

Collector of Central Excise, Patna

Vs

Tata Engineering and Locomotive Co. Jamshedpur etc.

(S.P. Bharucha, M. Jagannadha Rao, JJ.)

07.05.1997

JUDGEMENT

S.P. BHARUCHA, J

1. The Revenue assails the correctness of the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal. The appeals involve the interpretation of Section 9 of the Industries (Development and Regulation) Act, 1951, the notification dated 28th December, 1983, issued thereunder and Rules 2 and 3 of the Automobile Cess Rules, 1984. The relevant provisions are reproduced :-

The Industries (Development & Regulation) Act, 1951 :

'S.9.- Imposition of cess on scheduled industries in certain cases : (1) There may be levied and collected as a cess for the purposes of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by notified order, a duty of excise at such rate as may be specified in the notified order, and different rates may be specified for different goods or different classes of goods :

Provided that no such rate shall in any case exceed two annas per cent of value of the goods. Explanation : In this sub-section, the expression "value" in relation to any goods shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of their removal therefrom, without any abatement or deduction whatever except trade discount and the amount of duty then payable.

(2) The cess shall be payable at such intervals, within such time and in such manner as may be prescribed, and any rules made in this behalf may provide for the grant of a rebate for prompt payment of the cess.

(3) The said cess may be recovered in the same manner as an arrear of land revenue.

(4) The Central Government may handover the proceeds of the cess collected under this section in respect of the goods manufactured or produced by any scheduled industry or group of scheduled industries to the Development council established for that industry or group of industries, and where it does so, the Development Council shall utilise the said proceeds:-

(a) to promote scientific and industrial research with reference to the scheduled

industry or group of scheduled industries in respect of which the Development Council is established;

(b) to promote improvements in design and quality with reference to the products of such industry or group of industries;

(c) to provide for the training of technicians and labour in such industry or group of industries;

(d) to meet such expenses in the exercise of its functions and its administrative expenses as may be prescribed." Notification No.S.O.932 (E) dated 28.12.1983

"In exercise of the powers conferred by sub-section (1) of Section 9 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby specifies the classes of goods manufactured or produced in the schedule industry of transportation as mentioned in column (1) of the Table below on which a duty of excise shall be levied and collected as access for the purpose of the said Act, with effect from 1st January, 1984 at the rate specified in the corresponding entry in column (2) of the said Table. T A B L E Description of Rate of Duty class of goods of excise (1) (2) Motor cars, buses, 1/8 percent ad valorem trucks, jeep-type vehicles, vans, scooters, Motor-cycles, mopeds and all other automobiles| The Automobiles Cess Rules, 1984 :

"R.2- Definitions. - In these rules, unless the context otherwise requires, -

(c) "Cess" means the cess levied and collected in terms of Notifications No. S.O. 932 (E), dated 28.12.1983 of Department of Heavy Industry issued under sub-section (1) of Section 9 of the Act ; (f) Words and expression used herein and not defined but defined in the Central Excises and Salt Act, 1944 (1 of 1944) or the rules made thereunder, shall have the meaning respectively assigned to them in the Act or the Rules. R.3 - Application of Central Excise and Salt Act and the Rules made thereunder: Save as otherwise provided in these Rules, the provisions of Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder including those relating to refund of duty, shall so far as may, apply in relation to the levy and collection of the cess as they apply in relation to the levy and collection of the duty of excise on manufacture of automobiles under the act and the Rules."

2.It is contended by learned counsel for the Revenue that the cess must be levied at 1/8 per cent of the value of the motor vehicle, the value being computed as explained in Section 9(1). In other words, the value of the motor vehicle for this purpose must be deemed to be the wholesale cash price for which it is or is capable of being sold for delivery at the place of its manufacture and at the time of its removal therefrom "without any abatement or deduction whatever except trade discount and the amount of duty then payable".

3. Learned counsel for the assessee submits that the value of the motor vehicle for the purpose of the levy of the cess has to be calculated in the manner laid down in the Central Excises and Salt Act, 1944, for which purpose he places reliance upon Rule 3 of the Automobile Cess Rules.

4. The Tribunal in the order under appeal accepted the contention of the assessee and we are inclined to agree.

5. Section 9(1) of the Industries (Development & Regulation) Act, 1951, empowers the levy and collection of a cess on goods manufactured or produced in a scheduled industry at such rate as may be specified by the Central Government, different rates being permissible for different goods or different classes of goods. The provision contemplates the exercise by the Central Government of the function of fixing the rate of cess. The Legislature, by the proviso to Section 9(1), has laid down the limits of the Central Government's discretion in fixing such rate, namely, that such rate shall not exceed two annas per cent of the value of the goods. It is for this purpose that the Explanation in Section 9(1) defines the expression "value" and states that it shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of their removal therefrom without any abatement or deduction whatever, except trade discount and the amount of duty then payable. The opening words of the Explanation make it clear that it defines the expression "value" thus only for the purposes of Section 9(1).

6. The definition of the expression "value" for the specific purpose of Section 9(1) does not, therefore, apply to the valuation of goods to be made for the purposes of computation of the cess and under the said notification. In other words, in calculating 1/8 per cent ad valorem, the value of the goods is not to be determined as set out in the Explanation to Section 9(1). For this purpose, what is relevant is Rule 3 of the Automobile Cess Rules, 1984, which states that the provisions of the Central Excises and Salt Act shall apply so far as may be in relation to the levy and collection of the cess. The calculation of 1/8 per cent ad valorem of the motor vehicle for the purposes of the levy and collection of the cess must, therefore, be made as if it was excise duty that was being calculated and applying the provisions of the Central Excise and Salt Act for the purpose.

7. Accordingly, the appeals fail and are dismissed, with no order as to costs.