

**SUPREME COURT OF INDIA**

Moriroku UT India (P) Ltd

Vs.

State of U.P.

C.A.No.1709 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

03.03.2008

**JUDGMENT**

**Kapadia, J.**

1. Leave granted in both the special leave petitions. Civil Appeal arising out of SLP(C) No. 8789/07:[*Moriroku UT India (P) Ltd. v. State of U.P. & Ors.*]
2. This civil appeal filed by M/s Moriroku UT India (P) Ltd. is directed against judgment dated 6.4.2007 delivered by Division Bench of the Allahabad High Court in CWP (Tax) No. 13/04 by which, the writ petition filed by the appellant herein, seeking to restrain the AO from imposing any tax on moulds (tooling's) supplied by its customer, Honda Siel Cars India Ltd., free of cost was sought to be taxed under Section 3 of U.P. Trade Tax Act, 1948, stood dismissed.
3. Appellant is the company registered under the Companies Act, 1956 and is a manufacturer of plastic automobile components. Appellant is manufacturing such components for use in the Honda Siel Cars manufactured in India by Honda Siel Cars Ltd. (hereinafter called the "customer"), as per designs and specifications given by it. The customer supplies tools, dies, moulds etc. (tooling's) free of cost to the appellant herein to enable it to manufacture automobile components.
4. For the assessment year 2000-2001, a final assessment order was passed on 29.10.2002 under the provisions of the U.P. Trade Tax Act, 1948 ("1948 Act"). Thereafter, a notice under section 21 was issued by the AO for reassessment to which the appellant submitted its reply. By the said Notice, the appellant was called upon to show because why amortization cost in respect of tooling's and moulds should not be taxed under section 3 of the 1948 Act.

5. Vide reassessment order dated 30.9.2003, tax was imposed on the amortization cost on the ground that the sale price of the auto components should be the same both for the purposes of Central Excise Act, 1944 ("1944 Act") and for 1948 Act.

6. Being aggrieved, an appeal was preferred by the appellant-assesses under section 9 of the 1948 Act, which was rejected in the light of the circular dated June, 2003 issued by the Commissioner, Trade Tax, U.P. by which amortization cost was sought to be taxed under the 1948 Act. Accordingly, the appellant herein challenged the validity of the circular which, as stated above, was upheld by the High Court. Hence, this civil appeal.

7. A short question which arises for determination in this civil appeal is: whether amortization cost of tooling's was includible in the sale price of auto components as in the case of excise duty under Central Excise Act, 1944? In other words, whether the Department was right in equating sales tax to excise duty.

8. For deciding this case, we are required to consider the concept of amortization of costs. The expression "amortization", in accountancy parlance is a general expression, which basically means the writing off of the cost of an asset over a period of time. As a matter of usage, "depreciation" is the expression used in relation to tangible assets, "depletion" to natural assets, which are subject to exhaustion, for example, oil deposits or mineral deposits, an "amortization" to intangible assets, such as, patents, copyrights, trademarks etc. Thus, depreciation is a form of amortization. The Accounting Standard (AS 28) relating to impairment of assets uses the following expression:

"Depreciation (amortization) is a systematic allocation of the depreciable amount of an asset over its useful life."

9. One of the working differences between the depreciation and amortization and the reason why the expression "depreciation" is used in relation to tangible man-made assets in preference to amortization is that the notion of depreciation is to write off 90% of the cost of asset over its useful life either on a sliding scale system, which is the written-down value method, which works on the reducing balance principle or on the straight-line method in which 90% of the cost is written off over the estimated useful life. On the other hand, amortization generally is to write off the entire cost. The concept of amortization is indicated in Section 35D of the Income-tax Act, 1961. It refers to amortization of preliminary expenses. These are, however, differences only in practice and not in the fundamental underlined concept, i.e., to apportion the cost of even fixed assets over a period of time, namely, their useful life.

10. Amortization, therefore, is an accounting concept similar to depreciation. It is gradual reduction of the value of an asset or liability by a periodic amount. It is essentially a means to allocate categories of assets and liabilities to their pertinent time period. The key difference between depreciation and amortization is qua the nature of the items to which the terms apply. Therefore, depreciation is generally used in the context of tangible assets whereas

amortization is generally used in the context of intangible assets, such as, copyrights, patents, goodwill and capitalized costs. On the liability side also amortization takes place. On the liability side, amortization is commonly applied to deferred revenue items such as premium income or subscription revenue and, therefore, in such cases, it is recognized as income distribution over some future period of time. Amortization is a means by which accountants apply the period concept in accrual-based financial statements; income and expenses are recorded in the periods affected, rather than when the cash actually changes hands as it would be inappropriate to expense the entire cost of a facility in the year of its acquisition if its life extends over several years just as it would be equally wrong to expense fully an intangible asset only in the first year. Intangible asset such as copyrights, patent and goodwill can be of benefit to a business for many years, so the cost of accruing such an asset should be spread over the entire time period that the company is likely to use the asset or generate revenue from it. The term "amortization" is also used in connection with loans. The amortization of a loan is the rate at which the principle balance will be paid down over a period of time. Shorter periods will have higher amounts mortised. Therefore, amortization is the process of decreasing or accounting for an amount over a period of time. It is allocation of a lump sum amount to different time periods, particularly for loans and other forms of finances. Amortization of capital expenditures of certain assets under accounting rules, particularly intangible assets, is analogous to depreciation.

11. Department, in this case, has sought to load mortised cost of the moulds supplied by its customer to the sale price of auto components in the hands of the appellant herein. According to the Department, under Section 4(1)(a) of the 1944 Act, value has to be the normal price, which has to be the sole consideration and if the price fixed is without consideration for the moulds then, according to the Department, it cannot be said that price was sole consideration. In other words, according to the Department, if the consideration for moulds is not taken into account then under the excise law, price, which is the measure of value, cannot be said to be the sole consideration. According to the Department, in this case, price of auto components sold by the appellant was fixed or to be fixed by inter se negotiations. That, without the price of the moulds being taken into account, the price of the finished product would not reflect the real assessable value. According to the Department, without the supply of moulds from its customer, final product could not be made. By use of the moulds, the appellant was able to manufacture the auto components. Therefore, according to the Department, some money value was required to be attributed on account of usage of moulds as such moulds contributed to the value of the final product, namely, auto components. Therefore, by not taking into account the money value of moulds supplied by the customer, the price stood depressed. In the circumstances, according to the Department, mortised cost had to be loaded to the price charged or chargeable by the appellant for the finished products.

12. On the above case of the Department, the question which arises for determination in this civil appeal is whether Section 4 of the 1944 Act read with Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 ("Excise Valuation Rules 2000") can be read into Section 3 of the U.P. Trade Tax Act, 1948?

13. Valuation is a matter of principle. Under Section 4 of the 1944 Act, the basis of valuation is the transaction value for each removal. Section 4 lays down the method for arriving at the assessable value for levying excise duty. It refers to taxing the value. Therefore, Section 3 of the 1944 Act is the charging section which creates the liability to pay excise duty whereas Section 4 deals with assessment or quantification of liability ad valorem. Under Section 4, duty of excise is chargeable with reference to the value of excisable goods and "value" is defined by Section 4. The price charged by the manufacturer on sale by him represents the measure of that value, therefore, in the judgment of this Court in the case of Union of India and Ors. v. Bombay Tyre International Ltd. reported in AIR 1984 SC 420 it has been held that under the excise law, prices and sale are related concepts. In that judgment, it has been further observed that "price" under the excise law has a definite connotation. That, the "value" of an excisable article has to be computed with reference to the price charged by the manufacturer, the computation being made in terms of Section 4. Therefore, Section 4 of the 1944 Act requires the Department to find out the real value of the excisable article. As stated above, excise law is a tax on value. This is the most important distinction between the excise law and the sales tax law.

14. In the case of *M/s Chhotabhai Jethabhai Patel and Co. v. Union of India and Ors. reported in<sup>1</sup>* at p. 1018 this Court held that a duty of excise is a tax-levy on home-produced goods of a specified class or description, the duty being calculated according to the quantity or value of the goods and which duty is levied because of the event of manufacture which is unrelated to and which is not dependent on any commercial transaction. This observation indicates a vital difference between excise law and sales tax laws. In the case of excise law, the taxable event is manufacture, which is not related to commercial transaction. On the other hand, commercial transaction is the basis of the price-structure in the sales tax laws. In fact, the above observation of this Court in Chhotabhai Jethabhai Patel case (supra) has been explained by this Court in Bombay Tyre (supra) by saying that levy of excise duty is on manufacture while levy of sales tax by its very nature arises at the stage beyond manufacture, namely, the sale of the article. In cases of captive consumption, Section 4(1) (a) of the 1944 Act is not attracted. What is attracted in such cases is Section 4(1) (b), which refers to "deemed value" and which requires valuation to be done in terms of Excise Valuation Rules, 2000. The important aspect to be noted is that the Department, in the present case, has borrowed the concept of "amortized goods" from Rule 6 of the Excise Valuation Rules, 2000. Therefore, we quote herein below Rule 6, which reads as follows:

"Rule. Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstances where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assesses Explanation For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in

connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assesses in relation to sale of the goods being valued and aggregated accordingly, namely :-

- (i) Value of materials, components, parts and similar items relatable to such goods;
- (ii) Value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods”

15. As stated above, valuation is a matter of principle. Under Rule 3, the value of any excisable goods has got to be determined for purposes of Section 4(1) (b). In other words, the value for the purposes of Section 4(1) (b) has to be determined only in accordance with the Excise Valuation Rules, 2000. Thus, the said Rules are limited and restricted in their application. The concept of amortized cost is undoubtedly an accounting concept. However, as held by this Court in the case of *Delhi Electricity Regulatory Commission v. BSES Yamuna Power Ltd. and Ors. reported in*<sup>2</sup> accounting for costs differs according to the object and the purpose for which the exercise is undertaken. The concept of depreciation (amortization) differs from enactment to enactment. In the above judgment of this Court, in the case of Delhi Electricity Regulatory Commission, this Court was concerned with Electricity Act. The concept of depreciation in that Act differs from the Income-tax Act. Electricity taxation stands on a different footing vis-à-vis corporate taxation. Therefore, this Court observed that accounting for costs differs according to the object and purpose for which the exercise is undertaken. Therefore, when excise law seeks to tax the value, the concept therein cannot be bodily lifted and incorporated in Section 3 of the U.P. Trade Tax Act, 1948, which essentially deals with ascertainment of the price-structure depending upon the negotiations between the parties. Moreover, the effect of clause (ii) of Explanation 1 to Rule 6 of Excise Valuation Rules, 2000 is that where any tools or dies or moulds are supplied by the buyer free of charge or at a reduced costs for use in connection with production of the goods, the value apportioned as appropriate to such tools, moulds etc., to the extent such value has not been included in the price paid or payable, has to be treated as the money value of additional consideration flowing directly or indirectly from the buyer/customer to the assesses in relation to sale of goods being valued and aggregated accordingly. This is because under the excise law, the Department has to ascertain the real value of excisable article and to ascertain such real value, if in a given case, the Department detects apportionment of the value between the manufacturer and its customer then under clause (ii) of Explanation 1 to Rule 6, on account of deeming fiction, loading of such additional consideration is required to be made to the price of the final products. Such loading takes place on account of the express provision, namely, clause (ii) of Explanation 1 to Rule 6, which uses the expression "apportioned as appropriate". This is where the accounting concept of amortization has been incorporated specifically vide clause (ii) of Explanation 1 to Rule 6. For levy of excise duty, "value" is to be determined per unit of excisable goods. Tools, dies, moulds etc. have their

own life span and will be used for estimated production during their useful life. Consequently, depending upon the expected useful life and/or expected number of units likely to be produced, value of tools, dies, moulds etc. supplied by the buyer/customer free of charge to the appellant is to be appropriately apportioned per unit of production. This is where the concept of amortization comes in specifically in Rule 6. The amount so apportioned is required to be added to the price/transaction value as per clause (ii) of Explanation 1 to Rule 6 read with Section 4(1) (b). The important thing to be noted is that this entire exercise of loading/adding to the transaction value is exclusively for determination of assessable value for central excise purposes and to fulfill the requirement of Section 4 which provides for measure for levy of excise duty. To the same effect is our judgment in the case of *Co. C v. Ferodo India Pvt. Ltd.* vide Civil Appeal No. 8426/02 under Rule 9(1)(c) of Customs Valuation (Determination of price of Imported Goods) Rules, 1988, which also refers to the addition of the cost of royalty payment to the transaction value. Therefore, Rule 6 of Excise Valuation Rules, 2000 creates the deeming fiction only for the purposes of Section 4(1)(b) of the 1944 Act and for laying down the measure for levy of excise duty. It provides for items which constitute additional consideration. There is no such provision in Section 3 of the 1948 Act. Therefore, one cannot borrow and automatically apply the concept of amortized cost to Section 3 of the 1948 Act.

16. Before analyzing Section 3 of the 1948 Act, it is important to keep in mind that in Income-tax cases, tax is eligible on "real income" which means the actual income received by or which accrues to the assessee. In case of sales-tax, tax is eligible on real price received or receivable by the dealer in respect of a sale. A dealer is entitled to frame his price-structure in a manner conducive to the type of his business or with a view to withstand the competition. In a given case, cost may be more than the price. The dealer may base his price-structure to give an incentive to his clients, agents, distributors etc., particularly if he is a manufacturer. In such cases, his price-structure has to be scrutinized by the Department under the sales-tax law to find out the real sale-price receivable by him. There may be cases where he is required to give a discount on account of defect in quality or delay. The important thing to be noted is that "price" is the amount of consideration which a seller charges the buyer for parting with the title to the goods. It comprises of the amount which the dealer himself has to pay for the purchase of the goods, the expenditure, which he is to incur for transporting the goods from the place of purchase to the place of sale, the duties, if any, levied on the particular goods bought by him, the octopi duty, which he may have had to pay and his own margin of profit after meeting handling charges including interest on the capital invested. The cost price of the goods actually paid by him under various heads of accounts would no doubt constitute the consideration for which he would part with his title to the goods. The entire amount of consideration, including the sales tax component, which the purchaser pays, would constitute the price of goods. To this extent, there is no difficulty. The difficulty comes in when by law or by legal fiction the Department seeks to introduce a notional concept as an element of the "real price". This is particularly important when there is no rule to that effect in the sales-tax law. Even under the definition of turnover in Section 2(i) one has to take into account only the aggregate amount for which goods are bought or sold. It is this aggregate amount which is taxable under Section 3 read with Section 2(i) of the 1948 Act.

17. We quote herein below Section 3 and Section 2(i) of the 1948 Act, which read as follows:

"3. Liability to tax under the Act.- (1) Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rates provided by or under Section 3-A or Section 3-D or Section 3-H on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed."

"2(i) 'Turnover' means the aggregate amount for which goods are supplied or distributed by way of sale or are sold, by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration: Explanation I.- Omitted. Explanation II.- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:--

(i) the amount for which goods are sold or purchased shall include the price of the packing material in which they are packed, and any sums charged for anything done by the dealer in respect of the goods sold, at the time of or before the delivery thereof, other than, cost of freight or delivery or cost of installation or the amount realized as trade tax on sale or purchase of goods, when such cost or amount is separately charged;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) Where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same without profit to the customer, the sales in respect of such goods shall be included in the turnover of the latter dealer alone."

18. We also quote herein below Section 2(h) of the 1948 Act, which reads as follows:

"Sale', with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) for cash or deferred payment or other valuable consideration, and includes--

(i) A transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(ii) A transfer of property in goods (whether as goods, or in some other form) involved in the execution of a works contract;

(iii) The delivery of goods on hire purchase or any system of payment by installments;

(iv) A transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) The supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash or deferred payment or other valuable consideration; Explanation I.--A sale or purchase shall be deemed to have taken place in the State,--

(i) in a case falling under sub-clause (ii) if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in the execution of the works contract, notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State;(ii) in a case falling under sub-clause (iv), if the goods are used by the lessee within the State during any period, notwithstanding that the agreement for the lease has been entered into outside the State or that the goods have been delivered to lessee outside the State. Explanation II.--Notwithstanding anything contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place—

(a) When the goods are transferred from a principal to his selling agent and from the selling agent to his purchaser,

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found, in either of the cases aforesaid,--

(i) To have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or

(ii) To have purchased the goods at one rate and passed them on to his principal at another rate; or

(iii) Not to have accounted to his principal for the entire collection or deductions made by

Him, in the sales or purchases effected by him on behalf of his principal; or

(iv) To have acted for a fictitious or non-existent principal."



19. U.P. Trade Tax Act, 1948 is a self-contained code for levy of tax on sale or purchase of goods in Uttar Pradesh. Clause (bb) of Section 2 defines the expression "trade tax" to mean a tax payable under the Act. Clause (h) of Section 2 defines the expression "sale" to include transfer of the right to use any goods for any purpose for cash or deferred payment or other valuable consideration. In this case we are concerned only with Section 3 and not with Section 3-F of the 1948 Act. Section 3 inter alia provides that every dealer shall for each assessment year pay a tax at the rates provided under Section 3-A, Section 3-D or Section 3-H on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed. Section 3-F provides for tax on transfer of right to use any goods or goods involved in execution of works contract. The definition of "sale" in Section 2(h) is in two parts. The first part covers the normal sale and the second part covers deemed sales. In the present case, we are concerned with sale of auto components to the buyer. It is a normal sale. The aggregate amount for which these auto parts/components are sold constitutes the turnover relating to such sales within the meaning of turnover in Section 2(i). Therefore, it is on such turnover that liability of tax under Section 3 of the 1948 Act has to be determined. Therefore, sales-tax or trade-tax under the 1948 Act is leviable on sale, whether actual or deemed, and for every sale there has to be a consideration. On the other hand, excise duty is a levy on a taxable event of "manufacture" and it is calculated on the "value" of manufactured goods. Excise duty is not concerned with ownership or sale. The liability under the excise law is event-based and irrespective of whether the goods are sold or captively consumed. Under the excise law, the liability is there even when the manufacturer is not the owner of raw material or finished goods (as in the case of job workers). Excise duty, therefore, is independent of ownership (see: *Ujagar Prints & Ors. v. Union of India & Ors*)<sup>3</sup> Therefore, for sales-tax purposes, what has to be taken into account is the consideration for transfer of property in goods from the seller to the buyer. For this purpose, tax is to be levied on the agreed consideration for transfer of property in the goods and in such a case cost of manufacture is irrelevant. As compared to the sales-tax law, the scheme of levy of excise duty is totally different. For excise duty purposes, transfer of property in goods or ownership is irrelevant. As stated, excise duty is a duty on manufacture. The provisions relating to measure (Section 4 of 1944 Act read with Excise Valuation Rules, 2000) aim at taking into consideration all items of costs of manufacture and all expenses which lead to value addition to be taken into account and for that purpose Rule 6 makes a deeming provision by providing for notional additions. Such deeming fictions and notional additions in excise law are totally irrelevant for sales-tax purposes. Therefore, in any event, these notional additions cannot be read into clause 5.1 and clause 5.2 of the General Agreement for Purchase of Parts dated 31.7.1997.

20. Before concluding, it may be clarified, that, in the present case, moulds were manufactured by the buyer/customer so that the auto components could be manufactured by the appellant in terms of the specifications given by the buyer. Therefore, the cost of manufacture of these moulds was incurred by the buyer/customer and not by the appellant. In our judgment, we have termed the "amortization cost" as notional in the sense that it is not the cost in the hands of the appellant. As stated above, Rule 6 of Excise Valuation Rules,

2000 refers to items of additional consideration. But for Rule 6 it was not possible for the Department under the 1944 Act to load such items to the transaction value of the final product. It is for above reasons, particularly because cost of manufacture is not incurred by the appellant but by the customer, such cost cannot be added to the price of the final product, particularly when there is no law to that effect.

21. Accordingly, we hold that the High Court had erred in holding that the amortization cost calculated in terms of Rule 6 of the Excise Valuation Rules, 2000 is includible in the sale price of auto components sold by the appellant herein to its customer, M/s Honda Siel Cars India Ltd.

22. Consequently, the impugned judgment is set aside and the civil appeal filed by the assessee is allowed with no order as to cost. Civil Appeal arising out of SLP(C) No. 9259/07:[*TS Tech Sun (India) Ltd. v. State of Uttar Pradesh & Ors.*]

23. In the light of the above judgment, in the case of *Moriroku UT India (P) Ltd. v. State of U.P. & Ors.*, this appeal is also allowed with no order as to costs.

<sup>1</sup>*AIR 1962 SC 1006*

<sup>2</sup>*(2007) 3 SCC 0033*

<sup>3</sup>*(1989) 3 SCC 4088*