Supreme Court of India
Assistant Collector Ofcentral ... vs Madras Rubber Factory Ltd on 20 December, 1986
Equivalent citations: 1987 AIR 701, 1987 SCR (1) 846
Author: P Bhagwati
Bench: Bhagwati, P.N. (Cj)

PETITIONER:
ASSISTANT COLLECTOR OFCENTRAL EXCISE & OTHERS ETC.

Vs.

RESPONDENT:
MADRAS RUBBER FACTORY LTD.

DATE OF JUDGMENT20/12/1986

BENCH:
BHAGWATI, P.N. (CJ)
BENCH:
BHAGWATI, P.N. (CJ)
KHALID, V. (J)

CITATION:
1987 AIR 701 1987 SCR (1) 846
1986 SCC Supl. 751 JT 1987 (1) 41
1986 SCALE (2)1239
CITATOR INFO :
RF 1987 SC 729 (2)
C&F 1989 SC1525 (14)
R 1989 SC2121 (3)
D 1990 SC 977 (9)
RF 1990 SC1814 (15)

ACT:
Central Excise and Salt Act, 1944: Section 4; Central Excise Rules, 1944: Rule 96; Central Excise (Valuation) Rules, 1975: Rule 4.

Excise duty--Valuation of excisable goods--'Assessable Value--Determination of-- TAC/Warranty, product discount, Overriding commission, duty paid on processed tyre cord, secondary packaging cost, interest on goods after removal from factory gate till date of sale, interest on receivables, cost of distribution at duty paid sales depots--Deduction of--Whether permissible and valid.
Lower price for Government Departments--Whether normal price.

Computation of assessable value in a cum-duty price at factory gate--Permissible deductions should first be deducted.

HEADNOTE:

In Union of India v. Bombay Tyres International Ltd ., [1984] 1 SCR 347, this Court held that under s.4 of the Central Excise and Salt Act, 1944, only those expenses which were incurred on account of factors contributing to the product's value upto the date of sale or the date of delivery at the factory. gate were liable to be included in the assessable value. On November 14/15, 1983 the Court made a clarificatory order wherein it was stated that discounts allowed in the trade (by whatever name called) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, and that such allowance and the nature of discount should be known at or prior to the removal of the goods and should not be disallowed only because they were not payable at the time of each invoice or deducted from the invoice price.

The respondent-Rubber Factory claimed various deductions of the nature of post-manufacturing expenses for determining the assessable value of their products under s.4 of the Act which were disallowed

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by the Excise authorities. Its writ petitions were, however, allowed by the High Court.

In appeals by the Union of India for setting aside the High Court judgment it was contended for the respondent: (a) that the TAC/ Warranty discount, which was sought to be deducted for determining the assessable value, satisfied all the criteria of a trade discount stipulated in the clarificatory order; (b) that the claim for deduction of product discounts--prompt payment discount, year-ending discount and campaign discount--was justified on the same reasoning; (c) that the interest on finished goods from the date the stocks were cleared till the date of sale was a proper deduction for determination of the assessable value; (d) that the claim for deduction of interest on receivables (sundry debtors for sales) was justified on the ground that this cost was inbuilt in the price and was incurred on account of the time factor between the delivery of goods and realisation of moneys; (e) that the overriding commission allowed to the Hindustan Petroleum Corporation for exclusive sale of company's products through their dealer net work was also of the nature of a discount; (f) that the cost of distribution at the duty paid sales depot was a proper deduction; (g) that the difference between the lower price at which the product was sold to the Government and the price charged from ordinary dealer was of the nature of a discount; (h) that the claim for deduction of special secondary packaging charges squarely falls within s.4(4)(d)(i) of the Act, and (i) that the company was entitled to the deduction of excise duty paid on processed typecord under s.4(4)(d)(ii).

The respondents also disputed the method of computation of 'assessable value' in a cure-duty price at a factory gate

sale and contended that such value was to be arrived at by first deducting the predetermined excise duty added to the factory price and only thereafter the permissible deductions were to be deducted.

Disposing of the appeals, the Court,

HELD: 1.1 The respondent company is not entitled to the deduction of TAC/Warranty discount for determining assessable value of tyres since it does not come within s.4(4)(d)(ii) of the Central Excise and Salt Act , 1944. [856H, 857A, 855H]

1.2 Even though giving of TAC/Warranty is established by practice for the wholesale trade or capable of being decided, what is really relevant is the nature of the traction. It is not a discount on the

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tyres already sold, but relate to the goods which are being subsequently sold to the same customers. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale. [8S6B]

1.3 A trade discount of any nature could be allowed to be deducted provided it is known at or prior to the removal of the goods. In the instant case, this condition precedent is not satisfied as the committee decided the claim for TAC/Warranty subsequent to the removal of the tyre. [856C]

1.4 The analogy of Rule 96 of the Central Excise Rules, 1944 relating to abatement of duty of defective tyres cannot be made applicable to justify the claim for deduction of the TAC/Warranty discount. A tyre being sold as a "seconds" or "defective" would be sold at a discount, such discount being known before the goods were removed/cleared, thereby also satisfying the pre-condition of s.4(4)(d,(ii) of the Excise Act. The assessable vase and price list submitted would be one relating the 'seconds' tyres. [856G]

Union of India v. Bombay Tyres International Ltd ., [1984] 17 ELT 329, referred to.

2.1 The respondent is entitled to deduction of 'prompt payment discount' which is a 'trade discount' given to the dealers by the company. It is established under the terms of sale or by established practice and is known at or prior to the removal of the goods- [857E-F]

2.2 The company is not entitled to deduction of the 'year-ending discount'. The allowance of the discount is not known at or prior to the removal of the goods. The calculations are made at the end of the year and the bonus at the said rate is granted only to a particular class of dealers. This is computed after taking stock of the accounts between the company and its dealers. It is not in the nature of a discount but in the nature of a bonus or an incentive much after the invoice is raised and the removal of the goods is complete. [857G-858A]

2.3 The campaign bonus cannot be a permitted deduction to the company. The allowance of the discount is not known at or prior to the removal of the goods. The qnantum is

unascertained at the point of removal. The discount is not on the wholesale cash price of the articles sold but is based an the total sales effected of a particular variety of tyre calculated after the removal. [858D]

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3.1 Expenses incurred on account of several factors which have contributed to the product's value upto the date of sale, which apparently would he the date of delivery at the factory gate, are liable to he included in the assessable value. [858F]

3.2 The company was justified in claiming deduction of interest an finished goods until they were sold and delivered at the factory gate. But interest on finished goods from the date of delivery at the factory gate up to the date of delivery from the sales depot would be an expense incurred after the date of removal from the factory gate and it would, therefore, not he liable to he included since it would add to the value of the goods after the date of removal from the factory gate. [858G-H]

Union of India v. Bombay Tyres International Ltd., [1984] 1 SCR 347, referred to.

4. The interest cost and expenses on sundry debtors or interest on receivables is an expense subsequent to the date of sale and removal or delivery of goods and, therefore, the company would not he eligible to claim deduction on this account. [859H]

5. The overriding commission paid by the company to the Hindustan Petroleum Corporation for sale of their products exclusively through HPC dealer network is not deductible. It was agreed to in consideration of the COrporation not agreeing to enter upon agreement with any other tyre manufacturing company vis-a-vis by reason of the respondent undertaking not to enter upon any agreement with any other oil company. It is a compensation granted for the sale of company's products through HPC dealers and is a commission for services rendered by the agent. It is not a discount known at or prior to the removal of the goods. [859A-C]

6. The cost of distribution incurred at the duty paid sales depots is not to he included in the assessable value in case the wholesale dealers take delivery of the goods from outside such godown. The wholesale dealers having taken delivery of the goods manufactured by the company and there being a removal of the goods from the factory gate, the cost of distribution at duty paid sales depots cannot he taken into account for the purpose of determining the assessable value of the goods. [859H-860A]

Union of India & Ors. v. Duphar Interfram Ltd., [1984] ECR 1443, referred to.

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7. Merely because the product is sold at a lower price to the Government it cannot be said that the difference in price with reference to an ordinary dealer and the Government is a discount to the Government. The position that

there can be different price lists of articles of similar description sold to different classes of dealers or different classes of buyers in wholesale is specifically recognised under s.4(1)(a), proviso (1) of the Act. The lower price for the Government constitutes a normal price for it as a class of buyer and no deduction on this head is liable to the company for the purpose of determination of the assessable value of the article. [860D, C, E]

8.1 Section 4(4)(d)(i) of the Act read with the Explanation thereto makes it apparent that the 'secondary packaging' done for the purpose of facilitating transport and smooth transit of the goods to be delivered to the buyer in the wholesale trade cannot be included in the value for the purpose of assessment of excise duty. If a packaging is not necessary for the sale of the product in the wholesale market at the factory gate, the same cannot be included in the value for the purpose of assessment of excise duty. [860 FG]

8.2 In the instant case, the secondary packaging for tread rubber consists of cardboard cartons and wooden cases. This secondary packing is not employed merely for the purpose of facilitating transport or smooth transit but is necessary for selling the tread rubber in the wholesale trade. The cost of these cardboard cartons and wooden cases or any other special secondary charges incurred by the company on tread rubber could not, therefore, be excluded from its assessable value. [861A, D, E-F]

Union of India & Ors. v. Godfrey Philips India Ltd., [1985] 22 ELT 306 and Bombay Tyres International Ltd. v. Union of India & Ors., Bombay High Court M.P. No. 1534 of 1979 decided an January 7, 1986, referred to.

9. The company is eligible for deduction from selling price of tyre of excise duty paid on processed tyre cord. This is in accord with s.4(4)(d)(ii) of new s.4 of the Act. [862F-G]

10.1 The assessment of excise duty both in relation to s.4 and in relation to the Valuation Rules is now subject to the definition contained in s.4(4)(d) of the Act. The 'value' as defined thereunder is to be arrived at after the cost of packaging of a durable nature or a returnable nature as also amounts of duty of excise, sales tax and other taxes and trade

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discount allowed in accordance with the normal practice of wholesale trade is determined. It is implicit that no excise duty is payable on an element of excise duty in the price. The value as contemplated under s.4 cannot include a component of excise duty. [863AB]

10.2 The aggregate of the assessable value, the permissible deduction and the excise duty is equal to the selling price (cure-duty paid). The excise duty is only known as a ratio of the assessable value when an ad valorem duty is included in the cure-duty paid selling price. The quantum of

excise duty cannot be pre-deducted or pre-determined till the assessable value is known. It is only the permissible deductions in concrete monetary terms and amount which are known. The cum-duty paid sale price being available for computation and the value of deduction permitted being also known, the assessable value and the excise duty as a ratio of the assessable value can be only found by first deducting the permissible deductions from the cum-duty paid selling price and thereafter computing the value by dividing the difference by (1 +rate of excise duty). This method has both a legal and mathematical basis. To reverse this sequence is to mis-interpret the scheme and the mode of levy of excise duty on the assessable value. [864E-G, 865B, 865G]

10.3 Where the factory price is not a cure-duty price, the first step in arriving at the assessable value is to deduct the permissible deductions and thereafter to compute the excise on an ad valorem basis by applying the tariff rate to the assessable value. [865D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3195 of 1979 etc. From the Judgment and Order dated 20th June, 1979 of the Kerala High Court in Writ Appeal No. 302 of 1978. F.S. Nariman, M. Chandrasekharan, K.R. Nambiar, C.V. Subba Rao, Ms. A. Subhashini, A.K. Ganguli, Mrs. R. Rangas- wamy, Hemant Sharma, K. Swamy and Ms. S. Relan for the appearing parties.

The Judgment of the Court was delivered by BHAGWATI CJ. 1. The above cases are involving a company known as Madras Rubber Factory Ltd. (popularly known as MRF Ltd.) MRE has four factories; Kottayam (Kerala), Madras (Tamil Nadu), Arkonam (Tamil Nadu) and Goa (Union Territory) engaged in the manufacture of automotive tyres, tubes and other rubber factory products. Each of these factories are under juris- diction of different Assistant Collectors. The four proceed- ings arising for our consideration are as under:

(i) Civil Appeal No. 3195 of 1979 is an appeal by certifi- cate filed by the Union of India through the Assistant Collector of Central Excise, Kottayam against the Judgment dated 20th June 1979 of the Division Bench of the High Court of Kerala from Writ Appeal No. 302 of 1978 allowing post manufacturing expenses under the new Section 4 of the Excise Act. This relates to the Kottayam factory.

(ii) Civil Appeals Nos. 4731-32 of 1984 are appeals filed by Union of India through the Superintendent of Central Excise, Kottayam against the Judgment dated 1st April 1976 of the Division Bench of the High Court of Kerala allowing post manufacturing expenses under the old Section 4 of the Excise Act.

(iii) SLP (Civil) No. 10108 of 1980 is another appeal of the Union of India against the Judgment of the Additional Judi- cial Commissioner, Goa, Daman and Diu allowing post manufac- turing

expenses under the old Section 4 of the Excise Act in respect of the factory at Goa. In respect of new Section 4, the Union of India and MRF were agreed that the decision in Writ Appeal No. 302 of 1978 being the subject matter of Civil Appeal 3195 of 1979 would be applicable to the factory at Goa.

(iv) Civil Appeal No. 793 of 1981 is MRF's Appeal under Section 35L of the Central Excise and Salt Act (as amended)' against the order and decision dated 1st February 1984 of the Tribunal (CEGAT) deciding that the sale of tyres and other rubber products through their 42 Depots throughout India were not retail sales but were in the nature of whole- sale sales and MRF was not entitled to deductions under Rule 6A of the Central Excise (Valuation) Rules, 1975 (hereinaf- ter referred to as the "Valuation Rules").

2. These proceedings are now arising for our considera- tion after the pronouncement of the Judgment by this Court in the case of Union of India & Others v. Bombay Tyres International Ltd., [1983] Vol. 14 Excise Law Times 1896) decided on the 7th October 1983 and the clarificatory order passed by this Court in the same case of Union of India & Others v. Bombay Tyres International Ltd., reported in 1984 ELT 329. This clarification was given by the Supreme Court on 14th and 15th November 1983. Pursuant to hearings held in this Court in several cases relating to post-manu- facturing expenses and after the latter clarificatory order in the case of Union of India & Others v. Bombay Tyres International Ltd. (supra), the Tribunal (CEGAT) decided the Review Notice and set aside the order of the Appellate Collector on 1st February 1984 and on 9th February 1984 the Civil Appeal No. 793 of 1984 was admitted. Format orders were passed by this Court in the pending appeals relating to post-manufacturing expenses. Even in the present matters format orders were passed on or around 3rd May, 1984. Format orders were also passed in the pending Writ Appeal No. 590 of 1979 pending before the High Court at Madras. In accord- ance with the format orders and within the timeframe stipu- lated, amendments to price lists were to be filed by MRF Ltd. The present Appeals are now to consider the various deductions claimed by MRF Ltd. and/or disallowed and/or not allowed by the Assistant Collector, or allowed by the As- sistant Collector, in the various jurisdictions qua the factories of MRF Ltd. in the cross Appeals of the Union of India and the MRF Ltd.

3. For the sake of convenience, the deductions arising for consideration of this Court can be summarised as under:--

(i) TAC/Warranty discount

(ii) Product discounts

(iii) Interest on finished goods and stocks carried by the manufacturer after clearance

(iv) Over-riding commission to Hindustan Petroleum Corpora- tion

(v) Cost of distribution incurred at duty paid Sales Depots

(vi) Interest on receivables

(vii) 1% turnover discount allowed to RCS Dealers

(viii) Secondary packing cost on tread rubber

(ix) Discount to Government and other Departments

4. The Appeals further also raise the issue of whether the price to the Defence Department Ex-factory gate (ex- factory) is to be considered as the wholesale cash price under old Section 4 as this was disallowed by the Assistant Collector, and further the issue as to the method of computation of assessable value where the selling price is a cum-duty price. This issue involves the consideration as to how excise duty has to be deducted, whether after deducting permissible deductions or otherwise. We propose to deal with the issues as follows. For the purpose of this Judgment we are not repeating and setting out the text of the un-amended Section 4 and the amended Section 4 as the same are exten- sively quoted in our Judgment in Union of India v. Bombay Tyres International Ltd., (1983 ELT 1896). Recapitulating our Judgment in Union of India & Others v. Bombay Tyres International Ltd. (supra) we held that:

"broadly speaking both the old s.4(a) and the new s.4(1) (a) speak of the price for sale in the course of wholesale trade of an article for delivery at the time and place of removal, namely, the factory gate. Where the price contemplated under the old s.4(a) or under the new s.4(1) (a) is not ascertainable, the price is determined under the old s.4(b) or the new s.4(1)(b). Now, the price of an article is related to its value (using this term in a general sense), and into that value are poured several components, including those which have enriched its value and given to the article its marketability in the trade. Therefore, the expenses incurred on account of the several factors which have contributed to its value upto the date of sale, which apparently would be the date of delivery, are liable to be included. Consequent- ly, where the sale is effected at the factory gate, expenses incurred by the assessee upto the date of delivery on ac- count of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely after-sales service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organisation expenses and after-sales service promote the marketability of the article and enter its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee upto the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery."

5. In the clarificatory order in Union of India & Ors. v. Bombay Tyres International Ltd., reported in 1984 Vol. 17 ELT 329 we clarified that discounts allowed in the trade (by whatever name called) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice. The allowance and the nature of dis- count should be known at or prior to the removal of the goods and shall not be

disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.

6. In relation to the first head of deduction, namely TAC/ Warranty discount, the petitioners contend that deduc- tion on account of TAC/Warranty discount ought to be permit- ted as a deduction for determining the assessable value. It is submitted by them that this discount relates to the claims of the customers on account of any defect in the tyre already sold and assessed to duty. Such claims are scruti- nised by a committee of technical personnel of the assessee. The Committee decides as to what amount of money should be refunded to the customers on account of the defect in the manufactured tyre already sold to the customers by which defect the tyre does not get its full life tenure. Instead of refunding the amount in cash the customers are permitted to buy a new tyre, the price of which new tyre would be reduced by the amount refundable to customers as per deci- sion of the committee. '17he petitioners contend that the TAC/Warranty discount satisfied all the criteria of a trade discount stipulated in our order dated 14th/15th November 1983 in that it is a discount established by practice since 1943, it is a discount given to the consumer of a MRF tyre in respect of a tyre purchased earlier, the factum of allow- ance is known is trade prior to removal, the nature of the discount is not arbitrary or ad hoc and easily determinable.

7. The Revenue disputes this claim on the ground that it does not come within Section 4(4)(d)(ii) of the Act since the claim is not in accordance with the normal practice of the wholesale trade at the time of removal of the goods in respect to which the claim is made and also on the ground that this is not normally claim- able as trade discount.

8. We are inclined to accept the contention of the department. Even though the giving of TAC/Warranty is estab- lished by practice or capable of being decided, what is really relevant is the nature of the transaction. The war- ranty is not a discount on the tyre already sold, but relate to the goods which are being subsequently sold to the same customers. It cannot be strictly called as discount on the tyre being sold. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale.

9. In our order dated 14-th/15th November 1983 we have said that trade discounts of any nature should be allowed to be deducted provided, however, the discount is known at or prior to the removal of the goods. In the present case this condition precedent is not satisfied as the Committee de- cides the claim subsequent to the removal of the tyre.

10. The Petitioners have further contended that the Excise Act and the Rules framed thereunder contemplate such an allowance and an abatement of duty on defective tyres. Counsel for the Petitioners has drawn an attention to Rule 96 which reads as follows:

"Rule 96. Abatement of duty on defective tyres:- If a manu- facturer desires that certain tyres should, in consequence of damage sustained during the course of manufacture, be assessed on a value less than the standard selling price he shall declare in writing on the application for clearance of the goods, that such damage has been sustained and each such tyre shall be clearly legibly embossed or indelibly stamped with the word "Second", "Clearance" or "Defective".

11. There is, however, a distinction between a compensa- tion in the nature of warranty allowance on a defective tyre after it has been sold and removed from the factory gate and selling a defective tyre as a "seconds" or "defective". In our view the analogy of Rule 96 is not applicable. A tyre being sold as a "seconds or "defective" would be sold at a discount, such discount being known before the goods were removed/cleared, thereby also satisfying the pre-condition of section 4(4)(d)(ii) of the Excise Act. The assessable value and price list submitted would be one relating to "seconds" tyres. We, therefore, disallow the claim in respect of TAC/Warranty discount.

12. The next head of deductions arising for our consid- eration is in respect of product discounts. This head com- prises of 3 tyres of discounts:

(1) Prompt Payment Discount (2) Year Ending Discount (3) Campaign Discount

13. We deal with each of the heads individually as under:--

(i) Under the prompt payment discount scheme MRF in relation to up-country Non-RCS Bills in the replacement market except Government and DGS & D accounts, a rate of 0.75% on the total value of the invoice including sales tax, surcharge, etc. is offered if the bill is cleared/paid for within 26 days from the date of invoice. The Union of India disputes this claim on the ground that it is limited to only certain varieties of products as explained in the scheme document and is only for a limited period. We are not in- clined to accept the contention of the Union of India in this regard. A prompt payment discount is a trade discount given to the dealers by MRF. It is established under the terms of sale or by established practice and is known at or prior to the removal of the goods. It squarely falls within our order of clarification in the case of Union of India & Ors. v. Bombay Tyres International Ltd. (supra). The MRF is entitled to deduction on this account.

(ii) In the Special year-end Bonus to Dealers MRF pro- poses and claims this deduction as a year-end discount. This Bonus of Rs.50 per tyre is for certain specific tyres and is receivable only on those invoices where payments are actual- ly receivable within 45 days from the date of the invoice. Under this scheme a declaration is to be received dealerwise and thereafter provision is to be made at the head office of MRF for the Bonus. The allowance of the discount is not known at or prior to the removal of the goods. The calcula- tions are made at the end of the year and the Bonus at the said rate is granted only to a particular class of Dealers. This is computed after taking stock of the accounts between MRF and its dealers. It is not in the nature of a discount but is in the nature of a Bonus or an incentive much after the invoice is raised and the removal of the goods is complete. In the circumstances, we are of the opinion that MRF is not enti- tled to deduction under this head.

(iii) MRF proposed "Superlug Piggy-back campaign Bonus" in March/April 1983 for invoices during a particular period whereby bonus of Rs.50 per tyre for every Superlug tyre and/or any other particular variety of tyres is given. The bonus was again applicable only on invoices for which pay- ments were received within 45 days. Details of bonus earn- ings per dealer were to be computed after taking stock of the accounts between MRF and its dealers and the bonus amount was to be credited after June 1983 or mid-July 1983. On the same reasoning as the year-ending discount/bonus scheme, the campaign bonus cannot be a permitted deduction to MRF. The

allowance of the discount is not known at or prior to the removal of the goods. The quantum is unascer- tained at the point of removal. The discount is not on the wholesale cash price of the articles sold but is based on the total sales effected of a particular variety of tyre calculated after the removal. We accordingly reject this claim of MRF.

14. Interest on finished goods from the date the stocks are cleared till the date of the sale was disallowed by the Assistant Collector, Kottayam. This head has again been urged for our consideration as a proper deduction for deter- mination of the assessable value. As quoted in our judgment in Union of India and Ors. v. Bombay Tyres International Ltd. (supra), we have held that expenses incurred on account of several factors which have contributed to its value upto the date of sale which apparently would be the date of delivery at the factory gate are liable to be included. The interest on the finished goods until the goods are sold and delivered at the factory gate would therefore necessarily, according to the judgment in Bombay Tyres International case (supra) have to be included but interest on finished goods from the date of delivery at the factory gate up to the date of delivery from the sales depot would be an expense in- curred after the date of removal from the factory gate and it would therefore, according to the judgment in Bombay Tyres International case (supra) not be liable to be includ- ed since it would add to the value of the goods after the date of removal from the factory gate. We would therefore have to allow the claim of MRF Ltd. as above.

15. The next head of deduction relates to over-riding commission to the Hindustan Petroleum Corporation which was disallowed. MRF entered into a contract with Hindustan Petroleum Corporation Ltd. for sale of their products through HPC dealer network. An overriding commission was agreed to, in consideration of HPC not agreeing to entering upon agreement with any other tyre manufacturing company vis-a-vis by reason of MRF undertaking not to enter upon any agreement with any other oil company. The discount proposed was as a percentage of sale effected through the HPC dealers on half yearly basis. On the face of it, the over-riding commission payable to HPC is a commission for sales. It is a compensation granted for the sale of MRF products through HPC dealers and is a commission for services rendered by the agent. It is not a discount known at or prior to the removal of the goods and we accordingly reject this claim of MRF Ltd.

16. Another head of deduction disallowed to MRF relates to interest on receivables (sundry debtors for sales). MRF has represented that this cost is inbuilt in the price and is incurred on account of the time factor between the time the goods are delivered and the time the moneys are rea- lised. The cost is incurred only where credit terms are given in case of up-country and other buyers where payment is made much after the sales are effected. They contend that it is nothing but an extension of the principle underlying Rule 4 of the Central Excise (Valuation) Rules. They contend that this is an adjustment in value required to be made to take into account and provide for the difference in the time of delivery and the realisation of the sale value. As stated in our judgment in Union of India & Ors. v. Bombay Tyres International Ltd. (supra), it is only those expenses incurred on account of factors which have contributed to its value upto the date of sale or the date of delivery which are liable to be included in the assessable value. The interest cost and expenses on sundry debtors or interest on receivables is an expense subsequent to the date of sale and removal or delivery of goods and in our opinion MRF Ltd. would be eligible to claim deduction on this account.

17. The next head which was urged for our consideration relates to the cost of distribution incurred at the duty paid sales depots. In our judgment in Union of India and Others v. Duphar Interfram Ltd. (Civil Appeal No. 569 of 1981) reported in 1984 Excise and Customs Reporter at page 1443, we have held that the cost of distribution is not to be included in the assessable value in case the wholesale dealers take delivery of the goods from outside duty paid godown. The wholesale dealers having taken delivery of the goods manu- factured by MRF. Ltd. and there being a removal of the goods from the factory gate, the cost of distribution at duty paid sales depots cannot be taken into account for the purpose of determining the assessable value of the goods.

18. The next head of deduction disallowed to MRF relates to discount to Government and other Departments. In our view the Assistant Collector, Goa has rightly rejected the claim of MRF though the Assistant Collector, Kottayam allowed the claim of MRF. MRF Ltd. sells its products at a lower price as per contract with the Government or its Departments. Separate price lists for the Government and other Depart- ments were filed by MRF distinct and different from the price lists in relation to dealers. The position that dif- ferent price lists for different classes of dealers or different classes of buyers is specifically recognised under section 4(1), proviso (i), of the Excise Act. Different prices can be declared with reference to different classes of buyers and each price is deemed to be a normal price of such goods. In this view of the matter, merely because the product is sold at a lower price to the Government and its Departments does not enable the MRF to contend that the difference in price with reference to an ordinary dealer and the Government is a discount to the Government. The differ- ence in price is not a discount but constitutes a normal price for the Government as a class of buyer and no deduc- tion on this head is liable to MRF Ltd.

19. The next question which arises for our consideration relates to special secondary packaging charges for tread rubber. It has been the contention of the MRF that their case is covered by the judgment in Union of India & Ors. v. Godfrey Philips India Ltd., reported in 1985 Vol. 22 ELT

306. The majority judgment in Godfrey Philips India Ltd. (Supra) holds that "on a proper construction of Sec. 4(4)(d)(i) of the Act read with the Explanation, the second- ary packaging done for the purpose of facilitating transport and smooth transit of the goods to be delivered to the buyer in the wholesale trade cannot be included in the value for the purpose of assessment of excise duty. If a packaging is not necessary for the sale of the product in the wholesale market at the factory gate, the same cannot be included in the value for the purpose of assessment of excise duty." It has been brought to our notice that in a Judgment delivered by the Bombay High Court in Misc. Petition No. 1534 of 1979 (Judgment dated 7th January 1986) Bharucha J. of Bombay High Court in Bombay Tyres International Ltd. v. Union of India & Ors., has considered the Judgment in Godfrey Philips India Ltd. (supra) with specific reference to the question of secondary packaging for tread rubber. It has been brought to our notice that such packaging consists of cardboard cartons or wooden cases. In that case the tread rubber as packed was produced before Bharucha J. He has described that the tread rubber is a strip of rubber approx- imately 6" wide and about 1" thick which is tightly wound into a roll. Each roll weighs between 15 Kgs and 40 Kgs. The roll is not held together by any means. The roll is inserted into a loose and open polythene bag. That bag also cannot hold the roll together. The bag is placed in a cardboard carton or a wooden case. The cardboard carton is held to- gether by rubber bands. The wooden case is nailed together. Though, it was contended that the cardboard

cartons and wooden cases were in the nature of secondary packaging whose cost was not includable in the value of tread rubber, Bharu- cha J. held that a roll of tread rubber cannot be sold without the cardboard carton or the wooden case. It is further stated that the secondary packing in which tread rubber is sold is in the course of wholesale trade. The secondary packing is not employed merely for the purpose of facilitating transport or smooth transit and is necessary for selling the tread rubber in the wholesale trade. Bharu- cha J. refused to remand the matter to the authorities as the tread rubber as packed had been produced before him and he was of the firm view that the cardboard cartons and the wooden cases are not such secondary packing materials as can be excluded in computing the assessable value of the Peti- tioner's tread rubber. In the circumstances that this very issue has been decided on a visual personal inspection of Bharucha J. in the case of Bombay Tyres International Ltd. (supra) pronounced after the decision in Godfrey Philips India Ltd. (supra) we are of the view that the cost of cardboard cartons and wooden cases or any other special secondary packing charges incurred by the MRF on tread rubber should not be excluded from the assessable value. Tread rubber is a product which if even slightly damaged becomes unfit or un-usable. The vital element "cushion compound" which is applied to the bottom of the tread rubber and which helps the tread rubber to stick to the buffed surface of the old tyre which is to be retreaded is very delicate. A polythene sheet is put over the layer of the compound before the same is rolled and put into another polythene bag to avoid sticking to the outer side of the tread rubber and getting contaminated by dust. It is stated that such production cannot be marketed without the poly- thene bags and/or cardboard boxes. These are the findings of the Assistant Collector, Goa and in the light of the cumula- tive decisions of the Assistant Collector, Goa and of the Bombay High Court, we are of the view that the secondary special packing charges for tread rubber cannot be deducted from the assessable value of tread rub- ber.

20. In relation to the determination of wholesale price of tyres on the basis of the ex-factory price for Defence supplies, with reference to the old Section 4 in view of our Judgment in Union of India v. Bombay Tyres International Ltd. (supra) also reported in [1984] 1 SCR 347 at 376E, this Court has held that "in the new Section 4 in supersession of the old Section 4, no material departure was intended from the basic scheme for determining value of excisable arti- cles." It has been contended by the Union of India that even after our format orders referred to above, MRF has not submitted any statement of deductions/amendments in respect of price lists filed nor submitted any fresh prices. It claims several deductions on percentage basis by furnishing calculations vis-a-vis the entire company but did not fur- nish item-wise or factory-wise break up of such claims. Having held that there is no material departure in the basic scheme for determining the value of excisable articles in the old Section 4 and the new Section 4, there is nothing in the unamended Section 4 to justify an inference that the wholesale cash price of articles of similar description sold cannot be different for different classes of buyers in wholesale. Different prices can be normal prices for the purposes of determination of the assessable value of the article. We accordingly reject the contention of the MRF. Even though the MRF has not filed a separate price list for the factory gate clearances to Defence Department under the old Section 4, in view of our now holding that there is no material schematic difference between old Section 4 and new Section 4, we permit MRF Ltd. to file revised price lists with reference to the class of buyers namely, Defence on a different basis for a different normal price and avail of all the necessary reliefs with reference to lower assessable value, if the same has not already been filed.

21. In so far as the deductions claimed towards excise duty paid on processed tyre cord, the contention of the MRF has been upheld by the Goa Bench in Special Civil Appeal No. 28 of 1983 and the claim has been allowed to MRF for deduc- tion from selling price of excise duty on processed tyre cord. This is in accordance with Section 4(4) (d)(ii) of the new Section 4 and we accordingly confirm that MRF is eligi- ble to this deduction.

22. The last important issue relates to the method of computation of assessable value in a cum-duty price at a factory gate sale. The issue is whether excise duty should be first deducted or the permissible deduction should be first deducted from the selling price for the re-

assessments before the Assistant Collectors. The assessment of excise duty both in relation to Section 4 and in relation to the Valuation Rules is now subject to the definition contained in Section 4(4)(d) of the Excise Act. The value as defined thereunder is to be arrived at after the cost of packaging of a durable nature or a returnable nature as also amounts of duty of excise, sales tax and other taxes and trade discount allowed in accordance with the normal prac- tice of wholesale trade is determined. It is thus implicit that no excise duty is payable on an element of excise duty in the price. The value as contemplated under Section 4 cannot include a component of excise duty. In the circum- stances, where the computation of an assessable value has to be made from the factory gate sale price which is a cum-duty price, the first question which will have to be addressed is what are the exclusions and permissible deductions from such a sale price. The petitioners have contended that their cum-duty price was arrived at after calculating and adding excise duty payable i.e., before actual duty was paid. They contend that their price list for several articles is ap- proved much in advance of the removal from the factory. They contend that when the assessable value is to be arrived at, the same amount of excise duty which was pre-determined and added to the factory price is naturally to be deducted first and only thereafter the permissible deductions should be deducted to arrive at the value. For the purposes of argu- ment, MRF submitted the following example for consideration:

They suggested that their selling price should be con- sidered (cum-duty selling price) as Rs. 3200. They further submitted that the permissible deductions whether on account of trade discount or on account of cost of secondary packag- ing or sales tax or other taxes, packaging or sales tax or other taxes should hypothetically be considered at Rs.200. The rate of excise duty chargeable is 60% ad valorem for automotive tyres. Assuming for the sake of argument that the value of the product is actually Rs.2075. In accordance with the provisions of Section 4(4)(d) permissible deductions are made. The assessable value would be Rs. 1875 being the difference of Rs.2075 and Rs.200. The excise duty at the rate of 60% would thereafter be computed on the sum of Rs. 1875 and would aggregate Rs. 1125. The selling price which is a cum-duty price would be the sum total of the assessable value, the permissible deductions and the excise duty. Putting this as a mathematical formula the selling price (cum-duty price) is equal to assessable value plus permissi- ble deductions plus excise duty. Cumduty Paid Selling Price = Assessable Value + Excise Duty + Permissible deductions. Again excise duty is computed as a ratio of the assessable value where duty is ad valorem. For the purposes of ascer-

taining the assessable value, if three of the components namely, the cum-duty selling price, the quantum of permissi- ble deductions and the rate of excise duty are known, the proper and appropriate method of determining the assessable value would be the following formula:-

Assessable value = cum-duty selling price - permissible deductions divided by (1 + Rate of excise duty) Thus in the instant case working backward, if the cum- duty selling price is known to be Rs.3200 and the permissi- ble deductions are known to be Rs.200 and the rate of excise duty is known to be 60% the assessable value is computed aS under:

Selling price-permissible deductions = Rs.3200=RS.200 = Rs.3000 Assessable value is equal to difference in selling price and permissible deductions divided by 1 plus 60/100 which is equal to 3000/1.6 which is equal to Rs. 1875. The excise duty at 60% ad valorem rate would be Rs. 1125 on the assessable value of Rs. 1875.

The mathematical formula enumerated above balances. For example, if the cum-duty paid selling price is equal to Rs.3200, the assessable value is Rs. 1875, excise duty is Rs. 1125 and permissible deductions is Rs.200, the aggregate of the assessable value, the permissible deductions and the excise duty is equal to the selling price (cum-duty paid).

Any other method of computation of excise duty or assessable value is erroneous. The Petitioner's basis that the assessable value is to be arrived at by taking into consideration the same amount of excise duty which was hypothetically pre-determined and added to the factory price and that this element in an attempt to compute the assessa- ble value should naturally be deducted first, is putting the cart before the horse. The excise duty is only known as a ratio of the assessable value when an ad valorem duty is included in the cum-duty paid selling price. The quantum of excise duty cannot be pre-deducted or predetermined till the assessable value is known. It is only the permissible deduc- tions in concrete monetary terms and amount which are known. The cum-duty paid sale price being available for computation and a known value of deductions permitted being also known, the assessable value and the excise duty as a ratio of the assessable value can be only decided by first deducting the permissible deductions, from the cum-duty paid selling price and thereafter computing the value in accord- ance with the equation mentioned above. This has both a legal and a mathematical basis. If the pre-determined amount of excise duty as per the illustration given by MRF Ltd. is first deducted, the equation will not tally. For example, if from a hypothetical cumduty price of Rs. 150 (comprised of the value of the product at Rs. 100 and ad valorem excise duty@ 50% at Rs.50) if the excise duty of Rs.50 is first deducted and thereafter the permissible deduction of Rs.5 is deducted, the assessable value arrived at would be Rs.95. The rate of excise duty is 50% and the excise duty @50% of the assessable value of Rs.95 would be Rs.47.50 and not Rs.50 as earlier deducted. There would be a constant differ- ence of Rs.2.50 in the computation. It is, therefore, an incorrect method of evaluating the assessable value in instances of cum-duty selling price. This interpretation is borne out by the definition contained in Section 4(4)(d) of the Excise Act. MRF's contention that the excise duty should be deducted first and then the permissible deductions is incorrect. In ordinary cases where the factory price is not a cum-duty price, the first step in arriving at the assessa- ble value is to deduct the permissible deductions and there- after to compute the excise on an ad valorem basis. The excise duty cannot be computed unless the

permissible deduc- tions are first made. The assessable value is arrived at only after the permissible deductions are made. Excise duty is a ratio of the assessable value. Ad valorem excise duty is computed only on assessable value after arriving at such assessable value by making proper permissible deductions. Excise duty cannot be computed without proper determination of the assessable value, namely assessable value exclusive of permissible deductions. Even in the cum-duty sale price, the same principle must be followed to arrive at the assess- able value. To compute an excise duty as a pre-determined amount without making the permissible deductions for reduc- ing the cum-duty selling price is a fallacy both legally and mathematically as demonstrated above. The ad valorem excise duty can only be computed after reducing the assessable value by permissible deductions and then applying the tariff rate to the assessable value. To reverse this sequence is to mis-interpret the scheme and mode of levy of excise duty on the assessable value.

23. In the light of our aforesaid discussions and keep- ing in line with our previous format orders, we direct the assessing authorities to quantify and re-determine the permissible deductions in accordance with our present Judgment. The assessee, MRF Ltd. already having been required to file the permissible deduc- tions/amendments to the price lists within a period of one month in the last instance in May 1984 is once again re- quired by us to file fresh price lists in the light of our present Judgment within one month for all the periods under consideration. The assessing authorities after hearing the assessee would quantify the correct assessable value in the light of our Judgment. In making the assessments for each of the periods, the authorities would include the set off in respect of further refunds, if any, allowable on account of fresh deductions permitted and/or already allowed to the assessee. MRF would be at liberty to obtain suitable direc- tions in the pending Writ Appeal No. 590 of 1979 in the High Court of Madras in accordance with our Judgment. We leave the parties to bear their own costs.

ORDER In respect of items claimed by the assessee which have been allowed by us in this judgment or where the allowance by Assistant Collector has been upheld the quantum will be adjusted by giving appropriate credit in the personal Ledger Accounts.

P.S.S. Appeals dis- posed of.