

## BATA SHOE CO. (P) LTD. &amp; OTHERS

v.

## THE COLLECTOR OF CENTRAL EXCISE &amp; ORS.

25th April, 1985

[D.A. DESAI, A.P. SEN AND V. BALAKRISHNA ERADI, JJ.]

*Central Excise and Salt Act, 1944 Section 4, scope of—Determination of value for the purpose of excise duty—Exigibility to excise duty of "footwear and accessories" under Entry 36 of the First Schedule to the Act in terms of the Notification No. G.S.R. 171/67 dated 24th July, 1967—Interpretation of the Notification.*

By virtue of Entry 36 of the First Schedule in the Central Excises and Salt Act, 1944 "footwear and parts thereof" in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, is chargeable to excise duty, the rate of duty being 10% ad valorem in respect of "footwear" and 15% ad valorem in respect of "parts of footwear". By a Notification dated July 24, 1967, issued in exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government exempted, with effect from the 26th May, 1967, footwear falling under item No. 36 of the First Schedule to the Central Excises and Salt Act, 1944, of which the value did not exceed Rs. 5 per pair from the whole of the duty of excise leviable thereon.

During the year 1967 and 1968, Bata Shoe Company was manufacturing certain items of footwear of which the wholesale price was Rs. 6.25 per pair. The contention of the company that since the assessable value of such items of footwear calculated in terms of section 4 of the Act, as it stood at the relevant time was only Rs. 4.94 and thus less than Rs. 5 per pair were qualified for exemption under the Notification was negatived by the department on the ground that while computing the value of the articles for the purpose of judging the applicability of the exemption, the duty element of the cost structure could not be deducted from the wholesale price and on such calculation the value of such footwear would exceed Rs. 5 per pair.

Three Writ Petitions were, therefore, filed in the High Courts of Patna, Calcutta and the Punjab & Haryana, since the company had three manufacturing establishments attracting the jurisdictions of these Courts. The Patna High Court allowed the writ petition accepting the contention of the company and granted certificate of appeal to the department. The High Court of Calcutta

dismissed the petition and accepted the stand of the Department that the expression "value" occurring in the Notification dated July 24, 1967 is not the deemed "value" calculated according to the provisions of section 4 of the Act, but is the real and actual "value" of the goods after the payment of the duty. The High Court of Punjab & Haryana dismissed the petition *in limini* on the ground of laches. Both these two High Courts, however, granted certificate of appeal to the company. Hence the three appeals by certificates.

Allowing the appeals of the company and dismissing the State appeal, the Court,

HELD : 1.1 While computing the "value" of the articles of footwear for the purposes of testing the availability of the exemption granted under the Notification dated July 24, 1967 section 4 of the Central Excises and Salt Act, 1944 gets attracted. Section 4 is comprehensive in its coverage and it lays down the procedure to be followed for determination of "value" of any article in every case where the article is chargeable with duty at a rate dependent on the value of the article. [966H, 967A]

1.2 While the notification makes it clear that the effect of the Notification is to render the chargeability or otherwise to duty of excise of footwear falling under item 36 of the First Schedule is made wholly dependent upon the "value" of the article of footwear ; in case such "value" exceeds Rs. 5 per pair, duty will be chargeable at the rate of 10% whereas if the value does not exceed Rs.5 per pair, no duty will be chargeable on such items of footwear, that is the rate of duty will be nil. Thus entry 36 read along with the Notification dated July 24, 1967 clearly shows that the chargeability to duty in respect of any article of footwear is made dependent upon its value in the sense that the chargeability to duty of excise will arise only if the "value" of the article does not exceed Rs. 5 per pair. [96D-E, 967A-B]

1.3 Before determining the question of availability of the exemption under the Notification dated July 24, 1967; the first essential step, therefore, is to determine the "value" of the article in the manner prescribed in section 4 of the Act. The fact that on such a computation the article may ultimately be found to be exempted from excise duty does not have any bearing on the question of applicability of section 4 of the Act for determining the "value" for purpose of duty. [967B-D]

1.4 The expression "for the purpose of duty" occurring in section 4 has a wide import. For all purposes connected with the determination of chargeability and levy of duty the provisions of the section are to be applied for computation of the "value" of the article. Under the Explanation to section 4, it is mandatory that in determining the price of an article both trade discount as well as the amount of duty calculated as payable on the wholesale cash price payable at the time of removal of the article based on the wholesale cash price referred to in clause (a) are to be deducted from such wholesale price. [967D-E]

In the instant case, in as much as the value of the articles of footwear in

**A** question calculated in accordance with the provisions of section 4 of the Act did not exceed Rs. 5 per pair, the articles in question were exempted from the charge to duty of excise under the Notification dated July 24, 1967 and the company is entitled, forthwith, to a refund of the amounts of duty illegally realised by the Department. [967G-H]

**B** *The Collector of Central Excise, Patna & Ors. v. The Bata Shoe Company (P) Ltd. AIR Patna—approved.*

*The Bata Shoe Company (P) Ltd. v. The Collector of Central Excise & Ors., Calcutta, AIR Calcutta—; The Bata Shoe Company (P) Ltd. v. The Collector of Central Excise & Ors., AIR Punjab & Haryana—reversed.*

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 353 (N) of 1971.

From the Judgment and Order dated 29.7. 1970 of the Punjab and Haryana High Court in C.W. No. 2331/70.

**D** Civil Appeal No. 1469 (N) of 1972.

From the judgment and order dated 28. 6. 1971 of the Patna High Court in C.W. No. 1330/70).

AND

**E** Civil Appeal No. 1470 of 1972.

From the judgment and order dated 24. 12. 1971 of the Calcutta High Court in F.M.A. No. 201 of 1971)

**F** *Dr. Y. S. Chitale, Anil Sharma and Praveen Kumar* for the Appellants.

*M. S. Gujaral, V. K. Punjwani, C. V. Subba Rao and Ms. A. Subhashini* for the Respondents.

**G** The Judgment of the Court was delivered by

**H** BALARKISHNA ERADI, J. In these three appeals the parties involved are the same and the point arising for determination is identical. Hence they were heard together and are being disposed of by this judgment.

The Bata Shoe Company Ltd. (hereinafter called 'the company') is an existing company within the meaning of The Companies Act, 1956; with its head office at No. 30, Shakespeare Sarani, Calcutta-17. The company is engaged in the business of manufacturing and dealing in articles of footwear and accessories. For the purposes of the said business, the company has three manufacturing establishments namely, a factory at Batanagar in the district of 24- Parganas, West Bengal, another factory at Bataganr-near Patna in the State of Bihar and a third manufacturing establishment at Faridabad in the State of Haryana. By virtue of Entry 36 of the First Schedule in the Central Excises and Salt Act, 1944 (hereinafter called the 'Act'), footwear and parts thereof in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, is chargeable to excise duty, the rate of duty being ten per cent ad valorem in respect of 'footwear and fifteen per cent ad valorem in respect of 'parts of footwear'.

By a Notification G. S. R. 360, dated February 28, 1965 issued by the Central Government in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 for short "the Rules" footwear and parts thereof were completely exempted from levy of excise duty. However, shortly thereafter, by other Notification dated May 26, 1967, the exemption from duty granted in respect of footwear and parts thereof by the preceding Notification dated February 28, 1965 was withdrawn. Thereafter followed yet another Notification dated July 24, 1967 which was in the following terms:-

#### "NOTIFICATION CENTRAL EXCISES

G. S. R. In exercises of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rule, 1944 the Central Government hereby exempts, with effect from the 26th may, 1967, footwear falling under Item No. 36 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) of which the value does not exceed Rs. 5.00 per pair, from the whole of the duty of excise leviable thereon.

(No. 171/67)"

- A** The sole question raised in these appeals concerns the interpretation of this Notification.

- B** During the year 1967 and 1968, the company was manufacturing certain items of footwear of which the wholesale price was Rs. 6.25 per pair. The company contended that since the assessable value of such items of footwear calculated in accordance with the provisions of Section 4 of the Act, as they stood at the relevant time was only Rs. 4.94 and hence less than Rs. 5 per pair, such items qualified for exemption from duty under the Notification dated July 26, 1967. Though originally the Department appears
- C** to have been inclined to accept the correctness of the stand taken by the company, later on they changed their stand and informed the company that the articles of footwear manufactured by it, of which the wholesale price was Rs. 6.25 per pair were chargeable to excise duty since while computing the "value" of the articles for the purpose of judging the applicability of the exemption, the duty
- D** element of the cost structure could not be deducted from the whole sale price and on such calculation the value of such footwear would exceed Rs. 5 per pair.

- E** The company took up the matter with the respective Collectors of Central Excise in West Bengal, Bihar and Haryana but without success. In the meantime the Department continued to levy and collected from the company substantial amounts by way of duty on such articles of footwear. The company, therefore, instituted separate Writ Petition in the High Courts of Calcutta, Patna and Punjab and Haryana. The Patna High Court allowed Writ Petition of the company and upheld its contention that the articles of footwear in question were not exigible to duty since they fell within the scope of exemption granted the Notification of July 26, 1967. Accordingly, a mandamus refund of the duty illegally collected from the Company was issued by the Patna High Court. The High Court of Calcutta however, took a different view and accepted the stand of
- G** the Department that the expression "value" occurring in the Notification dated July 26, 1967 is not the deemed 'value' calculated according to the provisions of Section 4 of the Act but is the real and actual 'value' of the goods after payment of duty. The High Court of Punjab and Haryana was moved by the company only after short interval of time during which it had been pursuing its
- H** remedies before the highest Departmental Authorities as well

as before the Patna and Calcutta High Courts. A Division Bench consisting of two learned Judges of the Punjab and Haryana High Court dismissed the company's Writ Petition in limini on the ground that the company had approached the High Court at a very belated stage. The Division Bench however, certified the case to be fit one to this Court under Article 133 of the Constitution of India. Similar certificates were granted to the company and to the Union of India respectively by the High Courts of Calcutta and Patna. That is how these appeals have come to be filed in this Court.

After hearing Counsel appearing on both sides and giving our anxious consideration to the matter in all its aspects, we are clearly of the opinion that the view taken by the High Court of Patna is the correct one and the contrary view taken by the High Court of Calcutta cannot be sustained. We are also of opinion [that on the facts and circumstances of the High Court of Punjab and Haryana was not justified in dismissing the Writ Petition of the company *in limini* on the ground of delay especially having regard to the fact that the matter was throughout being actively pursued by the company before the Departmental Authorities as well as before the two other High Courts.

Section 3 of the Act is the charging section and Sub-section (1) thereof lays down that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into any part of India as, and at the rates, set forth in the First Schedule. Section 4 deals with the subject of valuation of excisable goods for purposes of charging of duty of excise. We shall reproduce that section as it stood at the relevant time, omitting portions thereof which are unnecessary for our present purpose :

"4. Determination of value for the purposes 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 articles chargeable

A with duty from the factory or any other premises of manufacture or production for delivery at the place of manufacture of production, or if a wholesale market does not exist for such article at such place, at the nearest place where market exists.

B (b) (Not relevant)

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 amount of duty payable at the time of removal of the article chargeable with duty from the factory or other premises aforesaid."

C Under this Section, in all cases where any article is chargeable with duty at a rate 'dependent upon its value' such 'value' is to be computed by deducting from the wholesale cash price referred to in clause (a) two components of the price structure namely (1) trade discount and (2) the amount of duty payable on the article at the time of its removal from the factory or other premises of manufacture or production.

E The short question for consideration is whether the mode of determination of "value" prescribed by Section 4 is not attracted while computing the "value" of the articles of footwear for the purposes of testing the availability of the exemption granted under the Notification dated July 26, 1967. To our mind the answer to the question is perfectly simple. Section 4 is comprehensive in its coverage and it lays down the procedure to be followed for determination of "value" of any article in every case where the article is chargeable with duty at rate dependent on the value of the article. On a careful reading of the Notification dated July 26, 1967, it also become clear that the effect of the Notification is to render the chargeability or otherwise to duty of excise of footwear falling under Item 36 of the First Schedule is made wholly dependent upon the 'value' of the article of footwear; in case such 'value' exceeds Rs. 5 per pair, duty will be chargeable at the rate of 10% whereas if the value does not exceed Rs. 5 per pair, no duty will be chargeable on such items of footwear, that is the rate of duty will be 'nil'. It is precisely to such a situation that the provision of Section 4 gets attracted because as expressly stated in the opening part

part of the said section the mode of determination of 'value' specified in the section will be applicable to all cases where any article is chargeable with duty at a rate dependent upon the value of the article. In the case of a total exemption, the rate will be 'nil'. Thus Entry 36 read along with the Notification dated July 24, 1967 clearly shows that the chargeability to duty in respect of any article of footwear is made dependent upon its value in the sense that the chargeability to duty of excise will arise only if the 'value' of the article does not exceed Rs. 5 per pair. It is therefore, plain that before determining the question of availability of the exemption under the Notification dated July 24, 1967, the first essential step is to determine the 'value' of the article in the manner prescribed in Section 4 of the Act. The fact that on such a computation the article may ultimately be found to be exempted from excise duty does not have any bearing on the question of applicability of Section 4 of the Act for determining the 'value' for purpose of duty. The expression 'for the purposes of duty' occurring in Section 4 has a wide import. For all purposes connected with the determination of chargeability and levy of duty the provisions of the section are to be applied for computation of the 'value' of the article. Under the Explanation to Section 4, it is mandatory that in determining the price of an article both trade discount as well as the amount of duty calculated as payable on the wholesale cash price payable at the time of removal of the article based on the wholesale cash price referred to in clause (a) are to be deducted from such wholesale price. This is the view taken by the High Court of Patna in the judgment appealed against C. A. No. 1469 of 1972 and we have no hesitation to agree with the said view. The High Court of Calcutta was of opinion that Section 4 only lays down the formula or the principle for determination of "value for the purpose of duty" and it has not laid down any principle or formula for the determination of value for exemption from duty as already indicated. In our opinion this is not a correct interpretation of the scope and ambit of Section 4 of the Act.

In the result, we hold that inasmuch as the value of the articles of footwear in question calculated in accordance with the provisions of Section 4 of the Act did not exceed Rs. 5 per pair, the articles in question were exempt from the charge to duty of excise under the Notification dated July 24, 1967.



A In the result, C. A. No. 1470 of 1972 arising out of the judgment of the High Court of Calcutta, C. A. No. 353 of 1971 filed against the order of the High Court of Punjab and Haryana and the Writ Petitions filed by the company in the High Courts will stand allowed with the direction that the amounts of duty illegally realised by the Department from the company should be forthwith refunded to it. C.A. No. 1469 of 1972 filed by the Collector of Central Excise, Patna against the decision of the Patna High Court will stand dismissed. In C. A. No. 1470 of 1972 and C. A. No. 353 of 1971 the appellants will get their costs from the respondents. There will be no order as to costs in C.A. No. 1469 of 1972.

C

S. R.

*Civil Appeal Nos. 353/1971 and 1470/2 allowed.**Civil Appeal No. 1469/72 dismissed.*

D