases were no other parties own selling depot and the price charged to them could not prima facie be accepted as genuine. Unless there was cornpelling evidence to establish that the transaction was at arms length.

In this connection we would like to submit as follows:

ii (B) Out of our total production 90% of the goods are marketed through area dealers to whom 30% discount is given. Out of these 15 area dealers, 5 are quite independent parties not connected with the depots and they are responsible for marketing about 30% of our total production and the sales to these dealers are from principle to principle and are at arms length.

ii (C) The Kirloskar Brother's depots are being treated on par with these area dealers and the dealings are from principle to principle. Simply because they are depots of Kirloskar Brothers it cannot be presumed that the dealings are not at arms length.

ii (D) It is not the case of department that the goods are sold to these area dealers at a specially low rate. The facts that there are 5 independent dealers along with depots goes to prove that no special treatment is accorded to the depots.

ii (E) We would insist with all force that these transactions are at arms length and these represents the normal trade practice. The sales to independent dealers may not be treated as retail sales but there is no reason as to why the price charged to these few so-called independent dealers should be preferred to the price charged to independent area dealers.

ii (F) The whole idea of assessments seems to have been misconceived. Now it is an established law that "Excise is a Tax on the Production and Manufacture of Goods (See Union of India v. Delhi Cloth and General Mills 1963) (AIR 1963 SC 791), Section 4 Act therefor provides that the real value should be found after deducting the selling cost and the selling profits and the real value can include only the manufacturing cost and the manufacturing profit".

ii (G) The section also makes it clear that the excise is levied only on the amount representing the manufacturing cost plus the manufacturing profit, and that excludes postmanufacturing costs and the profit arising from the post-manufacturing operations.

ii (H) In our case the amount charged by rig lesser discount to the so-called indepgevndent dealers represents the selling profits and cannot be attributed to the manufacturing activity. Under these circumstances the value that could be approved for our assessment would be the list price less maximum discount and this will represent the manufacturing cost plus the manufacturing profit.

ii (I) Under the circumstances it is abundantly clear that the price cannot be loaded with any kind of selling cost or selling profit irrespective of whether the same is of the wholeseller or of the manufacturer, the reason being that it is not attributable to manufacturing activity.

ii (J) After the decision in Voltas case there have been a number of cases both of the Supreme Court and various High Courts, wherein the decision in Voltas case have been followed meticulously.

Under these circumstances there are no reason to reopen the matter and give an adverse decision."

11. An opportunity of personal hearing was also granted. It is noticed in the order of the Central Government that:

> "During the course of personal hearing on 19-10-1976 various contentions were reiterated and it was emphasised that the manufacturers had two patterns of sales, namely(i) through area distributors who are given exclusive rights of sale within their respective areas and who were further authorised to appoint sub-distributors, and (ii) some 10% sales were to other dealers to whom a less percentage of discount was given. It was emphasised that the discrimination between the two patterns of sales was on account of the fact that area distributors provided after sales service etc. which could be treated as post manufacturing operations. It was pointed out to them during the course of personal hearing that majority of the so-called area distributors were depots of M/s. Kirloskar Brothers Ltd., only. They contended that though the over-all controlling authority was the Kirloskar Group of Companies, yet these depots were independent entities by themselves. They were asked to submit detailed information about the composition of all the Directors of M/ s. Kirloskar Electricals, Bangalore, the Directors of Dewas factory and their agreements with various area distributors with their sub-distributors. The information was to be submitted by November 16, 1976 but could not be received within the time stipulated.

12. The Central Government after considering the points raised by the appellant in its written reply to the show cause notice as well as points urged during the course of personal hearing took the view that under Section 4 of the Act the abatement of duty is admissible only in respect of the article in question and not the duty paid on the raw material or the component which had gone into its manufacture, and accordingly held that the view of the Appellate Collector is incorrect. Regarding the question of discount the Central Government took the view that the independent wholesale dealers are those who are other than the depots of M/s. Kirloskar Brothers. The view of the Appellate Collector treating sales to these dealers as retail sales is incorrect. The Central Governmerit held that once the wholesale cash price is ascertainable the quantum of sales to such wholesale dealers is irrelevant and in the instant case even the quantum of sale to the independent wholesale dealers is 10%. The wholesale cash price is thus ascertainable. In this view of the matter the Central Government in exercise of the powers conferred in it under sub-sedtion (2) of Section 36 of the Act set aside the impugned order passed by the Appellate Collector and restored all the orders passed by the Assistant Collector of Central Excise.

13. Before the High Court the above referred order of the Central Government was impugned in the aforesaid circumstances. It was contended on behalf of appellant before the High Court that the

Government of India erred in holding that the duty paid on the electric motors was not deductible in computing the wholesale cash price under the provisions of Section 4 of the Act. It was also contended that the Government of India erred in restoring the orders of the Assistant Collector whereby only 25 per cent discount was held to be deductible by way of trade discount in computing the wholesale cash price of the pumps in question. The High Court held that the explanation to Section 4 of the Act provides for deduction of trade discount and the amount of duty payable at the time of removal of the article from the factory. The 'duty' referred to in the explanation is the duty payable on the product which is manufactured and does not refer to the duty paid on the raw material or the component of the product manufactured. Faced with this difficulty before the High Court the counsel for the appellant stated that he was not relying on the explanation to Section 4 of the Act for contending that the duty paid on electric motors fitted to the pumps was liable to be deducted from the wholesale cash price of the article in question. It was urged before the High Court that the excise duty paid on the component parts could not be treated as manufacturing cost and that it was not competent for the Government to levy excise duty on excise duty paid. The High Court rejected the contention. As regards the deduction of trade discount the High Court agreed with the order of the Central Government.

14. Before us learned counsel for the appellant has submitted that the Central Government erred in disturbing the appellate order of the Collector and submitted- (1) that besides the depots of the appellant there are other five independent wholesalers and the Central Government should not have ignored the trade discount allowed to them; (2) that the Central Government, though had passed the impugned order only on 14th April, 1977, did not refer to the information which was submitted after 16th November, 1976; (3) that the Central Government ignored the Notification No. 84/72-CE Dt. 17-31972 as amended by Notification No. 131/72 dated 22-3-1972; and (4) that while computing the assessable value the duty paid on electric motors for purposes of manufacturing mono-block pumps was also liable to be excluded.

15. It will be noticed that we are concerned with old Section 4 of the Act as operative during the relevant time.

16. In A.K.Roy v.Voltas Limited,(1973) 2 SCR 1089 : (AIR 1973 SC 225), the Supreme Court emphasised at page 1097 that there can be no doubt that the 'wholesale cash price' has to be ascertained only on the basis of transactions at arm's length. Once wholesale dealings at arm's length are established, the determination of the wholesale cash price for the purpose of Section 4(a) of the Act may not depend upon the number of such wholesale dealers. Before the Central Government it was emphasised by the appellant itself that the discrimination between the two patterns of sales was on account of the fact that area distributors provided after sales services etc. which could be treated as post-manufacturing operation. It is thus clear from the submission made by the appellant itself before the Central Government that the discount to area distributors was also in consideration for also providing after sales service which is not required to be taken into account while dealing with trade discount within the meaning of explanation to Section 4(a) of the Act. Therefore the Central Government rightly did not take into account such area distributors who may have to provide after sales service. The trade discount given to such wholesalers who were under no obligation to provide after sales service is the relevant trade discount given to the wholesalers.

17. In view of our conclusion on the first point itself no useful purpose would be served in examining the second question as the appellant himself had given the reasons before the Central Government as to why they gave higher trade discount to their depots and other area distributors.

18. We may take points Nos. 3 and 4 together. In M/s. Narne Tulaman Manufacturers Pvt. Ltd., Hyderabad v. Collector of Central Excise, Hyderabad, (1989) 1 scc 172: (AIR 1989 SC 79) the Supreme Court had the occasion to deal with somewhat similar situation as in the present case. Sabyasachi Mukharji, J. (as his Lordship then was) speaking for the Court observed (paras 2 and 3 of AIR):

> "The activity carried out by the appellant of assembling the three components of the weigh bridge brings into being complete weigh bridge which has a distinctive name, character or use. As a result of the work of assembling a new product known in the market and known under the excise item "weighbridge" comes into being. The appellant will become a manufacturer of that product and as such liable to duty."

19. His Lordship further observed thus (paras 3 of AIR):

> "A part may be goods as known in the excise laws and may be dutiable. If the indicator system is a separate part and a duty had been paid on it and if the rules so provide then the appellant may be entitled to abatement under the rules. But if the end-product is a separate product which comes into being as a result of the endeavour and activity of the appellant then the appellant must be held to have manufactured the said item. When parts and the end-product are separately dutiable both are taxable."

20. Section 4(a) of the Act read with its explanation reads as under:-

> "4. Determination of value for the purposes of duty- Where, under this Act, any article is chargeable with duty at a rate dependent on the value of the article, such value shall be deemed to be-
>
> (a) the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold at the time of the removal of the article chargeable with duty from the factory or any other premises of manufacture or production for delivery at the place of manufacture or production, or if a wholesale market does not exist for such article at such place, at the nearest place where such market exists, or
>
> (b) ....
>
> Explanation- In determining the price of any article under this section, no abatement or deduction shall be allowed except in respect of trade discount and the amount of duty payable at the time of the removal of the article chargeable with duty from the factory or other premises aforesaid."

21. It is clear from the explanation itself that while computing the assessable value the deduction has to be allowed apart from trade discount to the amount of duty payable at the time of removal of the article chargeable with duty from the factory. Here the article concerned was the 'pump' which had an electric motor which was duty paid. But what was deductible while assessing the assessable value was merely the excise duty payable on the 'pump' and not the excise duty already paid on the electric motor which was merely a component.

22. The relevant part of the Notification No. 84/ 73-CE dated 17-3-1972 as amended by Notification

No. 113/72 dated 22-3-1972, reads as follows:-

"In exercise of the powers conferred by Rule 8(1) of the Central Excise Rules, the Central Government hereby exempts power driven pumps falling under tariff item NO.30A of the first schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and specified in column (2) of the table annexed hereto from so much of duty of the excise leviable thereon as in excess of the duty specified in the corresponding entry in column (3) of the said table.

S.No.	Description	Duty
(1)	(2)	(3)
1.	Power Driven Pumps Primarily Designed for Handling Water Namely	10% Ad Valorem
	i) Centrifugal Pumps (Horizontal or Vertical Pumps)	
	ii) Deep Well Turbine Pumps	
	iii) Sub Mersible Pumps and	
	iv) Axial Flo And Mixed Flow Vertical Pumps	Nil
2.	Others	Nil

Provided that:-

(i)Where the aforesaid pumps on which the duty of excise is leviable are fitted with duty paid internal combustion engine falling under sub-item (ii) of item No. 29 or Electric motors falling under sub-item 2(ii) of item No. 30 of the first schedule to the aforesaid Act such power driven pumps shall also be exempted from so much of the duty of excise leviable thereon as is equivalent to the duty of excise leviable thereon as is equivalent to the duty of excise or the additional excise duty under Section 2A of the Indian Tariff act 1934 (32 of 1934) the same may be already paid on such internal combustion engine or Electric Motors.

(ii) ....

Provided further that where the duty of excise leviable on power driven pumps is less than the amount of duty of excise or the additional duty under Section 2A of the Indian Tariff Act aforesaid specified in clause (i) or as the case may be calculated under clause (ii) of the first proviso with respect to internal combustion engine, elect. Motor, rotors or stator then no part of the duty so specified or calculated shall be refunded to the manufacturer.

23. It will be noticed that first part of the Notification exempts the 'Power Driven Pumps' falling under Tariff Item No. 30A of the first schedule to the Act and reduces the duty to 10% ad valorem.

24. To understand more conveniently the meaning and scope of provisos, the provisos shorn of unnecessary words may be read as under:-

> "Provided that :-
>
> (i) Where the aforesaid pumps on which the duty of excise is leviable are fitted with duty paid.... Electric motors... such power driven pumps shall also be exempted from so much of the duty of excise leviable thereon.... as is equivalent to the duty of excise .... paid on such . electric motors.
>
> (ii) ....
>
> Provided further that where the duty of excise leviable on power driven pumps is less than the amount of duty of excise or the additional duty under Section 2A of the Indian Tariff Act aforesaid specified in clause (i) or as the case may be calculated under clause (ii) of the first proviso with respect to internal combustion engine electric motor, rotors or stator then no part of the duty so specified or calculated shall be refunded to the manufacturer."

25. It is thus clear from the provisos that while charging duty after computing the assessable value, the appellant will be entitled to reduction of duty paid on the electric motors from the over all excise duty payable on the 'pump'. The value of the excise duty paid on the electric motor is not deductible while arriving at the assessable value under Section 4(a) of the Act. This becomes further clear from the wording of the second proviso which contemplates where the duty of excise on power driven pumps becomes less than the excise duty paid on the electric motor then no nart of the excise duty is liable to be refunded to the manufacturer. Therefore the purpose of the first proviso and the second proviso is only to the calculation of excise duty payable and has no relevance to the calculation of assessable value of the articles manufactured when it is cleared from the factory.

26. There is thus no merit in this appeal and the same, is accordingly dismissed with costs. Appeal dismissed.

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