

IDL Chemicals Ltd.

Vs.

Collector of Central Excise

(Suhas C. Sen, K. T. Thomas JJ)

09.05.1997

JUDGMENT

SEN, J.

1. The appellant, IDL Chemicals Limited, manufactures explosives at its factory at Sonaparbat. The raw materials for explosives are obtained from diverse sources. The finished goods are sold in the following manner :-

- (i) Goods which are sold to customers like Coal India Limited.
- (ii) Goods sold to public sector companies and Government undertakings.
- (iii) Goods which are sold to ordinary customers who do not have long term contract.
- (iv) Goods which are transferred from the factory premises to various magazines outside the State of Orissa which ultimately are sold to persons enumerated in categories (i), (ii) and (iii).

2. There is no dispute that the goods are sold to Coal India Limited and Government undertakings at a rate much lower than the rate charged for the goods sold to ordinary customers who do not have any long term contract with the appellant.

3. There is also no dispute that excise duty is paid at the factory gate on the basis of three different prices :-

- (i) The price paid by Coal India Limited.
- (ii) A little higher price paid by public sector companies and Government undertakings.
- (iii) Goods sold to ordinary customers at a much higher rate. The ad valorem duty is imposed separately on the three types of sales made by the appellant. There is no dispute of these sales.

4. Nearly 50% of the goods manufactured by the appellant are not sold at the factory gate, but are transported to various magazines outside the State of Orissa. From these magazines the goods are ultimately sold to Coal India Limited, Government undertakings and also to other customers. There is also no dispute that bulk of the goods are purchased by Coal India Limited at a low rate. Ordinary

purchasers have to pay a much higher price.

5. The dispute in this case is about the excise duty which has to be paid at the time of removal of the goods from the appellant's factory outside the State of Orissa to its magazine.

6. The procedure followed by the appellant was to calculate the duty on the basis of the price usually paid by Coal India Limited. The appellant used to execute a bond under Rule 9-B of the Central Excise Rules, 1944 and pay the duty provisionally on the basis of its own calculation on this basis. As and when sales ultimately took place, if any higher price was realised the differential duty was paid by the appellant. On behalf of the appellant, it is contended that there is no allegation of any suppression of fact or avoidance of tax by the appellant. The appellant following this procedure has from time to time paid whatever duty was payable by it.

7. It has further been contended on behalf of the appellant that the duty is to be paid on the "normal price", as contemplated by Section 4(1) of the Central Excise Act, 1944. The "normal price" is a price at which the goods are usually sold to the wholesale dealers. There is no dispute that in this case the bulk of the goods produced by the appellant are sold to Coal India Limited. When the goods are not being sold at the factory gate and are being taken to various magazines all over the country, the question of determination of "normal price" of these unsold goods arises. The "normal price" in this case will have to be found by reference to the price at which the goods are sold to Coal India Limited, which according to the appellant consumes nearly 90% of the goods produced by the appellant. There is no reason to calculate normal price to be anything but the price usually paid by Coal India Limited. It has further been contended that the Act contemplates a provisional assessment and final assessment. The assessee provisionally paid taxes when the goods were removed from factory gate to the godowns and finally paid the tax when the final assessment was made. The procedure followed by the assessee was accepted and acted upon by the excise authority for a number of years. There was no reason to interfere with this practice.

8. On behalf of the respondent it was pointed out that so far as the sales to Coal India Limited and Government undertakings are concerned, the assessee has filed price lists at the time of removal of goods at the factory gate and tax was levied accordingly. Similarly, when the goods were sold to other customers whatever price list had been filed by the assessee was approved and goods had been taxed accordingly. But when goods were despatched to different consignment agents in various parts of the country who stored the goods in magazines there, no price list was filed by the assessee. At the time of removal from the factory, the goods were not earmarked for sale to any particular buyer. The assessee did not represent that these goods were meant to be sold to Coal India Limited or a Government purchaser at a stated price. No price list was filed by the appellant at all. Since there was nothing to indicate that the goods were meant to be sold to Coal India Limited or a Government undertaking, the price at which the assessee sold the goods to private buyers at the time of removal of goods from the factory was treated as the "normal price" of the goods.

9. We are of the view, the contention of the respondent must be upheld. The assessee had failed to make any declaration as to the price of the goods despatched by it to its various agents outside the State. At the point of time of removal of the goods, the assessee was not in a position to say that the goods were meant to be sold to Coal India or any other Government undertaking. The duty had to be calculated at the point of time of removal of the goods. At that point of time, the only way the duty could be levied was by calculating the duty on the basis of sales made to independent

customers and not a special customer like Coal India. Even if ultimately and at a much later date from the date of removal of the goods, the appellant sold the goods to a Government Company or to Coal India Limited, the liability to pay duty at the time of removal of goods from the place of manufacture will not be altered. Rule 9-A of the Central Excise Rules lays down that no excisable goods shall be removed from any place of manufacture until the excise duty leviable thereon has been paid. Rule 9-A also lays down that the rate of duty shall be the rate in force on the date of actual removal of goods from the factory. There is a special rule for warehousing the goods which does not apply to this case. The appellant did not file any price list in connection with these goods which were being sent to the consignment agents. The assessee was unable to make any statement that the goods were meant for sale to Coal India Limited or for any Government Company. The Excise Officer was right in calculating the price which would have been payable by an ordinary customer as the "normal price" of these goods.

10. The appeal, therefore, fails and is dismissed. There will be no order as to costs.