Supreme Court of India
Union Of India And Anr vs Century Manufacturing Company ... on 14 May, 1992
Equivalent citations: 1992 AIR 2055, 1992 SCR (3) 282
Author: S Rangnathan
Bench: Rangnathan, S.

PETITIONER:
UNION OF INDIA AND ANR.

Vs.

RESPONDENT:
CENTURY MANUFACTURING COMPANY LTD.

DATE OF JUDGMENT14/05/1992

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
RAMASWAMI, V. (J) II
YOGESHWAR DAYAL (J)

CITATION:
1992 AIR 2055 1992 SCR (3) 282
1992 SCC (3) 418 JT 1992 (3) 382
1992 SCALE (1)1200

ACT:
Central Excises and Salt Act, 1944:
Section 3(2), 4 and First Schedule-Fixation of ad valorem rate of tariff by Central Government-Adoption of mode of fixation having nexus with manufacture or production-Determination of value as provided under section 4 not the only basis-Power conferred on Government Fixation at average price-Whether unrestricted and arbitrary-Whether violative of Article 14 of the Constitution of India.
Constitution of India, 1950:
Article 14-Power conferred on Central Government under section 3(2) of the Central Excises and Salt Act , 1944-Fixation of ad valorem rate of duty-With reference to average prices-Whether arbitrary, unrestricted and violative of.

HEADNOTE:
In exercise of its power conferred under section 3(2) of the Central Excises and Salt Act, 1944, the Central Government issued notifications dated 28.11.1970 and 26.7.1971 fixing the tariff value on the basis of which excise duty was to be levied on sulphuric acid and liquid

chlorine respectively.

The Respondent-assessee challenged the fixation of the tariff values for the abovesaid two items, by filling Writ petitions before the High Court. The main contentions of the assessee were that excise duty being a duty on manufacture or production, its levy could be based on the cost of production or manufacture or production, its levy could be based on the cost of production or manufacture together with any margin of profit the manufacturer may be able to make when he sells the goods in a whole-sale market at or near the factory gate; that the tariff value fixed under section 3(2)of the Act could also be only on the basis mentioned above and could not be based on the sale price of the goods much less on a weighted average sale price;

283

and that section 3(2) gave a wide and unfettered discretion to the Central Government to fix the value at any figure it chose and so section 3(2) of the Act was violative of Article 14 of the Constitution of India, as no guidelines have been indicated in the statute.

The High Court allowed the Writ Petitions and gave certain directions to the Central Government. Being aggrieved against the said judgment of the High Court, the Revenue has preferred the present appeals.

Allowing the appeals, this Court,

Held: 1. The tariff values of sulphuric acid and chlorine were validly fixed under the respective notifications issued by the Central Government. Section 3(2) of the Central Excises and Salt Act, 1944 and the notifications dated 28.11.1970 and 26.7.1971 are valid and constitutional. [299 D, E]

2.1. The High Court's reasoning restricts the freedom of rate fixation under section 3(1) to the mode of determination of value set out in section 4 and to the manufacturing cost and profit of an individual manufacturer-assessee before the authorities. It overlooks that, reading ss.3(1), 3(2) and 4 together, in the light of Bombay Tyres, it is clear that the rate of excise duty need not necessarily be ad valorem; that, even when it is ad valorem, the mode of determination of value outlined in section 4 is only one of the modes available to the Central Government which comes into operation only where the value of any item of goods is not otherwise specified in notifications issued under section 3(2); and that even where the value is to be determined under section 4, it can have any nexus with the wholesale price and is not limited to manufacturing cost and profit. The High Court has erred in reading ss.3(1) and (2) as being subject to the parameters of section 4. It is clear that section 3(1) read with the schedule is very wide and unrestricted in its language and permits the levy of duty on any basis that has nexus with manufacture or production. Section 3(1) comes into

operation only in cases of goods where an ad valorem duty is set forth in the schedule but, subject only to this restriction, this sub-section too does not carry any limitation as to the manner in which the value is to be fixed, much less any limitation that the value should be determined in the same manner as under section 4. [294 C-G]

2.2. Even section 4 does not restrict the levy to manufacturing cost

284

and profit. This section read with the relevant rules only sets out the procedure by which the assessing officer has to determine the value in individual cases that come up before him. Naturally, in such cases, the statute proceeds on the basis of the position in the individual case before the officer. Whether it be the manufacturing cost plus profit basis or the price basis, the officer determines the value on the facts of the individual case without taking into account similar considerations in the case of other manufacturers. But it would not be correct to read this limitation into section 3(2) as well. Section 3(2) is a general provision which gives full liberty to Central Government to determine the value in cases where the first schedule prescribes an ad valorem levy. Section 4 does not control or limit the power of the Central Government to fix rates under section 3(2). Section 4 is subject to section 3(2) and is not attracted to cases where the value is notified under section 3(2) and not vice versa. The High Court was, therefore, not correct in finding fault with the Central Government for having fixed the tariff value at a figure related to an average of the prices at which the goods are sold to various manufacturers. There is nothing in the statute which precludes the Government from fixing the tariff value in this manner. [294 G, H; 295 A-C]

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

3.1. While section 3(2) confers a power on the Central Government to fix tariff values for goods at its pleasure, unrestricted to the terms of section 4, this cannot be done at the whim and caprice of the Government. This discretion has to be exercised by the Government in accordance with the crucial guideline that is inbuilt into the statute and also illustrated by the manner in which the determination is provided for in section 4. The statute leaves one in no doubt that the rate of duty is to be fixed ad valorem i.e. on the basis of the value of the goods. It cannot be disputed that the normal indication of the value of the goods will be its price and, that the statute intends price to be the relevant factor is clear from the language of section 4 under which the statute itself fixes the value for the majority of cases. The value may be derived with reference to the wholesale price, the retail price or the average price at which the goods are sold by the manufacturer concerned or even by the price at which the

goods are sold by the manufacturer concerned or even by the price at which the goods are sold by any particular person or place or the average price which the goods command in the whole country or any part thereof. It can be fixed at the

285

lowest of such prices, at the highest of such prices or at some average (mean, media, mode etc.) of such prices as the Government may consider appropriate in the case of any particular commodity. [295 E-H; 296 A,B]

3.2. That the weighted average so fixed exceeds the manufacturing cost and profit of a particular manufacturer, can be no reason for doubting its validity. Equally, there is no acceptable logic in the High Court's suggestion that it should be fixed at the lowest of the prices at which the manufacturer is able to sell his goods in the wholesale market. To apply such a measure will restrict the fixation of the value at figures even less than those that can be arrived at under section 4. The whole purpose of section 3(2) is to enable the Revenue to free itself from the shackles of section 4, inter alia, in cases where the Government feels that the application of that section would lead to difficulties and harassments. It cannot be said that the tariff value has been manipulated to enhance the rate of duty. The Central Government has the undoubted power to enhance the rates and the validity of a notification having such an effect is not open to challenge even if it is done under the "guise" of fixing a tariff value. But there is no such guise or facade in this case and the tariff value has been fixed on the basis of relevant criteria having a nexus to the value of the goods. [298 D-G]

Veeran v. Union of India, (1981) 8 ELT 515, Kerala and Gwalior Rayon Silk Mfg. (Weaving) co. Ltd. v. Union of India, (1988) 34 ELT 562 M.P., approved.

Century Spinning & Mfg. Co. v. Union, (1979) 4 ELT (J) 199, reversed.

Subbarayan v. Union of India, (1979) 4 ELT (J) 473 Mad. and Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd. v. Union of India, (1981) 5 ELT 52 M.P., overruled.

Union of India v. Vazir Sultan Tobacco Co. Ltd., 1978 Tax LR 1824, distinguished.

Roy v. Voltas Ltd., [1973] 2 SCR 1089 and Atic Industries v. Asst. Collector, [1975] 3 SCR 563, referred to.

4. The generality of section 3(2) is unrestricted and section 3(3) only explains a few possible ways in which that power can be, and could always

286

have been, exercised. Likewise, the scheme of ss.3 and 4 leave no doubt that section 4 is without prejudice to the provisions of section 3 and the newly inserted section 4(3) only makes this abundantly clear. [299 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1432 and 33 of 1984.

From the Judgment and Order dated 15/27.11.1978 of the Bombay High Court in Special Civil Application Nos. 1066/72 and 1276 of 1972.

A.K. Ganguli, P. Parmeshwaran, Dilip Tandon and Ms. A Subhashini for the Appellants.

C.M. Lodha, S.S. Shroff, Rajiv Shakdhar and S.A. Shroff for the Respondent.

The Judgment of the Court was delivered by S. RANGANATHAN, J. These two appeals under Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act') raise an interesting question as to the vires and interpretation of s.3(2) of the Act. Under that provision, the Central Government issued notifications dated 28.11.1970 and 26.7.1971 fixing the tariff value on the basis of which excise duty was to be levied on sulphuric acid and liquid chlorine respectively. In respect of the former, the tariff value fixed was Rs. 260 per metric tonne where the strength of the acid was 93% to 99% and a proportionately lower figure where the strength of the acid was less. The tariff value for chlorine was fixed at Rs. 500 per metric tonne.

It is necessary to set out the provisions of sections 3 and 4 of the Act, as they stood at the relevant time, to enable a proper understanding of the issue raised. They read thus:

3. Duties specified in the First Schedule to be levied (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as and at the rates, set forth in the First Schedule.

(1A) x x x (2) The Central Government may, by notification in the official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings in the First Schedule as chargeable with duty ad valorem and may alter any tariff values the time being in force.

4. Determination of value for the purpose of duty: Where, under this Act, any article is chargeable with duty at a rate dependent on the value of the article, such value shall be deemed to be -

(a) the wholesale cash price, for which an article of the like kind and quality is sold or is capable of being sold at the time of the removal of the article chargeable with duty from the factory, or any other premises of manufacture or production for delivery at the place of manufacture or production, or if a wholesale market does not exist for such article at such place, at the nearest place where such market exists, or

(b) where such price is not ascertainable, the price at which an article of the like kind and quality is sold or is capable of being sold by the manufacturer or producer or his agent, at the time of the

removal of the article chargeable with duty from such factory or other premises for delivery at the place of manufacture or production, or if such article is not sold or is not capable of being sold at such place, at any other place nearest thereto. Explanation - In determining the price of any article under this section, no abatement or deduction shall be allowed except in respect of trade discount and the amount of duty payable at the time of the removal of the article chargeable with duty from the factory or other premises aforesaid."

The effect of these two sections read with the definition in s.2(d) of, and the First Schedule to, the Act may be summarised thus : Excise duty is charged on all goods specified in the First Schedule to the Act. It is a duty on such goods produced or manufactured in India. It is levied at the rates specified in the First Schedule. These rates are charged in some cases on the basis of length, area, volume and weight but, in most cases, the rate is ad valorem i.e. dependent on the value of the goods. We are concerned here with the last of these modes of rate fixation where the rate is applied to the value. Naturally, in such cases, the crucial question is : what is the value of the goods to which the rate is to be applied? This question is answered in two ways. S.3(2) empowers the Central Government, in such cases, to fix the tariff value by Gazette notifications issued from time to time. S.4 empowers the assessing authority to determine the vales of the excisable goods in individual cases on the basis of the wholesale cash price for which the goods are sold at the factory gate.

The Century Spinning and Manufacturing Co. Ltd. (the respondent, hereinafter referred to as 'the assessee') challenged the fixation of the tariff values of sulphuric acid and liquid chlorine at the amounts referred to earlier. Its contention, developed in three steps, was this: (a) that an excise duty being a duty on manufacture or production, its levy can be based on the cost of production or manufacture together with any margin of profit the manufacturer may be able to make when he sells the goods in a wholesale market at or near the factory gate; (b) the tariff value fixed under S.3(2) can also be only on this basis and cannot be based on the sale price of the goods, much less on a weighted average sale price as in the present case; (c) if S.3(2) were to be interpreted differently in a wide manner, as empowering the Central Government to fix tariff values wholly at its discretion - unfetttered by the formula indicated in (a) above - at any figure it chooses, the sub-section should be struck down as violative of article 14 as there are no guidelines indicated in the statute for fixation of such tariff value.

The Bombay High Court, in its judgment [reported as Century Spinning & Mfg. Co. v. Union, (1979) 4 ELT (J) 199] accepted the first two steps in the assessee's line of reasoning. It, therefore, allowed the writ petitions filed by the assessee and gave certain directions. We are informed that a similar view as to the scope of Section 3(2) of the Act has also been taken in Subbarayan v. Union of India, [(1979) 4 ELT (J) 473 (Mad) and Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd. v. Union of India, (1981) 5 ELT 52 (M.P.)]. Veeran v. Union of India, [(1981) 8 ELT 515 (Ker) and Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd. v. Union of India, (1988) 34 ELT 562 (M.P.)] take a contrary view but these decisions were rendered after an amendment of 1973 (effective from October 1975) and are, according to the assessee, distinguishable on that ground. The issue, being one of some importance and constant recurrence, the Union of India has preferred these appeals.

The High Court, in the judgment under appeal has been greatly influenced by certain observations of this Court in Roy v. Voltas Ltd., [1973] 2 S.C.R. 1089 and Atic Industries v. Asst. Collector, [1975] 3 S.C.R. 563 explaining the concept and nature of an excise duty. In the former of these cases, this Court was concerned with an attempt of the Revenue to ignore what was clearly a wholesale transaction because it represented only 10% of the total sales and to levy excise duty on the basis of retail sales which covered the major percentage of the total production. Pointing out the error of this and, after analysing the language of s.4 of the Act the Court observed:

"Excise is a tax on the production and manufacture of goods (see Union of India v. Delhi Cloth and General Mills, [1963] Supp 1 SCR 586 = AIR 1963 SC

791. Sec. 4 of the Act therefore provides that the real value should be found after deducting the selling cost and selling profits and that the real value can include only the manufacturing cost and the manufacturing profit. The section makes it clear that excise is levied only on the amount representing the manufacturing cost plus the manufacturing profit and the excludes post-manufacturing cost and the profit arising from post-manufacturing operation, namely selling profit. The section postulates that the wholesale price should be taken on the basis of cash payment thus eliminating the interest involved in wholesale price which gives credit to the wholesale buyer for a period of time and that the price has to be fixed for delivery at the factory gate hereby eliminating freight, octroi and other charges involved in the transport of the articles. As already stated it is not necessary for attracting the operation of section 4(a) that there should be a large number of wholesale sales. The quantum of goods sold by a manufacture on whole-sale basis is entirely irrelevant. The mere fact that such sales may be few or scanty does not alter the true position."

(Emphasis added) This Court adopted the above passage and further elucidated it in the latter case. There, the court was concerned with an attempt of the Revenue to levy duty, not on the basis of the wholesale sale price, but on the basis of the price at which the wholesale purchaser sold the goods to distributors and large consumers. In this context the court observed that if excise were levied on the basis of second or subsequent wholesale price, it would load the price with a post manufacturing element, namely, the selling cost and selling profit of the wholesale dealer. That would be plainly contrary to the true nature of excise as explained in voltas case and it would also violate the concept of the factory gate sale which is the basis of determination of the value of the goods for the purpose of excise.

Unfortunately, the observations of this Court in the above cases came to be understood as laying down a general proposition that excise duty can be levied only with reference to a hypothetical value of the manufactured goods comprising of its manufacturing cost and manufacturing profit and nothing more. This conceptual error was rectified and the correct legal position expounded in Union of India v. Bombay Tyres International Ltd., [1984] 1 S.C.R. 347. It is true that, by the time this decision was rendered, s.4 had undergone certain amendments. But this makes no difference to the point at issue before us and it will be useful to extract certain relevant passage from this judgment:

(a) The central issue between the parties is that case was "whether the value of an article for the purposes of the excise levy must be determined by reference exclusively to the manufacturing cost

and the manufacturing profit of the manufacturer or should be represented by the entire wholesale price charged by the manufacturer. The wholesale price actually charged by the manufacturer consists of not merely his manufacturing cost and his manufacturing profit but includes, in addition, a whole range of expenses and an element of profit (conveniently referred to as "post manufacturing expenses" and "post manufacturing profit") arising between the completion of the manufacturing process and the point of sale by the manufacturer. On this issue, the contention urged on behalf of the Union of India which was accepted by the court ran on the following lines:

"Shri K. Parasaran, the learned Solicitor General of India (when these cases were heard, and now the Attorney General of India) has strongly contended that the value of an excisable article for the purposes of the levy must be taken at the price charged by the manufacturer on a wholesale transaction, the computation being made strictly in terms of the express provisions of the statute and, he says, there is no warrant for confining the value to the assessee's manufacturing cost plus manufacturing profit. According to him, although excise is a levy on the manufacture of goods, it is open to Parliament to adopt any basis for determining the value of an excisable article, that the measure for assessing the levy need not correspond completely to the nature of the levy, and no fault can be found with the measure so long as it bears a nexus with the charge.

and the court expressed its conclusion in the following words:

"It is apparent, therefore, that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. Viewed from this standpoint, it is not possible to accept the contention that because the levy of excise is a levy on goods manufactured or produced the value of an excisable article must be limited to the manufacturing cost plus the manufacturing profit. We are of opinion that a broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. In our opinion the original s.4 and the new s.4 of the Central Excises and Salt Act satisfy this test."

(b) Dealing with the old and new section 4, the Court had this to say:

"As we have said, it was open to the Legislature to specify the measure for assessing the levy. The Legislature has done so. In both the old s.4 and the new s.4, the price charged by the manufacturer on a sale by him represents the measure. Price and sale are related concepts, and price has a definite connotation. The "value" of the excisable article has to be computed with reference to the price charged by the manufacturer, the computation being made in accordance with the terms of s.4.

A contention was raised for some of the assessees, that the measure was to be found by reading s.3 with s.4, thus drawing the ingredients of s.3 into the exercise. We are enable to agree. We are concerned with s.3(1), and we find nothing there which clothes the provision with a dual character, a charging provision as well as a provision defining the measure of the charge."

(c) Touching upon A.K. Roy & Anr. v. Voltas Ltd., [1973] 2 S.C.R. 1089 and the passage from it which we have quoted earlier, the Court observed:

"Those observations were made when the Court was examining the meaning of the expression "wholesale cash price". What the Court intended to say was that the entire cost of the article to the manufacturer (which would include various items of expense composing the value of the article) plus his profit on the manufactured article (which would have to take into account the deduction of 22% allowed as discount) would constitute the real value had to be arrived at after off-loading the discount of 22%, which in fact represented the wholesale dealer's profit. A careful reading of the judgment will show that there was no issue inviting the court's decision on the point now raised in these cases by the assessees."

(d) As to Atic Industries Ltd. v. H.H. Dove, Asstt. Collector of Central Excise and Ors., [1975] 3 S.C.R. the Court, after quoting extensively from the decision, pointed out:

"This case also does not support the case of the assessees. When it refers to post-manufacturing expenses and post-manufacturing profit arising from post - manufacturing operations, it clearly intends to refer not to the expenses and profits pertaining to the sale transaction effected by the manufacturer but to those pertaining to the subsequent sale transactions effected by the wholesale buyers in favour of other dealers."

If we look now at the judgment under appeal in the light of the above clarifications, it becomes clear that it does not state the correct law. Its basic premise is based on wrong interpretation of s.3(1) and s.4. It observes:

"Section 3(1) of the Central Excise and Salt Act, 1944, provides that there shall be levied and collected duties of excise on all excisable goods which are produced or manufactured in India at the rates set forth in the First Schedule. The charging section, therefore, enables levy of excise duty on production and manufacture of goods. It is, therefore, clear that the levy of excise must have relation to the production or the manufacturing cost of the goods produced by a manufacturer. Any levy of excise which takes into account the factors which are not connected with the production cost and profit on goods by the manufacturer would not be legal."

It is true that the sub-section (1) of section 3 makes a reference to the First Schedule. But, as already pointed out, the first schedule specifies rates based on length, area, volume and weight in a number of cases which may not and need not have any relation to manufacturing cost and profit. Even where the Schedule fixes a rate ad valorem and the value is governed by s.4, there is no restriction of the value to manufacturing cost and profit. The High Court observes:

"Under S.4, it is the wholesale cash price which is the assessable value. It is well sellted that the "wholesale cash price" means the manufacturing cost and the manufacturing profit, and the post-manufacturing cost and the post-manufacturing profit has got to be ignored for finding out the assessable value for levying the excise duty at the rates laid down in the Schedule."

Proceeding further, the Court ties up the value not only to the manufacturing cost and profit but also ties it up to the manufacturing cost and profit of the particular producer who is the assessee. It observes:

"The valuation for the purpose of levying excise duty thus solely depends on the production and the manufacturing cost and manufacturing profit of the product. This necessarily would exclude the inflation of cost and profit by the weighted average method or otherwise. One producer or a manufacturer has no control whatsoever over the production or manufacture by another manufacturer or producer. It appears to us clear that the value for the purposes of the excise duty on a particular product produced or manufactured by a purchaser or a manufacturer must be arrived at on the basis of manufacturing cost and manufacturing profit of that particular purchaser or manufacturer. The Weighted average basis necessarily introduces irrelevant considerations, viz., the production or manufacturing cost or manufacturing profit of another manufacturer or producer altogether. This in our view would be foreign to the concept of excise as envisaged by the charging section 3(1)." In short, the High Court's reasoning restricts the freedom of rate fixation under s.3(1) to the mode of determination of value set out in s.4 and to the manufacturing cost and profit of an individual manufacturer- as-sessee before the authorities. It overlooks that, reading ss.3(1), 3(2) and 4 together, in the light of Bombay Tyres, it is clear that the rate of excise duty need not necessarily be ad valorem; that, even when it is ad valorem, the mode of determination of value outlined in s.4 is only one of the modes available to the Central Government which comes into operation only where the value of any item of goods is not otherwise specified in notifications issued under s.3(2); and that even where the value is to be determined under s.4, it can have any nexus with the wholesale price and is not limited to the manufacturing cost and profit. In out opinion, the High Court has erred in reading ss.3(1) and (2) as being subject to the parameteres of s.4. It is clear that s.3(1) read with the schedule is very wide and unrestricted in its language and permits the levy of duty on any basis that has a nexus with manufacture or production as explained in Bombay Tyres. Section 3(2) comes into operation only in cases of goods where an ad valorem duty is set forth in the schedule but, subject only to this restriction, this sub-section too does not carry any limitations as to the manner in which the value is to be fixed, much less any limitation that the value should be determined in the same manner as under s.4. Even s.4 does not restrict the levy to manufacturing cost and profit but, this apart, this section, read with the relevant rules only sets out the procedure by which the assessing officer is to determines the value in individual cases that come up before him. Naturally, in such cases, the statute proceeds on the basis of the position in the individual case before the officer. Whether it be the manufacturing cost plus profit basis (as erroneously thought by the High Court) or the price basis (as explained in Bombay Tyres) the officer determines the value on the facts of the individual case without taking into account similar considerations in the case of other manufactures. But it would not be correct to read this limitation into s.3(2) as well. s.3(2) is a general provision which gives full liberty to Central Government to determine the value in cases where the first schedule prescribes an ad valorem levy. Section 4 does not control or limit the power of the Central Government to fix rates under s.3(2). Section 4 is subject to s.3(2) and is not attracted to cases where the value is notified under s.3(2) and not vice versa. The High Court was, therefore, not correct in finding fault with the Central Government for having fixed the tariff value at a figure related to an average of the prices at which the goods are sold by various manufacturers. There is nothing in the statute which precludes the Government from fixing the tariff value in this manner.

But, then, says learned counsel, to read s.3(2) in the manner indicated above, would make the provision vulnerable to challenge on the basis of violation of Article 14 of the Constitution. Such an interpretation, it is said, would leave it open to the Central Government to fix tariff values at its whim and caprice without any statutory guidelines laying down the parameters of such fixation. We think that the contention proceeds on a misconception. While we undoubtedly say that s.3(2) confers a power on the Central Government to fix tariff values for goods at its pleasure, unrestricted to the terms of s.4, we do not say that this can be done at the whim and caprice of the Government. The discretion has to be exercised by the Government in accordance with the crucial guideline that is inbuilt into the statute and also illustrated by the manner in which the determination is proved for in s.4. The statute leves one in no doubt that the rate of duty is to be fixed ad valorem i.e. on the basis of the value of the goods. It cannot be disputed that the normal indication of the value of the goods will be its price and, that the statute intends price to be the relevant factor is clear form the language of s.4 under which the statute itself fixes the value for the majority of cases. But where one had got bogged down, possibly due to certain earlier observations of this Court in a different context, was in thinking that the value of goods can only comprise of manufacturing cost and profit. Actually it has been made to depend on the wholesale price of the manufacturer concerned under s.4 (old and new).

But this need not be the sole criterion. The value may be derived with reference to the wholesale price, the retail price or the average price at which the goods are sold by the manufacturer concerned or even by the price at which the goods are sold by any particular person or place or the average price which the goods command in the whole country or any part thereof. If can be fixed at the lowest of such prices, at the highest of such prices or at some average (mean, media, mode etc.) of such prices as the Government may consider appropriate in the case of the particular commodity.

In the case of the goods with which we are concerned, the basis on which tariff value was fixed by the Government was explained before the High Court, we may extract the relevant passage:

"On rule being issued, affidavits in reply were filed on behalf of the respondents in Special Civil Application No. 1066 of 1972. The affidavit of Shri S.R. Narayan, Under Secretary to the Government of India, Central Board of Excise and Customs, New Delhi, shows that notifications fixing the tariff values in respect of sulphuric acid were being issued from time to time since the year 1962. These tariff values were fixed from time to time on the basic of weighted average value of sulphuric acid based on statistics collected. This weighted average value was based on the data collected on all-India basis. It is also contended in this affidavit that it would be a practicable method to fix tariff values on the basis of weighted average on all- India basis by taking into consideration the assessable values of the different manufacturers and then taking a weighted average thereof which would be a uniform rate of tariff for all the manufacturers. It has been also pointed out that in some of the sales in view of the tariff value so fixed the petitioners have benefited as they were required to pay excise duty at a rate less than what would have been payable under section 4. It was also pointed out that there is a difference between the method of determining the value under section 4 and under sub-section (2) of section 3, and once the tariff value is fixed, the determination of value under section 4 would be irrelevant. In the affidavit, the fixation of tariff value in respect of these items has been justified on the ground that it is a useful method to fix tariff

value where the price fluctuation is violent and it has been pointed out that the tariff values have been fixed after a close study of price fluctuations, and it cannot, therefore, be said that the Central Government has absolute and unfettered discretion which is being used in an arbitrary manner. A similar approach is found in the affidavit of Shri S.R. Narayan is Special Civil Application No. 1276 of 1972 in respect of chlorine, and the fixation of the tariff values on weighted average basis is justified on the ground that it is the only workable method for determining the assessable value which would be fair and acceptable to all the manufacturing units throughout the country. It has been contended that by its very nature, such an average value is bound to be higher or lower or even at par with the selling prices of the various manufacturers, but this cannot be helped if a uniform tariff rate is to be fixed. It is further stated in the affidavit that since 1962, notifications were issued by the Central Government fixing the values of chlorine and other products in gaseous form.

Representations were also made by certain manufacturers and by the Western U.P. Chambers of Commerce and Industries for fixation of tariff values. The various Collectorates were asked to furnish particulars regarding the assessable value of the various gases manufactured in their Collectorates, and after the data was collected from them, tariff values were fixed for various gases including chlorine. It was pointed out that even in the case of chlorine, there has been a considerable fluctuation in its price. This contention was sought to be demonstrated by reference to the information regarding the manufacturing cost and manufacturing profit of chlorine gas manufactured by the petitioners for the period from January 1972 to April 1972. In the month of January 1972, there was a fluctuation in price from Rs. 50 to Rs. 900. in the month of February, the price fluctuation was between Rs.250 to Rs.800; in the month of March 1972, it was between Rs. 250 to Rs. 1,000, and in the month of April 1972 the price fluctuation was between Rs.250 to Rs.800. It was contended that there is a considerable fluctuation in prices and a uniform rate of tariff value might at times also be to the benefit of the petitioner-company when the manufacturing cost and the manufacturing profit would be higher than the tariff value, although it may be put to a loss when such value is actually less than the tariff value. The respondents deny the petitioners' contention that the impugned notifications issued under sub- section (2) of section 3 of the Act were arbitrary or unreasonable or that the provisions of sub-section (2) of section 3 and sub-section (3) of section 3 were ultra vires or violative of any provisions of the Constitution of India. It is not necessary for us to elaborately mention the other points made out in the affidavits is reply having regard to the arguments advanced by the counsel on both sides." In our opinion, the tariff value has been notified under s.3(2) for valid reasons and on germane grounds having a nexus to the 'value' of the goods and the High Court erred in accepting the assessee's plea that "the notifications are arbitrary, perverse and display a non-application of mind on the part of the authorities as the tariff values fixed are unrelated to the value or price or the manufacturing cost and manufacturing profit of the products". That the weighted average so fixed exceeds the manufacturing cost and profit of a particular manufacturer, can be no reason for doubting its validity. Equally, there is no acceptable logic in the High Court's suggestion that it should be fixed at the lowest of the prices at which the manufacturer is able to sell his goods in the wholesale market. To apply such a measure will restrict the fixation of the value at figures even less than those that can be arrived at under s.4. The whole purpose of s.3(2) is to enable the Revenue to free itself from the shackles of s.4, inter alia, in cases where, as here, the Government feels that the application of that section would lead to difficulties and harassments. The criticism that the tariff value has been manipulated to enhance the rate of

duty has also no force. The Central Government has the undoubted power to enhance the rates and the validity of a notification having such an effect is not open to challenge even if it is done under the "guise" of fixing a tariff value. But, as already pointed out by us, there is no such guise or facade in this case and the tariff value has been fixed o the basis of relevant criteria having a nexus to the value of the goods.

We have so far avoided any reference to s.3(3), inserted in 1978, and s.4(3), inserted with effect from 1.10.1975, as these amendments came into effect later than the period with which we are concerned and we wished to look at the provisions of the statute as they stood before these amendments. In the light of our interpretation outlined above, it will be seen that these amendments are clarificatory in nature. The generality of s.3(2) is unrestricted and s.3(3) only explains a few possible ways in which that power can be, and could always have been, exercised. Likewise, the scheme of ss.3 and 4 leave no doubt that s.4 is without prejudice to the provisions of s.3 and the newly inserted s.4(3) only makes this abundantly clear.

We have principally dealt with the reasoning of the judgment under appeal and it is unnecessary to deal specifically with the earlier decision of the M.P. High Court viz. Gwalior Rayon Silk Mfg. (Wvg.) Co. v. Union of India, (1981) 5 E.L.T. 52 M.P. and the Madras decision Subbarayan v. Union, (1975) 4 E.L.T. (J) 473 which have adopted a similar approach. The decision in Union of India v. Vazir Sultan Tobacco Co. Ltd., (1978) Tax LR 1824 is not directly in point. The second Gwalior Rayon decision (1988) 34 E.L.T. 562 (M.P.) and the Kerala decision Veeran v. Union, (1981) 8 E.L.T. 515 set out the correct position though they restrict themselves to a consideration of s.4 of the Act after its amendment in 1973/1975.

For the reasons discussed above, we are of opinion that the tariff values of sulphuric acid and chlorine were validly fixed under the impugned notifications. S.3(2) of the Act as well as the notifications are declared valid and constitutional. The Judgment of the High Court under appeal is set aside. The appeals are allowed but we direct that the parties should bear their own costs.

G.N. Appeals allowed.