

UNION OF INDIA AND ORS.

A

v.

TATA ENGINEERING AND LOCOMOTIVE CO., LTD. ETC.

NOVEMBER 10, 1997

[SUHAS C. SEN AND M. JAGANNADHA RAO, JJ.]

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*Constitution of India, 1950 : Article 226.*

*Excise duty—Computation of—Power of competent authority—Extent of judicial control—Held High Court in exercise of its jurisdiction cannot give guidance to Assistant Collector about the manner and mode in which the assessment should be made.*

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*Excise duty—Assessment of—Price list of vehicles sold submitted by respondent company—Assessment made by Assistant Collector of Excise—Writ filed by respondent Company—Direction given by High Court to Assistant Collector—To pass final order on all the price lists submitted by respondent company—The price at which the Company sold the vehicles at the factory gate should be the normal price for the purpose of computation of the value of the excisable goods—Court also held that price lists of Regional Sales Offices of Tata Engineering & Locomotive Co. (TELCO) was not relevant for passing final orders on the price lists submitted by the company—Appeal preferred by Union of India—Held the writ petition should not have been entertained by the High Court at all—The Assistant Collector is entitled to complete the assessment as he thinks fit in exercise of his judgment—He can call for and examine whatever documents he considers relevant—The Court should not try to control the mode and manner in which an assessment should be made.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7645 of 1997.

From the Judgment and Order dated 27.9.88 of the Patna High Court in C.W.J.C. No. 802 of 1988 (R).

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N.K. Bajpai and V.K. Verma for the Appellants.

Soli J. Sorabjee, Ravinder Narain, Sridharan, Ms. Amrita Mitra, Amit Bansal and Ms. Juhi Singh for M/s. J.B.D. & Co. for the Respondent.

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A The following Order of the Court was delivered :

Leave granted.

B Union of India has come up in appeal against the judgment and order of the Division Bench of the Patna High Court directing the Assistant Collector of Central Excise, Jamshedpur, to pass without delay appropriate final order on all the price lists already submitted by the Company. The Court also held that the price at which the Company sold the vehicles at the factory gate at Jamshedpur should be the normal price for the purpose of computation of the value of the excisable goods. The Court also held that the Assistant Collector  
C of Central Excise could only call for relevant documents for the purpose of assessment of the value of the excisable goods. In the facts of this case, price lists of Regional Sales Offices of Tata Engineering & Locomotive Co. (TELCO) could not be said to be relevant for passing final orders on the price lists submitted by the company.

D The appellant has contended that it was necessary for the Excise Officer to examine the price at the Regional Sales Offices because two types of prices were being charged at the factory gate of the Company at Jamshedpur. It has been contended in reply that the bulk of the sales made by the Company was to the dealers; a small portion of sales was effected to sub-dealers directly  
E for which full particulars were furnished. Moreover, this point was not raised before that High Court when the writ petition was heard.

In our view, this writ petition should not have been entertained by the High Court at all. The Assistant Collector is entitled to complete the assessment  
F as he thinks fit in exercise of his judgment and according to his understanding of the law and facts. For this purpose, he can call for and examine whatever documents he considers relevant. If the Assistant Collector fails to follow any judgment of the High Court or this court, the assessee had adequate statutory remedies by way of an appeal and revision against the assessment order. The  
G Court should not try to control the mode and manner in which an assessment should be made. If the Assistant Collector is of the view that enquiries are necessary to be made as to the price at which trucks were sold at the Regional Sales Offices, the Court cannot stop him from making such enquiries.

H Mr. Sorabjee, appearing on behalf of the respondents, has complained that the assessments are going on endlessly and without due regard to an

earlier judgment of the Patna High Court in respect of an earlier assessment year on the very same issues. Whether the controversy raised in this case is covered by an earlier judgment of the High Court is a matter to be decided by the Assistant Collector. He will have to decide all questions of fact and law. He has to make whatever enquiries he thinks necessary for determination of the value of excisable goods. The High Court in exercise of its jurisdiction cannot give guidance to Assistant Collector about the manner and mode in which the assessment should be made.

We are of the view that the High Court was in error in entertaining this writ petition. Therefore, the appeal is allowed and the judgment of the High Court under appeal is set aside. There will be no order as to costs.

The Assistant Collector is directed to complete the assessment as expeditiously as possible.

T.N.A.

Appeal allowed.