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UNION OF INDIA & ORS.

v.

MAHINDRA & MAHINDRA LTD.

(Civil Appeal No. 6620 of 2003)

MAY 09, 2014.

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[SUDHANSU JYOTI MUKHOPADHAYA AND J. CHELAMESWAR, JJ.]

CENTRAL EXCISE ACT, 1944:

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s.4 – Normal price in the course of wholesale trade – Determination of – Show cause notices issued for short payment of excise duty covering period 1982 to 1985 – High Court quashed the same – On appeal, held: Assessee failed to bring the ascertainable price of the goods, cost of transportation to depot etc., to the notice of the High Court – Assessee simply challenged the show cause notices on the ground that amended s.4 was not applicable – High Court without looking into the relevant fact, declared the notices illegal only on the ground that sub-clause (iii) to s.4(b) was subsequently added by amendment including 'depot', 'premises of consignment agent' or any other place' or 'premises' from where the excisable goods were to be sold after their clearance from the factory – Matter remitted to the competent authority for reconsideration.

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s.4 (as amended by Finance Act, 1996) – Applicability of.

The assessee-respondent was issued two show cause notices by the appellant-department for short payment of excise duty under Section 11A of the Central Excise Act, 1944. The High Court quashed the notices.

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The question which arose for consideration in the

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instant appeal was whether the High Court was justified in interfering at the stage of issuance of show cause notice when the notices were pertaining to under assessment due to incorrect application of Section 4 of the Act. A

Allowing the appeal and remitting the matter to the competent authority, the Court B

HELD: 1. By Finance Act, 1996 (33/1996), Section 4 of the Central Excise Act was amended and the possibility of there being different prices at different places of removal was added by inserting Section (ia) after Section 4(1)(a)(i). The depots came to be added in the definition of place of removal by adding sub-clause (iii) after Section 4 (4)(b)(ii). Then concept of time of removal came to be added by adding sub-clause (ba) after sub-clause (b) in Section 4(4). In view of the fact that the amendment was made subsequently in the year 1996, the High Court mainly proceeded on the question whether the Revenue was justified in demanding excise duty on the basis of the higher price, at which the tractors were sold by the assessee from their depots whether on wholesale basis or retail under the law as it stood at that point of time. The said question was answered in negative in favour of the assessee and the High Court set aside the show-cause notices. In the instant case as the matter related to the years 1982 to 1985, Section 4, as it then stood would apply. As per Section 4, any activity ancillary to but not incidental to the manufacture cannot be included as part of the activity for the manufacture. Any income either in the form of interest on deposits, notional or real earned on the deposit etc. would not be the price for the manufacture though they might be profits or gains, if any, of any ancillary or allied venture. [Paras 4, 13, 14 and 17] [515-G; 516-B, C, E, F; 512-D-E] C D E F G

2. In the instant case the assessee failed to bring the H

A **ascertainable price of the tractor, cost of transportation to depot, etc. to the notice of the High Court. The assessee simply challenged the show-cause notices on the ground that the amended Section 4 is not applicable. The High Court without looking into the relevant fact, only** B **on the ground that sub-clause (iii) to Section 4(b) was subsequently added by amendment including 'depot', 'premises of consignment agent' or 'any other place' or 'premises' from where the excisable goods were to be sold after their clearance from the factory, declared the** C **notices illegal and set aside the same. Even the matter was not remanded back to competent authority allowing the assessee to bring to its notice "normal price", in course of wholesale trade, place of removal of tractors, transportation charges, etc. [Para 18] [521-F-H; 522-A]**

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Union of India and Ors. v. Bombay Tyre International Ltd. and Ors **(1984) 1 SCC 467: 1984 (1) SCR 347;** *Asstt. Collector of Central Excise v. Madras Rubber Factory Ltd.* **1986 Supp. SCC 751;** *Collector of Central Excise v. M/s. Indian Oxygen Ltd.* **AIR 1988 SC 1873: 1988 (1) Suppl. SCR** E **761;** *Union of India v. Bombay Tyre International Ltd.* **(1984) 1 SCC 467 1984 (1) SCR 347 – relied on.**

Case Law Reference :

F **1984 (1) SCR 347**	**Relied on**	**Para 15**
1986 Supp. SCC 751	**Relied on**	**Para 15**
1988 (1) Suppl. SCR 761	**Relied on**	**Para 17**
1984 (1) SCR 347	**Relied on**	**Para 17**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.6620 of 2003.

From the Judgment and Order dated 13.09.2002 in WP No. 2986/1986 of the High Court of Judicature at Bombay.

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R.P. Bhatt, Arijit Prasad, Shalini Kumar, B. Krishna Prasad for the Appellants. A

Gaurav Goel (For E.C. Agrawala) for the Respondent.

The Judgment of the Court was delivered by B

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal is directed against the judgment and order dated 13th September, 2002 passed by the High Court of Judicature at Bombay in Writ Petition No.2986 of 1986. By the impugned judgment the Division Bench of the High Court set aside two C show-cause notices dated 12th August, 1985 and 4th February, 1986 issued by Superintendent of Central Excise for short payment of excise duty under Section 11A of the Central Excise and Salt Act, 1944 (hereinafter referred to as, 'the Act').

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2. The factual matrix of the case is as follows:

The respondent-Mahindra & Mahindra Limited is a Public Limited Company (hereinafter referred to as the "assessee") and manufactures agricultural tractors (falling under Tariff item No.34-II), required engines (Tariff item No.29) and certain E components (Tariff item No.68) for the same at its factory situated at Kandivali, Mumbai. The assessee has its sales depots at Bombay, Daman, Ludhiana and Lucknow, etc. It had been filing classification list and price list periodically under the procedure of self-removal of excisable goods which is under F control and supervision of Inspectors of Excise at the factory level who in turn are under the control of the Superintendent of Excise. Accordingly, the assessee had been paying the excise duty on the goods removed at the factory gate regularly.

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3. The competent authority in exercise of power conferred under the Act issued two above referred show-cause notices dated 12th August, 1985 and 4th February, 1986. The first show-cause notice dated 12th August, 1985 covered the period

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A from 1982 to 1985 and alleged therein:-

(i) that the assessee sold the duty paid stocks from their sales depots at the higher price;

B (ii) that the sales depots were related persons and that therefore the price at which the goods were sold from the depots should be considered as the assessable value;

(iii) that though the retail price included excise duty, freight and dealer's margin, excise duty had been paid at the C factory gate without including the aforesaid amounts and that this was incorrect in view of Rule 6(a) of Central Excise (Valuation) Rules, 1975;

(iv) that the assessee had not included in the assessable D value (1) after sales services charges (2) dealer's margin (3) marketing and selling expenses and (4) excess freight;

(v) that the assessee had concealed the invoice value.

4. The notice alleged that there was an under assessment E due to incorrect application of Section 4 of the said Act for the above referred reasons, and therefore, called upon the respondent to show cause to the Assistant Collector of Central Excise Goregaon (East) Bombay under Section 11A of the said Act.

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5. The assessee filed a detailed reply to the notice on 30th September, 1985, much beyond the period of filing reply. It was pointed out that the assessee had been regularly filing its monthly returns and maintaining the production registers. It had been filing classification list and price list which were checked G thoroughly by the assessing authority right from the production stage. The depots are neither different bodies nor have they any separate existence. They are part and parcel of the assessee itself. With respect to Rule 6(a), it was submitted that the said Rule applies only in those cases where the value is H

not ascertainable under the main definition of the term normal price in Section 4(1)(a) of the said Act. It was also submitted that the wholesale sales are on principal to principal basis and all the services like marketing, selling, servicing etc. thereafter are not done by the assessee but by the dealers. It was denied that there was suppression of any information pertaining to sale invoices and since the department did not seek review of the approved price list, there was no justification in attempting to revoke the already approved assessable value.

6. Another show-cause notice dated 4th February, 1986 was issued by the competent authority covering the period from 1st August, 1985 to 31st October, 1985 whereunder the competent authority asked to show cause as to why an amount of Rs.20,00,754.50 (Rupees Twenty Lakhs Seven Hundred Fifty Four and Paise Fifty only) be not assessed.

It was alleged that the assessee declared the unit of sale of one tractor for sale to individual buyers which includes freight and declare margin, besides excise duty, and that it is making sales of tractors from Bombay and from its depots at Daman, Lucknow and Ludhiana to individual buyers directly through its declared prices and that it did not declare such fixed retail price which could have been assessed by reducing such amounts, on account of freight and part of declare margin as is necessary and reasonable in the opinion of proper officer to arrive at the assessable value. Thus, it was alleged that there has been short payment of duty of excise for the reasons enumerated in the show-cause notice and that such short payment worked out in the annexure to this notice amounts to Rs.20,00,754.50 (Rupees Twenty Lakhs Seven Hundred Fifty Four and Paise Fifty only)- Basic excise duty and Rs.1,00,037.75 (Rupees One Lakh Thirty Seven and Paise Seventy Five only)- Special excise duty totaling Rs.21,00,792.25 (Rupees Twenty One Lakhs Seven Hundred Ninety Two and Paise Twenty Five only) during the period from 1st August, 1985 to 31st October, 1985. The assessee was asked to show-cause to the Assistant

A Collector of Central Excise, Goregaon (East) Bombay as to why the differential duty amount of last five years should not be recovered from them under Section 11-A of the Act.

The assessee replied to the show-cause notice by its letter B dated 25th March, 1986. The assessee by its earlier letter dated 24th February, 1986, also asked for the work sheets showing as to how the assessable value had been worked out.

7. Thereafter, the assessee was served with annexure to the first show-cause notice on 21st May, 1986. The annexure C stated that the list showing the difference in the prices at Daman and Ludhiana when compared to those at Bombay which was on much higher side upto Rs.5,000/- per tractor and it contained the amount beyond the reasonable expenditure on account of transportation, insurance etc. In the said annexure, D it was accepted that few tractors i.e. about 20% were sold at the factory gate at Kandivali to show that the prices are ascertainable at the factory gate under Section 4(1)(a) of the said Act. It was further alleged that this was done with an ulterior motive to reduce the duty liability. It was claimed that E there was a short payment to the tune of Rs.3,59,45,487.40 (Rupees Three Crores Fifty Nine Lakhs Forty Five Thousand Four Hundred Eighty Seven and Forty Paise only) and thereby asked as to why a penal action under the Act should not be initiated apart from the recovery under Section 11A of the Act. F Detailed charts supporting the claim were also enclosed along with the annexure.

8. Thereafter, the assessee instead of waiting for a decision or moving before CEGAT moved before the High Court challenging both the notices.

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9. The High Court referring to the old and amended Section 4 of the Act held that the department was not justified in demanding the excise duty on the basis of higher price, at which the tractors were sold by the assessee from their Depots

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whether on wholesale price or retail price under the law in force at that point of time. A

10. Learned counsel for the petitioners made the following submissions:

(a) The High Court was not justified in interfering at the stage of issuance of show-cause notice when the notices were pertaining to under assessment due to incorrect application of Section 4 of the Central Excise and Salt Act, 1944. B

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(b) The High Court was not justified in holding that the ex factory gate price was ascertainable in this case, even when it was not disputed that there was over charging at the depots in excess over the alleged ex factory price.

(c) The High Court failed to take into account the fact that in the case of sale through depots expenses on account of cost of transportation including insurance freight only is allowed deduction. D

(d) Disputed question of fact being involved, the High Court should have remitted the matter back to the Department asking the parties to lead evidence for deduction towards transportation and "insurance". E

11. On the other hand, according to the learned counsel for the respondent-assessee it is too late to remand the matter to the competent authority. According to assessee the difference in price has been on account of freight, after sale service charges, dealer's margin, expenses in respect of marketing, selling etc. Therefore, the Revenue cannot allege that there was short deposit of excise duty by the assessee or that the assessee has failed to comply with Section 4 of the Act. F G

12. Section 4 of the Act, as it then stood, reads as follows:

"Section 4. Valuation of excisable goods for H

A ***purposes of charging of duty of excise.***—*(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be—*

B *(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for*
C *the sale:*

Provided that:—

(i) where, in accordance with the normal practice of the
D *wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;*
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(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum,
F *fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;*

G *(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such*
H *related person shall be deemed to be the price at which*

they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

(3) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.

(4) For the purposes of this section,—

(a) 'assessee' means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) 'place of removal' means—

(i) a factory or any other place or premises of production or manufacture of the excisable goods; or

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,

A From where such goods are removed;

(c) 'related person' means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a B holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation.—In this clause 'holding company', 'subsidiary company' and 'relative' have the same C *meanings as in the Companies Act, 1956;*

(d) 'value' in relation to any excisable goods,—

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing D *except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.*

Explanation.—In this sub-clause "packing" means the wrapper, container, bobbin, pirn, spool, reel or warp beam E *or any other thing in which or on which the excisable goods are wrapped, contained or wound;*

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods F *and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for* G *sale;*

Explanation: For the purposes of this sub clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of:-

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(a) the effective duty of excise payable on such goods under this Act, and A

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods. B

And the effective duty of excise on such goods under each Act referred to in clause (a) or clause (b) shall be:-

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with C *respect to, for reduction of duty of excise under such act on such goods equal to, any duty of excisable under such act, or the additional duty under Section 3 of the Customs Tariff Act, 1975, already paid) on the raw material of component parts used in the production or* D *manufacture of such goods from the duty of excise under such act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act, in respect of such goods as reduced so as to give full and complete effect to such exemption, and* E

(ii) In any other case, the duty of excise with reference to the rate specified in such Act in respect of such goods,

(c) "wholesale trade" means sales to deals, industrial consumers, Government, local authorities and other F *buyers, who or which purchase their requirements otherwise than in retail."*

13. By Finance Act, 1996 (33/1996), Section 4 of the Act was amended and the possibility of there being different prices at different places of removal was added by inserting Section (ia) after Section 4(1)(a)(i). The said Section reads as follows: G

*"**(ia)** where the price at which such goods are ordinarily sold by the assessee is different for different places of removal, each such price shall, subject to the existence* H

A *of other circumstances specified in clause (a), be deemed to be the normal prices of such goods in relation to each such place of removal."*

The depots came to be added in the definition of place of removal by adding sub-clause (iii) after Section 4 (4)(b)(ii). The added sub-clause (iii) reads as follows:

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"(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory"

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Then concept of time of removal came to be added by adding sub-clause (ba) after sub-clause (b) in Section 4(4). This sub-clause (ba) reads as follows:-

D *"(ba) "time or removal" in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b) shall be deemed to be the time at which such goods are cleared from the factory:"*

14. In view of the fact that the amendment was made E subsequently in the year 1996, the High Court mainly proceeded on the question whether the Revenue was justified in demanding excise duty on the basis of the higher price, at which the tractors were sold by the assessee from their depots whether on wholesale basis or retail under the law as it stood F at that point of time. The said question was answered in negative in favour of the assessee and the High Court set aside the show-cause notices.

In the present case as the matter relates to the years 1982 to 1985 Section 4, as it then stood and quoted above shall G apply.

15. The scope of Section 4 has been explained by this Court in *Union of India and Ors. v. Bombay Tyre International Ltd. and Ors,* (1984) 1 SCC 467. The ramifications thereof has

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also been discussed in *Asstt. Collector of Central Excise v. Madras Rubber Factory Ltd.,* 1986 Supp. SCC 751. A

16. In *Bombay Tyres International Ltd.* (supra) this Court had an elaborate discussion on Section 4 and the changes brought in by 1973 Amendment Act. In the said case this Court observed and held as follows: B

> *"**26.** Accordingly, we hold that pursuant to the old Section 4(a) the value of an excisable article for the purpose of the excise levy should be taken to be the price at which the excisable article is sold by the assessee to a buyer at arm's length in the course of wholesale trade at the time and place of removal. Where, however, the excisable article is not sold by the assessee in wholesale trade but, for example, is consumed by the assessee in his own industry the case is one where under the old Section 4(a) the value must be determined as the price at which the excisable article or an article of the like kind and quality is capable of being sold in wholesale trade at the time and place of removal.* C D
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> ***27.** Where the excisable article or an article of the like kind and quality is not sold in wholesale trade at the place of removal, that is, at the factory gate, but is sold in the wholesale trade at a place outside the factory gate, the value should be determined as the price at which the excisable article is sold in the wholesale trade at such place, after deducting therefrom the cost of transportation of the excisable article from the factory gate to such place. The claim to other deductions will be dealt with later.* E F
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> ***28.** Finally, where the wholesale price of the excisable article or an article of the like kind and quality is not ascertainable, then pursuant to the old Section 4(b) the value of the excisable article shall be the price at which the excisable article or an article of the like kind and* G H

A *quality is sold or is capable of being sold by the assessee at the time and place of removal or if the excisable article is not sold or is not capable of being sold at such place, then the price at which it is sold or is capable of being sold by the assessee at any other place nearest thereto.*

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***29.** In every case the fundamental criterion for computing the value of an excisable article is the price at which the excisable article or an article of the like kind and quality is sold or is capable of being sold by the manufacturer,* C *and it is not the bare manufacturing cost and manufacturing profit which constitutes the basis for determining such value.*

***30.** As we have noted, Parliament amended the Central Excises and Salt Act by Act XXII of 1973. In particular,* D *Parliament introduced a new Section 4 which totally superseded the old section, and embodied a much more comprehensive and clearly enunciated scheme for the determination of the real value of an excisable article. Clause (a) of the new Section 4 speaks of the "value"* E *being the "normal price, that is to say, the price at which such goods are ordinarily sold to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale".*

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***31.** Where the normal price of such goods are not ascertainable for the reason that such goods are not sold or for any other reason, the new Section 4(1)(b) provides that the nearest ascertainable equivalent thereof determined in such manner as may be prescribed shall* G *be the value of the excisable goods for the purpose of charging the excise duty.*

***32.** It will be noticed that the basic scheme for determination of the price in the new Section 4 is* H *characterised by the same dichotomy as that observable*

in the old Section 4. It was not the intention of Parliament, when enacting the new Section 4 to create a scheme materially different from that embodied in the superseded Section 4. The object and purpose remained the same, and so did the central principle at the heart of the scheme. The new scheme was merely more comprehensive and the language employed more precise and definite. As in the old Section 4, the terms in which the value was defined remained the price charged by the assessee in the course of wholesale trade for delivery at the time and place of removal. Under the new Section 4 the phrase "place of removal" was defined by Section 4(b) not merely as "the factory or any other place or premises of production or manufacture of the excisable goods" from where such goods are removed but was extended to "a warehouse or any place or premises wherein the excisable goods have been permitted to be deposited without payment of duty" and from where such goods are removed. The judicial construction of the provisions of the old Section 4 had already declared that the price envisaged under clauses (a) and (b) of that section was the price charged by the manufacturer in a transaction at arm's length. After referring to several cases, some of which have already been mentioned here earlier, this Court pointed out in Voltas Limited, (1973) 3 SCC 503:

"the 'wholesale cash price' has to be ascertained only on the basis of transactions at arm's length. If there is a special or favoured buyer to whom a specially low price is charged because of extra-commercial considerations, e.g., because he is a relative of the manufacturer, the price charged for those sales would not be the 'wholesale cash price' for levying excise under Section 4 (a) of the Act. A sole distributor might or might not be a favoured buyer according as terms of the agreement with him are

A *fair and reasonable and were arrived at on purely commercial basis."*

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34. *Both learned counsel for the assessees and the learned Solicitor General for the Revenue are agreed that in enacting the new Section 4 Parliament did not intend to bring into existence a scheme of valuation different from that embodied in the old Section 4. Reference was made in that connection to the Statement of Objects and Reasons. The difference, however, lies in this that while learned counsel for the assessee attempted to show by reference to the old Section 4 that the legislative intent was to confine the value of an excisable article to the manufacturing cost and manufacturing profit and that therefore the same limitations should be read into the new Section 4, the learned Solicitor-General approached the problem from the other end and contended that since on a plain reading of the new Section 4 the price actually charged by the assessee was the true criterion and was not limited to the manufacturing cost and manufacturing profit, it is that construction which should be put also on the old Section 4. We have earlier indicated our inability to accept the proposition that the old Section 4 defined the value of an excisable article in terms of the manufacturing cost and manufacturing profit exclusively. We find from an examination of the provisions of the new Section 4 that a similar conclusion must follow. The normal price mentioned in the new Section 4(1)(a) is the price at which the goods are ordinarily sold by the assessee in the course of wholesale trade. It is the wholesale price charged by him. It is a price which may vary, according to the first proviso to the new Section 4(1)(a) with different classes of buyers. It may also be, according to the second proviso to the new Section 4(1)(a), the price fixed as the wholesale price under any law or the maximum price where the law fixes a maximum. The price may also be a different price if*

the case falls within the third proviso to the new Section 4(1)(a). In that event it will be the price charged by a related person in the course of wholesale trade. Clearly, it is not possible to conceive of the price under the new Section 4(1)(a) being confined to the manufacturing cost and the manufacturing profit. Moreover, it is reasonable to suppose that the central principle for the determination of the value of the excisable article should be the same, whether the case falls under clause (a) or clause (b) of the old Section 4 or under the new Section 4(1). When regard is had to the provision of clause (b) in each case, it is not possible to limit the price to its components representing the manufacturing cost and manufacturing profit."

17. In *Collector of Central Excise v. M/s. Indian Oxygen Ltd.*, AIR 1988 SC 1873, referring to the decision in *Union of India v. Bombay Tyre International Ltd.* (1984) 1 SCC 467, this Court held that in the light of the aforesaid principles it has to be borne in mind that any activity ancillary to but not incidental to the manufacture cannot be included as part of the activity for the manufacture. Any income either in the form of interest on deposits, notional or real earned on the deposit etc. would not be the price for the manufacture though they might be profits or gains, if any, of any ancillary or allied venture.

18. In the present case the assessee failed to bring the ascertainable price of the tractor, cost of transportation to depot, etc. to the notice of the High Court. The assessee simply challenged the show-cause notices on the ground that the amended Section 4 is not applicable. The High Court without looking into the relevant fact, only on the ground that sub-clause (iii) to Section 4(b) was subsequently added by amendment including 'depot', 'premises of consignment agent' or 'any other place' or 'premises' from where the excisable goods were to be sold after their clearance from the factory, declared the notices illegal and set aside the same. Even the matter was

A not remanded back to competent authority allowing the assessee to bring to its notice "normal price", in course of wholesale trade, place of removal of tractors, transportation charges, etc.

B 19. For the reasons aforesaid, we have no option but to set aside the impugned judgment dated 13th September, 2002 passed by the High Court. We, accordingly, set aside the said judgment.

20. The case is remitted to the competent authority C granting liberty to the assessee to forward a copy of each of the show-cause replies already filed within four weeks. Assessee is also given liberty to produce relevant evidence in support of its claim. The competent authority will pass appropriate order(s) in accordance with law.

D 21. The appeal is allowed.

Devika Gujral Appeal allowed & matter remitted to competent Authority.