

SUPREME COURT OF INDIA

Commissioner of Customs and Central Excise, Nagpur

Vs.

Voltas Limited

C.A.No.2867 of 2002

(Mrs.Ruma Pal and Arun Kumar JJ.)

22.07.2004

ORDER

1. The dispute relates to the question whether Section 4(l)(a) of the *Central Excise and Salt Act, 1944*, as it stood during the assessment years 1994-95, 1995-96, or proviso (i) to Section 4(l)(a) was applicable to the refrigerators being sold by the respondent-assessee during the period in question. Section 4(l)(a) defines "value" of an excisable commodity to be the normal price or the price at which the goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade at the time and place of removal where the buyer is not a related person and the price is the sole consideration for the sale. Proviso (i) to Section 4(l)(a) clarifies that if, according to the normal practice of the wholesale trade in respect of the excisable goods in question, the goods are sold by the as- assessee at different prices to different classes of buyers, then each such price shall, subject to the existence of the other circumstances specified in Clause (a), be deemed to be the normal price of the such goods in relation to each such class of buyers. The factual question to be determined in this appeal is whether the as- assessee was selling the refrigerators to different "classes of buyers".

2. The issue arose after refrigerators were subjected to a change of duty from specific rates to ad valorem rates by Notification No. 46/94-C.E., dated 1st March, 1994. The respondent-assessee filed a price list and asked for provisional assessment for the period April 1994 onwards on the basis of a single assessable value in respect of the refrigerators sold by it. The price list, as submitted by the respondent-assessee, was not accepted by the Revenue and after issuing a show cause notice, the assessing officer came to the conclusion that the respondent had incorrectly proceeded on the basis that there was a single assessable value in respect of the refrigerators manufactured by it. It was found that the respondent had three categories of buyers, namely, (i) Whole Sale Distributors (WSD), (ii) Sales and Service Dealers (SSD) and (iii) Only Sales Dealers (OSD). The price in respect of the sales effected to each of the three categories of buyers was also different. The respondent-assessee had taken the lowest price at which the refrigerators were being sold but the assessing officer held that there were in fact three classes of buyers and took the highest price at which the refrigerators were being sold namely to the OSD. The Commissioner (Appeals) upheld the order of the assessing officer. By the time the matter came up before the Tribunal, the

respondent-assessee accepted the factual findings of the assessing officer to the effect that there were three categories of buyers. The sole contention was that in that event the respondent-assessee was entitled to be assessed on the separate price as charged in respect of each of the three categories under the first proviso to Section 4(1)(a) and not at the highest price as determined by the departmental authorities. The Tribunal upheld the submissions of the respondent-assessee.

3. Before us the arguments of the Department has been that the assessment ought to have been made under Section 4(1)(a) and not under proviso (i) thereto at all. The submission is contrary to the factual finding of the Department itself. The departmental authorities have proceeded on the basis that the factual pre-condition for the applicability of Proviso (i) to Section 4(1)(a) had been fulfilled. In the circumstances and given the facts of the case, we see no reason to interfere with the order impugned in this appeal.

4. The appeal is, accordingly, dismissed. There shall be no order as to costs.