

# ANDHRA PRADESH HIGH COURT

Union of India

Vs.

Vengunta Suryaprakasa Rao

C.C.C. Appeal No. 22 of 1961. Against decree of 4th Addl. J., in Original Suit No.26 of 1960

(Jaganmohan Reddy and Anantanarayana Ayyar, JJ.)

20.04.1966

## JUDGMENT

### **Anantanarayana Ayyar, J.**

1. Two plaintiffs, who constituted a registered firm of traders at Eluru, filed O. S. No. 26 of 1960 in the City Civil Court, Hyderabad for refund of tax of Rs. 19,888-31 p. being the amount of tax of Rs. 19,388-31 plus. Rs. 500 which had been levied and collected from the plaintiffs by the Collector of Central Excise and also for interest and costs. The sole defendant viz., the Union of India, contested the suit. The learned IVth Additional Judge, City Civil Court, who tried the suit, decreed it as prayed for except for awarding interest only from the date of the plaint and not from 5-3-1960 as claimed in the plaint. The defendant filed this appeal against the judgment and decree.

2. The plaintiffs are a firm of tobacco merchants who manufacture cheroots from country tobacco. They are manufacturing four brands namely, (1) Senior Langar, (2) Chinna Langar, (3) Key brand and (4) Special Langar. Senior Langar was beyond doubt taxable under Item No. 9 (II) (viii) of Schedule I to Central Excises and Salt Act, 1944 (hereinafter called the Act). The other three brands of cheroots were being sold by the plaintiff at a whole-sale cash price of Rs. 0-14-0 per hundred to M/s Maganti Veeriah and Company (hereafter referred to for convenience as the Company) which was the sole selling agent of the plaintiffs firm (hereafter referred to for convenience as the firm). There was a trade agreement between that company and the firm. Under Item No. 9 (II) (ix) of Schedule I, no duty was leviable if the price per hundred did not exceed Rs. 0-14-0. The Deputy Superintendent of Central Excise conducted experiment on 5-2-1956 and other dates to ascertain the cost structure of the brands of Chinna Langar, Key (Talam) and Special Langar. He decided that all the three varieties fell under taxable categories. On 29-5-1956 the Superintendent of Central Excise went to the firm's factory and seized the stock of these three brands of cheroots totaling in all 2,83,084 declaring that they were excisable goods.

3. He released the goods only on payment under protest, of an amount of Rs. 700/- as advance penalty and directed them to sell the goods only after affixing bond rolls of the value of duty payable of them under item No. 9 (II) (ix) of Schedule I to the Act. The Superintendent

ascertained the number of cheroots which had been manufactured between 5-2-1956 the date of the earliest experiment by the Deputy Superintendent, Central Excise, Nellore and 29-5-1956 the date of seizure of cheroots by the Superintendent of Central Excise. On 7-9-1956, the Collector of Central Excise issued a notice to the firm and, after due enquiry, passed an order (Ex. A-6) dated 8-11-1956 levying a duty of Rs. 19,388-5-0 on the cheroots removed from the factory during the period 5-2-1956 to 29-5-1956 and penalty of Rs. 500 that is, the suit amount. The plaintiffs' firm filed an appeal before the Central Board of Revenue under Section 35 of the Act against the said order of the Collector dated 8-11-1956. But, the said appeal was dismissed by an order of the Board dated 29-7-1958. Against the said order, the plaintiffs' firm filed Revision Application No. 267 of 1959 before the Central Government, Ministry of Finance (Department of Revenue), New Delhi. That also was dismissed on 30-6-1959. The firm paid the full amount of tax and penalty under protest in installments ending with 27-11-1957.

4. The contentions of the plaintiff in the plaint are as follows. The value, as defined in Section 4 of the Act of the cheroots, was only Rs. 0-14-0 per hundred. The Department conducted ten experiments from 27-11-1954 to 7-7-1956. In only one solitary experiment dated 5-2-1956, did the value, as ascertained by the Department, come to over Rs. 0-14-0 per hundred. That experiment was based on incorrect data and cannot be relied upon. All the other experiments conducted before and after 5-2-1956 showed the value of the goods as defined in Section 4 of the Act to be below Rupees 0-14-0 per hundred. The observation by the Collector of Central Excise in his order (Ex. A-6) that the price charged by the firm to the sole selling agent or distributor was not acceptable price for assessment is not correct. The duty and penalty are highly illegal and arbitrary. The plaintiff is entitled to refund of the amounts.

5. The defendants filed written statement contending as follows. By the experiment on 5-2-1956, the Deputy Superintendent of Central Excise, Nellore ascertained the cost of manufacture of Chinna Langar at Rs. 0-14-11 to Rs. 1-2-3 per hundred and the cost of manufacture of Talam brand as Rs. 0-14-8 to Rs. 1-3-0 per hundred. Regarding special Langar brand, no experiment was conducted but the price structure as given by the plaintiff was critically examined by the Deputy Superintendent and the latter fixed the cost of manufacture of that brand at Rs. 1-0-4 per hundred as against Rs. 0-12-8 as shown by the firm. While the ex-factory price arrived at by working out the cost of manufacture may be a rough indication of the value, where the value as defined in Section 4 of the Act is not ascertainable, it is not and it cannot be the basis for determining the taxable nature or otherwise of the cheroots. Hence the value of the tobacco adopted by the Deputy Superintendent do not affect the conclusion drawn on the basis of the wholesale cash price at which the plaintiffs sole selling agent company was actually selling the cheroots. The experiments conducted by the Deputy Superintendent, Central Excise, Ananthapur on 18-2-1956 no doubt disclose that the cost of manufacture as calculated by him is less than that worked out by the Deputy Superintendent of Central Excise, Nellore. But the latter cannot be accepted as a sound basis for determining the taxability or otherwise of the cheroots as it is defective. For that matter, even the cost of manufacture arrived at by the Deputy Superintendent of Central Excise, Nellore was not used for determining the taxable nature or otherwise of the cheroots. The price structure calculated for the experiment served only as a guiding factor and not as a determining factor. In view of the special relationship that existed between the plaintiffs' firm and M/s. Magnti Veeraiah and Co., the price of Re. 0-14-0 charged to M/s. Magnti Veeraiah and Co., by the plaintiffs cannot be accepted as the whole-sale cash price for the purpose of determining the taxability. Maganti Veeraiah of M/s. Maganti Veeraiah and Co., Nellore was a

partner in the plaintiff's manufacturing Company as well as in the sole agency. There was a particular agreement between the said respective parties by virtue of which all cheroots manufactured at the plaintiffs' firm were sold only to M/s. Maganti Veeraiah and Co. It has been categorically admitted by the authorised representative of M/s. Maganti Veeraiah and Co., the sole selling agent, that the three brands were being sold to dealers of Nellore at Rs. 1-3-3, Rs. 1-1-0 respectively. Therefore, the said three brands of cheroots fell under the taxable category. The prices charged by the plaintiffs' firm to the sole selling agent is a monopoly price in other words 'closed' market price. The selling price of M/s. Maganti Veeraiah and Co., the sole selling agent of the plaintiffs' firm, to the wholesale dealers is the only basis for determining the taxability or otherwise of the cheroots in question.

6. The learned Additional Judge framed six issues as follows :-

1. Whether the 'Chinna Langar', 'Thalam' and 'Special Langar' Brands of Cheroots are chargeable with duty under Central Excises and Salt Act (10 of 1944)?
2. What is the value of the said brands as determined under the provisions of section 4 of the Act?
3. Whether there is collusion between the plaintiffs' firm and the firm of M/s. Maganti Veeraiah and Co.?
4. Whether the suit is barred by time under section 40 (2) of the Act?
5. Whether the suit is barred under section 40 (1) of the Act?
6. To what relief?

7. The plaintiff examined three witnesses and marked a number of documents. The defendant examined one witness and filed one document. The learned Additional Judge found Issues Nos. 4 and 5 in the negative. He held on Issue No. 2 that the determination of the wholesale cash price for the purpose of Section 4 of the Act was the rate at which the article was sold by the manufacturer unless the evidence pointed to the conclusion that the price indicated is designedly low to avoid levy of duty. He found on Issue No. 3 that no collusion had been proved and that the brands were not chargeable with duty.

8. The learned Counsel for the appellant has contended before us that the findings of the lower Court on all the issues are wrong.

Issue No. 4 :- As regards this issue, the learned Additional Judge has mentioned all the relevant dates in para 6 of his judgment and shown that the suit was in time. It has not been shown to us that his finding on Issue No. 4 is wrong.

Issue No. 5: -

Section 40 of the Act runs as follows :- "Bar of suits and limitation of suits and other legal proceedings-(1) No suit shall lie against the Central Government or against any Officer of the Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted for anything done or ordered to be done under this Act after the expiration of six months from the accrual of

the cause of action or from the date of the act or order complained of."

9. In *Raleigh Investment Co. Ltd. v. Governor General in Council*<sup>1</sup>, it was held that a suit for a declaration that certain provisions of the Income-tax Act were ultra vires the Federal Legislature and that the assessment of the plaintiff based on those provisions was illegal and wrongful and for payment of the tax which had been collected of such basis was in truth directed exclusively to a modification of the assessment and as such was barred by Section 67 of the Act.

10. In *Union of India v. G. Vittappa Kamath*<sup>2</sup>, the learned Judge of the Madras High Court referred to the above decision of the Privy Council and then observed as follows :- (at p. 113)

"But it seems to us that the Income-tax Act and the Central Excises and Salt Act a not ad idem with regard to the provisions thereof. There is much greater similarity between Sections 17 and 18 of the Madras General Sale tax Act and Section 40 of the Central Excises and Salt Act and it according to the Madras General Sales Tax Act a suit would lie in respect of illegal levy, we see no reason why there should not be a suit with regard to illegal collection of tax under the Central Excises and Salt Act as well.....

Following the decision in *Province of Madras v. Satyanarayana Murthy*<sup>3</sup>, we hold that civil Courts have jurisdiction to entertain suits with regard to illegal recovery of central excise duty." In that case, the first appellate Court had decreed the suit for refund of excise duty as illegally collected and that decision was confirmed in second appeal by the above judgment. The Lower Court rightly relied on the above decision and found Issue No. 5 in the negative. We see no reason to disagree with the finding of the lower Court on Issue No. 5.

Issues Nos. 1, 2 and 3:- The main contention of the learned Advocate for the appellant in the appeal is that the findings of the lower Court on Issues Nos. 1 to 3 are untenable.

11. The relevant provisions of the Act are as follows :

"Section 2 (d) : 'excisable goods' means goods specified in the First Schedule as being subject to a duty of excise and included salt;

"Section 3. Duties specified in the First Schedule to be levied-(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods.....at the rates, set forth in the First Schedule.

In Schedule I to the Act, item 9 deals with Tobacco'.

The material provision reads thus :-

<sup>1</sup> AIR 1947 PC 78

<sup>3</sup> AIR 1952 Mad 273

<sup>2</sup> AIR 1957 Mad 110

"II Manufactured tobacco-

(1) Cigars and cheroots of which the value

(ix) exceeds 14 annas a hundred but does not exceed Rs. 1-4-0 a hundred. Four annas.

There is no duty on cheroots of which the value does not exceed Re. 0-14-0 a hundred.

Section 4 of the Act runs thus:-

"Section 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) where such price is not ascertainable the price at which an article of the like kind and quality is sold or is capable of being sold by the manufacturer or producer, or his agent at the time of the removal of the article chargeable with duty from such factory or other premises for delivery at the place of manufacture or production, or if such article is not sold or is not capable of being sold at such place, at any other place nearest thereto.

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."

The contention of the learned Counsel for the respondent plaintiff is that the price of Re. 0-14-0 at which the firm sold the cheroots to the sole selling agent, M/s Maganti Veeraiah and Co., at the factory is the wholesale cash price for which the article is being sold under section 4 (a) of the Act. On the other hand, the contention of the learned Counsel for the appellant defendant is that such price is not the value (wholesale cash price) for the purpose of section 4 of the Act, and that the price at which the Company (sole selling agent) is selling to others is the value for the purpose of section 4 (a) of the Act.

12. In *National Tobacco Co. v. Collector, Central Excise*<sup>4</sup>, the petitioner applied for a writ and succeeded in obtaining a writ in the nature of certiorari quashing the assessment made by the respondent (Collector, Central Excise) and a writ in the nature of mandamus directing the respondent not to take any further proceedings unless a proper assessment was made. The petitioner was manufacturing cigarettes and was relying on the price at which it was selling to its two stockists in Calcutta as the basis for duty being charged. According to the Department, the assessable value had to be worked out on the basis of the whole-sale cash price at which the stockists or agents were selling the cigarettes to an independent buyer in an open market after deducting general discount, if any, declared.

<sup>4</sup> AIR 1961 Cal 477

Central Excise Duty chargeable and other local taxes. The situation was described by the learned

Judges as follows :- (at p. 477)

"It is sufficient to say that at the relevant time, which concerns the years 1955 to 1957, the duty was levied upon a slab system.....

It follows that if the price is even a few annas more than the maximum limit of the slab, the rate of duty becomes calculable at the higher rate. It is, therefore, to the interest of the manufacturer to keep the value within the lower slab, and it is always the headache of the Excise Authorities to ensure that this is properly calculated, so that the higher duty is not deliberately avoided."

The learned Judges held as follows: (at p. 480)

"The determination of excise duty in terms of section 4 of the Act, depends on the determination of the value for the purpose of duty, for the calculation of which there are three factors, which are as follows: -

(1) The location where the calculation is to be made.

(2) The time at which the calculation is to be made.

(3) The methods of calculation." Regarding the third factor, the learned Judges further observed thus:- (at p. 481)

"..... it is easy to see that the stand taken by the petitioner company, namely that the value to be considered is the wholesale price at which it sells to its stockists at Calcutta, cannot be accepted.....The essence of the determination of the wholesale cash price for a wholesale market is that it must be an open market or a 'market overt', where any purchaser willing to purchase or sell the same goods or similar goods would be able to operate. This precludes any artificial or arbitrary price put on excisable goods by the manufacturer .....As I have pointed out above, the principles followed by the excise authorities in this case cannot also be supported. The principles embodied in the letter dated 5th November 1958.....do not accurately lay down the principles to be followed."

13. In the course of the judgment, the learned Judges further observed as follows :- (at p. 481)

"Secondly, a sale to one or two stockists, at a price arbitrarily fixed by the company, is not necessarily the whole-sale cash price that can be obtained at a wholesale market, located in accordance with the principles mentioned above. .. ."

14. In *Amco Batteries (P) Ltd. v. Asst. Collector Central Excise*<sup>5</sup>, the relevant facts were as follows. The petitioner was manufacturer of electric batteries. It manufactured under three trade-marks, "Amco", "Oakes" and "Speed". The batteries were marketed through a net-work of about 14 distributors each of whom was the sole distributor for a specified zone in India. 'Oakes' batteries were manufactured by the petitioner for Messrs. George Oakes Limited, Bombay who marketed them in Bangalore. Up to December 1958, the Central Excise Department accepted the price which had been declared by the petitioner and charged duty accordingly. In about December 1958, the Excise authorities intimated

<sup>5</sup> AIR 1963 Mys216

to the petitioner that the wholesale price declared by the petitioner cannot be accepted as correct as, in their view, the wholesale market price at Bangalore was very much more than the wholesale price declared by the petitioner. This conclusion was arrived at on the ground that the batteries manufactured by the petitioner have not got a wholesale market at the factory site and, therefore, the wholesale cash price ruling at Bangalore had to be taken into consideration; the factory and the office of the petitioner were both situated in a single building which was located just outside Bangalore City limits. It was contended that the wholesale prices charged by the petitioner to its distributors are very much less than the wholesale prices prevailing at Bangalore, even after deducting the distributors' discount and incidental expenses. The learned Judges relied on the decision of the Privy Council in *Ford Motor Co. of India Ltd. v. Secy, of State*<sup>6</sup>, and decided that, for determining the wholesale cash price, the authorities could have, if other conditions mentioned in Section 4(a) were fulfilled, levied duty on the basis of the wholesale cash price fetched at the Bangalore market. After considering the facts of that case, they referred to the decision in AIR 1961 Calcutta 477 with approval and proceeded to apply the principles of that decision to the facts of the case before them. They held as follows :- (at p. 218)

"...The petitioner was not free to sell the articles to others and in fact no sales are proved to have been made to any one other than the authorized distributors. The distributors were free to sell to the customers at whatever price they pleased. In determining the price to be paid by the distributors, 'wholesale cash prices' ruling in the nearest market (Bangalore), do not appear to have been taken into consideration. Hence the distributors cannot be considered as independent buyers. They are clearly favored buyers. Therefore, it cannot be said that there was a 'wholesale cash market' at the factory site nor can the price charged to the distributors be considered as the 'wholesale' cash price' ruling at the factory site.

From the above discussion it follows that the present case is not governed by the first part of Section 4 (a). Therefore, the relevant criteria is the 'wholesale cash price' prevailing at the time of the sales in question in the wholesale market nearest to the factory site.

The Central Excise Authorities have held that the nearest wholesale market to the Factory site is the Bangalore market. This finding cannot be properly challenged. I agree with the same."

15. As regards the determination of prices the learned Judges held that the wholesale cash price charged by the distributors, Messrs. Addison and Company (P) Limited and Messrs George Oakes (P) Limited to their wholesale customers could not be treated as the wholesale cash price without making allowable deduction. They observed as follows:- (at p. 219)

"I may add that in the instant case in determining the 'wholesale cash price' of the Batteries in question, the authorities will have to deduct the expenses that were likely to have been incurred by Messrs. Addison and Co. (P) Ltd., and George Oakes (P) Ltd. and the discounts to which they are ordinarily entitled to. Quite clearly all those factors were not borne in mind by the Excise Authorities while making the impugned levy." With these views, we are in agreement.

<sup>6</sup> AIR 1938 PC 15

16. In the present case, it is beyond doubt or dispute that the sale at the factory was to a sole selling agent, M/s. Maganti Veeraiah and Co. Therefore, if those sales alone were the sales, the

first part of Section 4(a) of the Act i. e., the price at which an article is being sold will not apply to the present case.

17. If the second part of section 4 (a) of the Act were to apply i. e., the price for which the article is capable of being sold, deductions must be made from the wholesale price at which the company was selling to others.

18. In the assessment order (Ext. A-6), the Collector of Central Excise held as follows :

"Thus the factory price charged to an associate firm or to a sole selling agent or distributor is not an acceptable price for assessment. The price acceptable for assessment in such cases would normally be the firm's or agents or distributor's catalogues cash selling price to an independent wholesale dealer. Therefore I would be guided in this case by the price which was being charged for these in the wholesale market..... by the manufacturers' sole selling agent viz., M/s. Maganti Veeraiah and Co., in the wholesale market. There is no dispute about the prices actually charged by the sole selling agents ....."

19. Thus, he did not make any deductions for discount and incidental expenses as had been indicated in the decisions of the Calcutta and Mysore High Courts referred to earlier. In the written statement also, there was no allowance conceded or made for such deductions in fixing the value (price) under Section 4 of the Act.

20. The learned Additional Judge observed in para 14 of his judgment as follows :-

"If there is evidence that the manufacturer has sold the finished product to a wholesale dealer at the place of manufacture, if evidence is further forthcoming that the price is low and the price shown is but a device to evade duty, enquiry can be made to see if the price is the real value of the goods. If, for example, it is borne out by evidence that the cost of manufacture is lower than the price at which the produce has been sold, then, obviously, the price quoted cannot represent the real value, of the goods. In the ultimate analysis, therefore, it is a question of fact if the price at which the goods are sold at the factory represents the real value of the goods."

21. Thus, he proceeded on the basis that, unless it appeared from the evidence or otherwise, the price at which the sale was made to the sole agent that is, the company would represent the real value of the goods. But, having regard to the principles enunciated by us above, the observations of the learned Additional Judge are not of help.

22. We proceed to deal with his findings on facts. Issue No. 1 is the decisive issue. It has to be decided on the basis of finding on Issue No 2. Issue No. 2 is the basic issue. The finding on Issue No. 3 would be only a factor of use to decide Issue No. 2. This issue No. 2 as framed, does not cast the burden of proof solely on the plaintiff or solely on the defendant. For deciding on Issue No. 2 the learned Additional Judge came to certain conclusions. We consider them below.

23. When a contention was raised that the sale by the plaintiffs' firm to the Company was not one in open market condition, the learned Addl. Judge simply held that the monopoly was illegal

though the monopoly, as a fact, was undisputed and undisputable. The fact that the monopoly is not illegal does not affect the fact that the price charged on the company was a 'closed' market price.

24. The learned Additional Judge rejected the contention that the purchaser and the manufacturer are the same. In AIR 1963 Mysore 216 Supra, it was observed as follows (at p. 217).

"Incidentally it was mentioned 'further, these two firms M/s. Addison and Co. and M/s. George Oakes Limited, are associated firms with Messrs. Amco Batteries Limited'. We are unable to find out the real significance of this observation. We are informed that the aforementioned two firms as well as the petitioner firm have some common directors. But it is not the case of the Central Excise Authorities that on that ground any concession was being shown to these firms. It is admitted that same Ex. factory price was and is charged to all the fourteen distributors".

25. We see no reason to disagree with the conclusion of the learned Additional Judge that the firm and the company are two distinct and different concerns.

26. The learned Additional Judge observed as follows : -

"Even by and under the terms of the agreement in this case, the selling firm, has to foot all the expenses of advertisement, transport and sale. If it had no margin of profit how did it make up the outlay on these efforts and yet made it worthwhile to trade?"

27. In effect, the learned Additional Judge held that the difference between the price at which the company purchased from the plaintiff and the price at which the company sold to its vendees could be fully accounted for by the cost incurred by the company for advertising and other expenses and the margin of profit which the company had to get. This finding is not based on any data in evidence. It is a mere general assumption which is not justified by facts and figures. It lacks precision. The learned Additional Judge did not specifically consider the factors mentioned in AIR 1961 Calcutta 477 Supra and AIR 1963 Mysore 216 Supra which we follow respectfully, and find out what was the wholesale cash price for purposes of Section 4(a) of the Act as arrived at by deducting from the prices charged by the company the discount and incidental expenses etc. Apparently, neither of the two sides put forward specific data on these items or showed by calculation what was the net wholesale market price as derivable from the price at which the company sold under the second part of Section 4(a) of the Act.

28. The learned Additional Judge held that the cost of production as indicated by the various experiments was really less than Rs. 0-14-0 per hundred thereby indicating that the price of Rs. 0-14-0 at which the plaintiffs' firm sold to the company could be the real wholesale price acceptable for purposes of Section 4(a) of the Act. For this conclusion, he showed by actual analysis of figures that the cost structure, as calculated by the experiment on 5-2-1956, was defective and incorrect and that, if the calculation were made on correct basis and properly, the cost price would be really less than Rs. 0-14-0. We find that his observations regarding this calculation have some good basis. But, cost price is not a decisive factor in deciding the value for

the purpose of Section 4. Cost price can only indicate at what price, as rock bottom price, it was possible for the plaintiff to sell under normal conditions as a prudent business concern and not as a philanthropic or charitable institution. It does not necessarily indicate the actual price as contemplated by Section 4 of the Act.

29. The learned Additional Judge relied on Ex. A-17(a) to Ex. A-17(c) the bill books of the company, which showed that after the Department seized the goods from the factory on 29-5-1956, the plaintiffs' firm actually sold the cheroots to one and all at the factory in open market at Re. 0-14-0 per hundred. These are sales after the seizure by the authorities. The learned Judge of the Calcutta High Court has pointed out in AIR 1961 Calcutta 477 as follows :- (at p. 480)

"Finally, another most important thing to be considered is that it will not do to go to such a wholesale market and calculate the wholesale cash price at any time. It must be calculated with reference to the time when the goods are removed from the factory or the place of manufacture or production for delivery etc."

30. In fact, the sales under Ex. A-17 series were at the time of removal of the particular cheroots which had been seized and released. So far as that particular stock of cheroots is concerned, the wholesale selling price was only Re. 0-14-0 per hundred and came under the first part of Section 4(a). The cheroots so seized and sold in open market to one and all are shown in Column 2 below. The total number of cheroots which were manufactured are given in Column 3 below. The figures shown in Column 4 give the number of cheroots of each variety disposed of to the company by the plaintiff during the period between 5-2-56 to 29-5-1956. It is the difference between figures in Column 2 and Column 3. Column 1 Column. 2 Column. 3 Column. 4

Brand. No. of cheroot seized by the Deputy Superintendent on 29-5-1956. No. of cheroots manufactured between 5-2-56 and 29-5-1956. No of cheroots sold to the Company by the firm of the plaintiff.

(1) Chinna Langar 1,62,213 67,04,300 64,84,987

(2)Thalam 35,648 11,67,000 11,31,352

(3) Special Langar 28,123 1,67,100 1,38,977

2,26,084 80,38,400 77,55,316

(4) Chinna Langar issued to out-workers for wrapping. 57,000

2,83,084

31. In his order dated 8-11-1957 (Ex. A-6), the Collector has charged duty and penalty on the cheroots shown in Column 4. This is the amount concerned in this suit. In a note to that order, the Collector has stated that the plaintiff credited a sum of Rs. 700/- as advance tax given for adjustment towards the above amount.

32. The prices shown in Ex. A-17 series is the correct value for the purpose of Section 4 so far as the cheroots in Column 2 are concerned. But, they are not the correct value for the purpose of

cheroots shown in Column 4. For, the prices in Ex. A-17 were at a time different from the relevant period at which value (price) for the purpose of Section 4 has to be fixed in accordance with law. That correct value has to be fixed on proper data. As happened in AIR 1961 Calcutta 477 Supra, each side proceeded on a wrong basis and upon an incorrect interpretation of Section 4(a) of the Act. Neither side placed before the Court data in evidence sufficient to enable the calculation of correct value under Section 4 of the Act. In particular, the discount etc., as mentioned in the Calcutta decision are not available in evidence. Now, the position of law is made very clear by us following the decisions of the Calcutta and Mysore High Courts referred to above. The interests of justice require that every assessee should pay to the State the duty due by him under the law and, at the same time should not be made to unnecessarily pay anything more.

33. In the circumstances of the case, we consider it desirable that both the parties should have an opportunity of adducing further evidence on the relevant aspects so as to place fuller data to enable the Court to decide correctly the value under Section 4 of the Act regarding the cheroots in Column 4.

34. In the result, we allow this appeal, set aside the judgment and decree of the lower Court and remand the case to the trial Court for fresh disposal on Issues Nos. 1 to 3 and 6. The learned Additional Judge will dispose of the case in the light of the observations made in this judgment and the principles laid down by us following the decisions of the Calcutta High Court in AIR 1961 Calcutta 477 Supra and of the Mysore High Court in AIR 1963 Mysore 216 Supra after giving full opportunity to both sides to adduce evidence further in the matter. The costs of this appeal shall follow and abide the result. The appellant will be entitled to a refund of the Court-fee paid by it on the memorandum of appeal.

Appeal allowed and case remanded.