

A COMMISSIONER OF CENTRAL EXCISE, NEW DELHI
v.
M/S. HERO HONDA MOTORS

APRIL 13, 2005

B [S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

Excise Law :

C *Assessable value—Cost of production—Receipt of advance and income
accruing thereon—Whether has gone towards depreciation of sale price—
Matter remitted back to Central Excise and Service Tax Appellate Tribunal to
consider whether or not advances or any part thereof have been used in the
working capital and whether or not the advances received by the assessee
and/or the interest earned thereon have been used in the working capital and/
D or whether it has the effect of reducing the price of the product.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1564 of 1999.

E From the Judgment and Order dated 6.10.98 of the Central Excise,
Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. No.
1330/98 in A. No. E/1983 of 1997-A.

A. Subba Rao, V. Ramasubramaniam, Tufail Ahmed Khan, Rupesh
Kumar, P. Parmeswaran, B. Krishna Prasad for the Appellant.

F S. Ganesh, P.A.S. Rao, P.K. Ram and D.N. Misra with him for the
Respondent

The Order of the Court was delivered :

O R D E R

G This appeal is against the judgment of the Customs, Excise & Gold
(Control) Appellate Tribunal, New Delhi dated 6th October, 1998.

The question which arises for determination is : whether receipt of
advance and the income accruing thereon has gone towards depreciation of
the sale price.

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A conspectus of decisions show that inclusion of notional interest in the assessable value or wholesale price will depend on the facts of each case. In the present case, according to the adjudicating authority, the evidence indicated that the main object behind receiving advance from the customers was not security but collection of capital. In this connection, reliance was placed on financial accounts, MIS reports, pricing and costing. The said material was put to the officers of the company. The adjudicating authority found on evidence that the advances were invested and income therefrom by way of interest, dividends etc. constituted additional flowback (consideration) from the customer to the assessee. In this connection, the adjudicating authority found that interest at 9% was actually paid by the assessee to each of the customers; that the interest was shown as cost of production; that it was charged to cost of production; that the said expense was incurred under the head "Sales" which implicated "sales income" with "other income". On examination of the balance sheet, profit & loss account and costing data, the adjudicating authority found that but for "other income", assessee was required to increase the prices to recover the cost of manufacture. The adjudicating authority further found that this "other income" accrued to the assessee in the course of sale. The said authority found that the said "other income" formed part of the prices. That, the difference in the interest paid to the customers and the interest earned on the advances received from the customers constituted "additional consideration" which flowed back from the customer to the assessee. The adjudicating authority further found difference between the current assets and current liabilities in the final statements indicating utilization of advances to meet the working capital requirement. The adjudicating authority further found that the payment of interest to the customer was shown in the books as cost of production whereas the income received on deployment of funds (advances) has been shown as income from sales and other income. The adjudicating authority found understatement of assessable value on account of failure on the part of the assessee to take into account the additional consideration arising on account of difference in the rates of interest.

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At the outset, we may point out that in this case the Annual Reports of the assessee show the opening and closing balance of the funds received under the caption "Customers' Advances". They show deployment of funds so received. The income accruing to the assessee was reflected in profit & loss accounts. For the year ending 31.3.1986 the outstanding balance under the above head was Rs. 33.40 crore out of which Rs. 28.90 crore was invested

- A in various securities/deposits leaving a balance of Rs. 4.42 crore [See Schedule 4]. The said schedule further indicates utilization of capital gains and interest income to reduce the liability under the said head. That, the said schedule 4 indicated not only liquidation of liabilities under the head "customers advances" by utilization of income on investments from such advances, they also indicated
- B flowback of the benefits from the customers to the assessee. Moreover, the income from such investments was shown under the head "Sales and Other Income". The said "Other Income" included interest on deposits, profit on sale of units and income from units [schedule 10]. Even the Report of the Directors under the head "Financial Reports" show that the profits of the company have been based on implication of Sales with Other Incomes. For
- C example, for the year 1985-86, Sales and Other Incomes were of Rs. 49.20 crore (rounded to "0") out of which Income from Sales was Rs. 45.02 crore (rounded to "0") whereas Rs. 4.06 crore was on account of Other Income. Therefore, according to the adjudicating authority, the total income (Sales and Other Income) contributed to the profits which had a direct impact on
- D pricing. According to the adjudicating authority, the said "Other Income" had contributed to the pricing. That, but for the said "Other Income", it was not possible for the company to sell the motorcycles at a price lower than the unit cost of production. Lastly, the adjudicating authority found on facts that since interest paid at 9% to the customers was indicated as an expense, the income on the investments from the advances was includible in the assessable value.
- E This aspect has also not been considered by the tribunal.

- For the above reasons, we hold that the tribunal has disposed of the appeal before it in a most perfunctory manner without going into any figures at all but by merely on the statement made by counsel and on the basis of
- F material which appears to have been produced first time before the tribunal. We, therefore, set aside the order of the tribunal and remand the matter back to the tribunal. The tribunal will consider in detail, if necessary, by taking the help of a Cost Accountant and after looking into the accounts of the respondent whether or not the advances or any part thereof have been used in the working capital and whether or not the advances received by the respondent and/or
- G the interest earned thereon have been used in the working capital and/or whether it has the effect of reducing the price of the motorcycle. The tribunal to so decide on the material which was placed before the Commissioner and not to allow any additional documents/materials to be filed before it. None of our observations made herein shall bind the tribunal to which this case is
- H remitted.

We may clarify that in the event of tribunal coming to the conclusion that additional consideration flowed back from the consumer to the assessee then the value of the benefit shall be ascertained by the tribunal with the assistance of a Cost Accountant. **A**

The question of limitation is for the present left open to be decided, if necessary, in the appeal which may be filed to this Court from the order of the tribunal. The appeal stands disposed of accordingly. **B**

R.P.

Appeal disposed of.