ANDHRA PRADESH HIGH COURT

Union of India

Vs

Vazir Sultan Tobacco Co. Ltd

(B.J. Divan, CJ. Amareswari, JJ.)

18.04. 1977

JUDGMENT

B.J. Divan, C.J.

1. All these matters relate to the same point viz. the question of post-manufacturing costs in the context of Section 4 of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). The writ appeals are against the decision of our learned brother Ramchandra Raju, J. in a group of matters which he disposed of by a common judgment and since the same question arises in each of these matters, we will dispose of this group of matters by this common judgment.

2. The respondent in Writ Appeal No. 252 of 1976 is Vazir Sultan Tobacco Company Ltd., and the respondent in Writ Appeals Nos. 435, 550, 553 and 560 of 1976 is National Tobacco Co. Ltd. The petitioner in W.P. No. 3114 of 1975 is the Andhra Sugars Ltd., Tanuku.

3. Under the provisions of the Act and the rules made thereunder with effect from 1968, the Government of India introduced a procedure known as "Self Removal Procedure". Under this procedure, the manufacturers could clear the excisable goods without prior assessment by the Central Excise Officer or his counter-signature on the gate pass at the time of clearance of the goods. But, under this Scheme, there was an obligation on the manufacturers to submit to the appropriate Excise Authorities from time to time price lists in the prescribed form for their approval for the purpose of levying excise duty. Till the decision of Ihe Supreme Court in *A. K. Roy v. Voltas Ltd*[1]*R*Vazir Sultan Tobacco Co. Ltd., and the National Tobacco Company Ltd., were showing in their price lists the price which the. wholesaler was paying to the case of both these companies, the manufacturer sells the goods to the distributor, the distributor sells the goods to the wholesaler and the wholesaler, in his turn, sells the goods to the retailer. Up to the time of the decision in Voltas case, the price lists were being submitted on the basis of the price which the distributor was charging to the wholesaler. But, in the Voltas case the Supreme Court clarified the legal position behind the concept of "wholesale cash price" mentioned in Section 4 of the Act and it was made clear, according to those two manufacturers, that only the manufacturing costs and the manufacturers profits were includible in the wholesale cash price. All post-manufacturing costs were deductible from the price paid by the wholesaler. According to the two companies, in declaring the "wholesale cash price," they are also entitled to exclude from the price which they

charge to their distributors the selling expenses, advertising expenses and freight which they incur for carrying the goods from the factory gate to any place. When the Vazir Sultan Tobacco Co., started submitting price lists since July 25, 1974, to the excise authorities claiming deductions or these three Items of expenditure viz., selling expenses, advertising expenses and freight from the price which the distributor was paying to the manufacturer, the excise authorities did not approve of those lists. Thereafter, Vazir Sultan Tobacco Company filed Writ Petition No. 7143 of 1974 praying for a writ of mandamus directing respondents 2 and 3, who are excise officers, to approve the price lists submitted by the company on 25-7-1974, 14-8-1974, 10-10-1974 and 16-12-1974 and also restraining the respondents from levying, collecting or recovering any excise duty from the company on the price charged by it to the distributors without excluding post-manufacturing coats and expenses and profits. The Company sought a further direction that the excise authorities should approve the price lists which may be submited by the company in which post-manufacturing costs and expenses and profits were excluded from the price realised by the comany from the distributors. The company also sought for payment of refund of the excise duty illegally recovered by inclusion in the duty illegally in the wholesale cash price of the company's products the post-manufacturing expenses and profits with regard to to lists mentioned in the writ petition.

4. As regards the National Tobacco Company after the decision in Voltas case-1977 E.L.T. (J 177), it submitted price lists dated 24-8-1973, 28-8-1973 and 18-10-1973 deducting from the price paid by the distributor to the manufactures 6.15% of the total turnover as marketing and distribution expenses ... The Assistant Collector of Central Excise, Rajahmundry. by his order dated 20-3-1974 held that the company was not entitled for deduction of 6.15% on sale price towards marketing and distribution expenses. The Inspector of Central Excise, Biccavolc, issued a demand notice for the period from Aug. 1973 to Feb. 1974. The National Tobacco Company filed Writ Petition No. 1748 of 1974 challenging this order. For the subsequent period from March 1974 to Feb. 1975, a similar order and a similar demand notice were issued by the excise officer concerned, which were challenged in W.P. No.-2274 of 1975. The order and the demand notice for the period from 1st March to 31st Aug. 1975 were challenged in W.P No. 5156 of 1975 and the order and the supplemental demand notice for the period from Aug. 1973 to Feb. 1974 were challenged in W.P. No. 2275 of 1975.

5. In all these writ petitions filed by the National Tobacco Company. Ltd., the manufacturer, prayed for the issue of writs of certiorari quashing the orders and the notices of demand basing its claim for deductions in the post-manufacturing costs.

6. In W.P. No. 3114 of 1975, Which come directly before us for disposal, the Union Carbide India Ltd., Division : National Carbon Co., Moula Ali, Secunderabad, sought deduction of post-manufacturing costs from the price lists submitted by it. The petitioner in this writ petition is a manufacturer and seller of dry cell batteries.

7. The Andhra Sugars Ltd., Tanuku is the petitioner in W. P. No. 6044 of 1975. It Manufacturers caustic soda in all three forms-Lye, Flakes and solids and clears from the factory on prices agreed to in the contracts with various customers. The question is of deduction of post-manufacturing costs from the price paid by the wholesaler or the customer to the manufacturer and here again the orders passed by the excise authorities refusing the claim of the manufacturer for the deduction of such post manufacturing costs have been challenged in this writ petition.8. In order

to appreciate the controversy between the excise authorities on the one hand and the respective manufacturers on the other in this group of matters, it is necessary to refer only to two sections of the Act. Section 3 of the Act, which is the chargin section in the Act provided at the relevant time that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into any part of India as, and at the rates, set forth in the First Schedule to the Act. Thus, it is clear that, so far as goods other than salt are concerned, the excise duties are levied on the production or manufacture of excisable goods. Section 4 of the Act, as it stands after its substitution by the new section with effect from 1973 by virtue of Central Excises and Salt (Amendement) Act, 1973 does not arise for consideration in this judgment. Section 4, after its substitution by Finance Act, 1955 provided as follows.

9. It is the contention of the Revenue in these writ appeals, which have been filed by the Union of India and Excise Authorities against the decision of our learned brother, Ramchandra Raju, J., allowing each of the writ petitions filed by the Vazir Sultan Tobacco Company and National Tobacco Company and granting appropriate relief in the respective writ petitions, that the case clearly falls under Section 4(a) and not under Section 4(b). The further contention is that in view of Section 4(a) and Explanation to Section 4, as it stood at the relevant time, deductions sought for by the respective manufacturers are not permissible and that the only deductions, which are permissible, are the trade discount and excise duty from the price paid by the wholesaler to whom first sales are effected by the manufacturer.

10. Since Section 4, which is the subject matter of consideration before us in the form as it stood before the substitution of new Section 4 by virtue of the Amendment Act, 1973, was enacted by a post-constitution Act, it was necessary to refer to the relevant entry in the List 1 of Seventh Schedule of the Constitution, to appreciate the background regarding the enactment of Sectior 4 and placing it on the statute book. Item 84 in List I i.e., Union List in the Seventh Schedule to the Constitution mentiones :"84. Duties of excise on tobacco and other goods manufactured or produced in India except-

(a) alcoholic liquors for human comsumption;
(b) opium, Indian hemp and other narcotic drug and narcotics but including medicinal and toilet preparations containing alcohol or any substance included in sub-para (b) of this entry."

11. It is therefore clear, as was amply made clear by charging Section 3 of the Act, which was enacted in 1944, that excise duty could be levied only on excisable goods manufactured or produced in India. It may also be pointed out that the relevant entry in the Federal List, which was entry 45 in the relevant Schedule to the Government of India Act, 1935, was also on the same lines as Item 84 which we have referred to above and therefore it was competent to the Central Legislature in 1944 to provide only for the levy of excise duty on excisable goods produced or manufactured in India. It is clear, when one bears these constitutional entries in mind, that the taxable event in the case of excise duty is the production or manufacture of excisable goods and nothing else.
* * * *

12. It is therefore, clear that when considering Section. 4, one has to bear in mind that section provides for machinery of collection of excise duty for administrative convenience. If, in

enacting Section.4 and Explanation thereto, any words are used which are capable of being construed as enabling the excise authorities to calculate the excise duty on anything other than manufacture or production of goods by the well known doctrine of "Reading Down", which has been evolved by Courts of law, first in Australia and then followed in India, the language of Section. 4 must be confined to the power of the Legislature referable to Item 84 in the Union List in the Seventh Schedule to the Constitution, viz., that only the manufacture or production should be taken into consideration by the excise authorities while fixing the value of the goods for the purpose of excise duty when excise duty is leviable on an ad valorem basis.

13. In re: Sea Customs Act, (AIR 1963 SC 1760), the Supreme Court observed (at. p. 1776) :

"The taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. In this connection sales tax may be contrasted which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales tax are levied, with reference to goods, the two are very difficult imposts; in one case the imposition is on the act of manufacture or production while in the other, it is on the act of sale."

14. In Shinde Brothers v. Deputy Commr., , the Supreme Court after referring to the earlier cases, observed that these cases establish that in order to be an excise duty (a) the levy must be upon 'goods', and (b) the taxable event must be the manufacture or production of goods. Further the levy need not be imposed at the stage of production or manufacture but may be imposed later.

15. As we have observed earlier, if the machinery section in the Act seeks to bring within its scope any item of cost incurred by the manufacturer, which is not referable to production or manufacture of the goods, then it is not an excise duty, but something else altogether and therefore it is not within the purview of the excise anthorities functioning under the four corners of the Act and the rules made thereunder while levying excise duty.

16. The first contention of Mr. Subrahmanya Reddy, the learned Standing Counsel for the Central Government in each of these matters before us that the case falls under Section. 4(a) and not under Section. 4(b) is correct, because each of the manufacturers before us actually sells the goods manufactured by it to a wholesaler or consumer. Again, the excise authorities seek to take into consideration the entire price which the first purchaser, be it the distributor or be it the first wholesaler, pays to the manufacturer less trade discount and excise duty at the time of the removal of the goods from the factory or other premises mentioned in Section. 4(a) of the Art

17. It may be mentioned at this stage that, long before the enactment of the Act of 1944, a similar concept, which later on was enacted in Section 4(a) was embodied in the Sea Customs Act, 1878. Under Section 30 of the Sea Customs Act, it was provided :

"for the purposes of this Act the real value shall be deemed to be (a) the wholesale cash price, less trade discount for which goods of the like kind and quality are sold or are capable of being sold at the time and place of importation or exportation as the case may be without any abatement or deduction, whatever except (in the case of goods imported) of the amount of the duties payable op the importation thereof, or

(b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid."

18. In *Ford Motor Co. v. Secy, of State*[2]- the Privy Council interpreted Cl (a) of Section 30 of the Sea Customs Act. The facts of the case before the Privy Council were that the Ford Motor Company of India, the appellants before the Privy Council, were importing Ford Motor vehicles into India from Canada and the questions which arose in the appeal before the Privy Council related to the amount of customs duty payable upon 256 Ford motor cars consigned to the appellants which arrived in Bombay by the S.S. "Algic" on or about 9th Jan. 1929. The appellants had a monopoly of the supply of Ford vehicles to India. Except that they sometime sold direct to their own employees or to Government, they sold in India only to authorised dealers or distributors. Each distributor had a particular district within which in was the sole agent for or retail seller of Ford vehicles. The appellants obtained from the distributors information as to their future requirements and placed consolidated orders accordingly once or twice a month wtth the manufacturers in Canada. After the Ford (Canada) received the order, they were required to build the car and a month was required for passage of time. They Sold to the dealers in large quantities Ford vehicles and all parts relating thereto. The Ford Motor Company of India (appellants) issued from time to time a price list and the terms of business were that the retail price to be charged by the distributor to the public was that stated in the price list current at the time of arrival of the vehicles in India and the price payable by the distributor to the appellants was the same price less a discount of 20 per cent. The distributor had to pay this price before obtaining delivery. Delivery was given by the appellants "free on rail" save in the case of the authorised dealers for the district of Bombay itself viz , Ford Automobiles (India), Limited - to whom delivery was made at their own warehouse in Bombay. The price mentioned in the price list was in all cases for a vehicle in running order, and the same was true of the contract between the appellants and the distributors. Each of the cars now in question arrived in India packed in a case, but incompletely assembled in this respect that the battery had to be charged and fixed, the wheels, mudguards, and running boards to be fixed, and other Items of work done to put the vehicle in running order. Having no facilities for doing such work in Bombay, the appellants gave delivery of the cars in the state in which they had arrived, making an agreed allowance to their distributors against the price. For each car the allowance was 13 rupees 8 annas. On those facts the question arose as to what was the wholesale cash price to be taken into consideration for the purpose of Section 3 of the Sea Customs Act. The Privy Council held that the price, which was charged by the appellants to their distributors was a wholesale price within the meaning of Section 30. It was a cash price. The cars were invoiced a few days before arrival of the ship and the price became fixed then and not before. The sales were therefore sales at the time and place of importation in every reasonable sense. It was further held that the overhead charges had no bearing upon any matter arising under Cl. (a) of Section 30.

19. In the context of these facts while discussing the provisions of Cl. (a) of Section 30 of the Sea Customs Act, the Privy Council observed at page 18 of the report :

'If the facts of the present case and the terms of Cl. (a) be placed side by side for comparison, several points of exact agreement become clear. The appellants price to their distributors is a wholesale price within the meaning of the section as declared in 59 Ind App 258 (Vacuum Oil Co. v. Secy. of State- AIR 1932 PC 168. It is a cash price; payment was made before delivery and delivery was within a few days of the arrival of the goods. The ony discount has been

deducted.* * * * That the Legislature intended to exclude post-importation expenses need not be doubted, but it had to do this in a practicable manner without undue refinement, and it must be taken to have regard to the phrase which it employed as sufficient for the purpose if taken in a reasonable sense. The fact that the motor cars were incompletely assembled at the time of their arrival in Bombay gives rise to no difficulty; because although the car, according to the price lists in respect of this defect was an agreed allowance, and reduced the sum payable by the distributor to a price referable to the car in the condition in which it arrived in Bombay. The allowance was deducted by the customs authorities from the price to the distributors before arriving at the price upon which duty was calculated.

* * * *

The price upon which customs duty has been charged appears therefore to be a wholesale cash price, less trade discount, for which the goods under assessment were in fact sold at the time and place of importation."

20. It was also pointed out by the Privy Council that the goods under assessment may under Cl. (a) of Section. 30 be considered as members of their own class even although at the time and place of importation there are no other members. The price obtained for them may correctly represent the price obtainable for goods of the like kind and quality at the time and place of importation.

* * * *

21. Thus, in the context of Section 4 of the Central Excises and Salt Act, 1944 and especially with reference to Section 4(a), the Supreme Court has now laid down in Voltas case-1978 E.L.T. (J 177), that the real value should be found after deducting the selling cost and selling profits and that the real value can include only the manufacturing cost and the manufacturing profit. If in cartain case, there are costs necessarily incidental to manufacturing process, they can be rightly said to form part of the manufacturing costs and thus they are also to be included in the real value including only the manufacturing costs and the manufacturing profit. Anything other than the manufacturing costs and manufacturing profit is not within the purview of Section 4(a)

22. In Atic Industries v. Asst Collector, Central Excise , the facts before the Supreme Court were that the appellants before the Supreme Court carried on business of manufacturing dye stuffs in a factory situate in a small township called Atul in Bulsar district in the State of Gujarat. The dye stuffs manufactured by the appellants were, throughout the period relevant, to the appeal, sold by them in wholesale units to two wholesale buyers, namely, I.C.I. (India) Ltd., and Atul Products Ltd. These sales were effected under respective agreement entered into by them with I.C.I, and

Autl. Seventy per cent of the dye stuffs manufactured by the appellants were sold to I.C.I, while the remaining 30 per cent to Atul. The price charged by the appellants to I.C.I, and Atul was a uniform price described as "the basic selling price" less trade discount of 18 per cent. I.C.I, and Atul, in their turn, resold the dye-stuffs purchased by them from the appellants to two categories of buyers. One was the category of textile mills and other large consumers, while the other was the category of distributors. The sales by I.C.I. and Atul to the textile mills and other large consumers were at the basic selling price without any discount but so far as the distributors were concerned, the sales to them by I.C.I, and Atul were at a higher price, though with trade discount. I.C.I, charged a higher price but allowed 10 per cent trade discount, while Atul charged a slightly lower price and allowed two and a half per cent trade discount. The prices were, however so adjusted that the net selling prices charged by I.C.I. and Atul to the distributors were almost the same. The distributors, in their turn, resold the dye-stuffs purchased by them from I.C.I. and Atul to the small consumers at a slightly higher price referred to as "small consumers price". No discount was given by the distributors to the small consumers. On these facts the Supreme Court held that the assessable value of the dye-stuffs manufactured by the appellants before the Supreme Court must be taken to be the price at which they were sold by the appellants to I.C.I, and Atul less 18 per cent trade discount and not the price charged by I.C.I, and Atul to their dealers. After referring to the Voltas case, Bhagwati, J., speaking for the Court, in para 10 at page 967 of the report, pointed out:

> "The wholesale dealings between the appellants and I.C.I. and Atul were purely commercial dealing at arms length and the price charged by the appellants for sales in wholesale made to I.C.I, and Atul less trade discount of 18 per cent was, therefore, clearly "wholesale cash price" within the meaning of Section. 4(a) and it did not make any difference that the wholesale dealings of the appellants were confined exclusively to I.C.I. and Atul and apart from these two, no independent buyers could purchase the dye-stuffs in 'wholesale from the appellants."

23. Mr. Subrahmanya Reddy for the appellants in the writ appeals and the respondendents in the writ petitions with which we are concerned in these cases, has very strongly relied upon the conclusion of the Supreme Court in Atic Industries v. Asst. Collector, Central Excise (supra) as set out in para 13 of the report and contended that, in the instant case, the price charged by the manufacturers to the first wholesalers, be they referred as distributors or wholesalers, is the wholesale cash price and it is that wholesale cash price less trade discount, and excise duty which should be the basis for imposition of excise duty in view of the language of Section 4. We are unable to accept this argument of Mr. Subrahmanya Reddy in its entirety. It is clear from the observations of Mathew J. in Voltas case (supra) which were approved by the Supreme Court inAtic Industries v. Assistant Collector, Central Excise (supra) that the excise duty, which is a duty payable on manufacture or production of goods, can only be on the aggregate of manufacturing costs and manufacturing profit. As we have observed above, if there are any Item of costs, which are necessarily incidental to the process of manufacture, they will also be part of the manufacturing costs. But if it can be demonstrated by a particular manufacturer that, even on the first sale to the first wholesale dealer there is an element other than that of manufacturing cost and manfacturing profit and thus the price charged to the first wholesaler includes post-manufacturing cost, such post-manufacturing cost must be eliminated by the excise authorities from their calculations. It must be pointed out that there may be two broad categories of manufacturers. The first category consists of manufacturers who only manufacture as in the case

of Atic Industries case (supra) but do not sell the goods except to the first wholesaler with whom they have arrived at an agreement at arms length. The second category is the category of manufacturers who not only manufacture, but also sell and incur the expenditure for the sale of goods as distinguished from manufacturing cost and manufacturing profit and if it can be demonstrated that, when the manufacturer of the second category sells the goods to the first wholesaler and incurs some post-manufacturing costs which have entered into the calculations and that the price charged to the first wholesaler by the manufacturer includes the post-manufacturing cost, then such post-manufacturing cost must be eliminated by the excise authorities from their calculations. Applying the process of 'reading down' it must be held that any Item other than manufacturing costs, including costs which are necessarily incidental to manufacturing process and manufacturing profit, must be excluded for the purpose of arriving at wholesale cash price. If such leading of post-manufacturing costs even in the price charged by the manufacturer to the first wholesaler with whem an agreement was entered into at arms length is permitted, the concept of excise duty being a duty payable on the manufacturer or production of goods, would be violated. We are therefore unable to accept this contention of Mr. Subrahmanya Reddy.

24. Mr. Subrahmanya Reddy has very strongly relied upon the decision of a Division Bench of the Gujarat High Court consisting of J.B. Mehta, Acting Chief Justice and M.P. Thakkar J., in Golden Tobacco Co. Ltd., *Bombay v. Union of India* [3]- The petitioner in that case sought to deduct from the price charged by them to the first Wholesaler 3% of the additional deduction as sought under the Chartered Accountant's certificate by way of marketing expenses and for consequential refund for the period between Dec. 1, 1972 to May 15, 1974. The petitioners had two cigarette factories at Bombay and Baroda. The petitioners had stated that they followed a uniform pattern for marketing goods as they sold the products manufactured by them to distributors who, in their turn, sold the same to the wholesale. dealers. The contention of the petitioner was that 3% represented the post-manufacturing costs. After considering all the relevant decisions on the point, the Division Bench of the Gujarat High Court held that the only deduction from the price which was permissible was trade discount and excise duty and no other deduction was permissible. With great respect to the learned Judges of the Gujarat High Court, we are unable to follow the conclusion of the learned Judges because the very concept of excise duty is that it is only a duty solely on the manufacture or production of the goods and nothing else and therefore any costs other than manufacturing costs in the sense we have explained above and manufacturing profit should not be allowed to enter in the wholesale cash price. It may be pointed out that, barring this decision of the Gujarat High Court, the other decision subsequent to the decisions in Voltas' case-1977 E.L.T. (J 177) and Atic Industries case (supra), the Supreme Court have taken the same view as we are taking in the instant case.

25. In *Coromandel Fertilisers Ltd., v. Union of India*[4] a Division Bench of this Court consisting of Sambasiva Rao, J., and Punnayya J., after referring to the decisions in Voltas case (supra) and Atic Industries case (supra) observed :

> "No doubt in neither of the two cases the question of inclusion or exclusion of freight charges arose. But certainly the question of the impost of excise duty and the nature of wholesale cash price arose in the two cases, The law on the point has been made clear by the highest court of the land which is binding on all the courts in India. From what we have extracted from the decisions of the Supreme Court there cannot be any possible

doubt that freight charges cannot be included in estimating the wholesale cash price, since they are not part of the manufacturing and producing cost but are only post-manufacturing expenses."

26. The Division Bench also pointed out that a similar view was adopted by the Bombay High Court in Misc. Petn. No. 293 of 1974, the Madras High Court in W.P. Nos. 2180 of 1972 and 2742 of 1975 and W.P. Nos. 2182 and 2183 of 1975 and the Karnataka High Court in W.A. No. 8 of 1975 (Kant). The Division Bench of the Gujarat High Court in Golden Tobacco Co. Ltd., *Bombay v. Union of India*[5] referred to the decisions of the Karnataka High Court, the Bombay High Court and the Kerala High Court, but differed from the views taken by those High Courts.

27. For the reasons stated above, we differ from the view taken by the Gujarat High Court and accept the view taken by the Division Bench of this Court consisting of Sambasiva Rao. J., and Punnayya, J., in *Coramandel Fertilisers Ltd. v: Union of India*[6] It may be pointed out that the view which we are taking is the view which was taken by the Kerala High Court in *Madras Rubber Factory v. Assistant Collector, Central, Excise,*[7] by the Bombay High Court in Union of India v. Mansigka industries Private Limited, 1976 Tax LR 1971, by the Karnataka High Court in *Union of India v. I.T.C. Ltd*[8]*.,* by the Madhya Pradesh High Court in *Universal Cables v. Union of India*[9]*,* and by the Allahabad High Court in l*.T.C. Ltd. v. Union of India*[10]*,* It may also be pointed out, us indicated by the Allahabad High Court in l.T.C Ltd v. Union of India (supra), that the Madras High Court has also taken the same view as the High Court other than Gujarat High Court. The conclusion that we have independently reached on our own is thus strengthened by the view taken by the Division Bench of this Court in *Coramandel Fertilisers Ltd. v. Union of India*[11] and by the view taken by the Kerala, Karnataka, Madras, Allahabad and the Bombay High Courts. In view of the near uniformity among the views expressed by the different High Courts, we see no reason to take a different view from the one which we have independently arrived at in the instant case.

28. In t,his view we must hold that the view taken by our learned brother, Ramachandra Raju, J., in W.P. Nos. 1748 and 7143 of 1974 and 2274, 2275 and 5136 of 1975 (Andh. Pra.) was correct and that the order passed by him that the petitioners were entitled to deduct from the price which they charged their distributors any expenditure incurred by them towards sales but not connected with the manufacture or production viz., advertisement expenses, selling expenses and freight charges, must be upheld. He rightly observed that these deductions had to be worked out between the petitioners before him and the Excise Department. He rightly allowed the writ petitions.

29. we, therefore, dismiss each of the writ appeals in the group before us. We allow Writ Petitions Nos. 3114 of 1975 and 6044 of 1975 and direct the excise authorities not to take into consideration in arriving at the wholesale cash price any costs other than manufacturing costs (inclusive of costs necessarily incidental to manufacturing process) and manufacturing profit and if the price charged by the manufacturer to the first wholesaler is found to be loaded by any post-manufacturing costs, such loading is totally foreign to the concept of excise duty under the constitutional entry 84 in List I-Union List in the Seventh Schedule to the Constitution and contrary to the basic notion underlying the charging section and must be excluded.

30. As observed by our learned brother, Ramchandra Raju, J., the deductions will have to be worked out by the excise authorities in the light of the observations which we have made in this judgment.

31. Each of these writ appeals is therefore dismissed and the two writ petitions before us are allowed and the directions to the excise authorities will be issued accordingly to deduct from the wholesale cash price any post-manufacturing costs so as to exclude from the wholesale cash price, apart from trade discount and excise duty, any element other than the manufacturing costs (inclusive of costs necessarily incidental to the process of manufacture) and manufacturing profit. The appellants in the writ appeals and the respondents in the writ petitions will pay the costs to the respondents in the writ appeals and the petitioners in the writ petitions respectively. Advocate's fee Rs. 150/- in each matter.

Cases Referred.

1 AIR 1973 SC 225
2AIR 1938 P.C. 15
31977 E.L.T. (J 113)
4(Writ Petn. Nos. 1400 to 1403 of 1976 decided on 24-9-1976)
5Spl. Civil Appln. No. 858 of 1974 (Guj)
6(W.P. Nos. 1400 to 1403 of 1976 decided on 24-9-1976)
71977 E.L.T. (J 85)
81976 Tax LR 2003
91977 E.L.T. (J 92)
101977 E.L.T. (J 28)
11(W.P. Nos. 1400 to 1403 of 1976) decided on 24-9-1976