**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No.5282 OF 2005**

M/s D.J. Malpani ... Appellant(s)

Versus

Commissioner of Central Excise, Nashik ... Respondent(s)

**J U D G M E N T**

**S.A. BOBDE, J.**

The appellant-assessee manufacture goods falling under Chapter 24 of the Schedule of The Central Excise Act, 1944 (hereinafter referred to as "the Act"). While selling goods, the appellant-assessee charged the customers invoices for the price of goods plus Dharmada, a charitable donation. According to the appellant, the Dharmada was paid voluntarily by customers and was meant for charity. It was accordingly credited to charity.

2. However, the Superintendent, Central Excise, Nashik issued show cause notices and raised a demand of duty in respect of Dharmada, claiming it was part of the price for the sale of manufactured goods and included it for computing assessable value.

3. Initially, the Adjudicating Authority held that the Dharmada component was not part of the trading receipts and could not be included in the assessable value and dropped the demand for excise duty and the penalty.

4. However, another show cause notice dated 3.8.2001 was issued by the Commissioner of Central Excise, Aurangabad under Section 4 of the Act calling upon the appellant to show cause as to why penalty under Section 173Q and interest under Section 11AA should not be levied. After hearing the appellant, the Deputy Commissioner held vide order dated 26.02.2002 that Dharmada cannot be considered as trading receipts and was not part of the assessable value. Therefore, no duty was payable on the component of Dharmada.

5. Thereafter, in an appeal filed by Revenue, the Commissioner (Appeals), however, held that the Dharmada was liable to be included as a part of the assessable value and therefore the goods were liable to be assessed on the basis of their price plus Dharmada.

The Central Excise and Service Tax Appellant Tribunal (for short “CESTAT”), in an appeal filed by the appellant, by judgment dated 6.1.2005 partly allowed the appeal and held that the duty amount needs to be recalculated. The CESTAT however rejected the appellant’s contention that Dharmada was not part of the transaction value. The CESTAT purported to follow the judgment of

this Court in Collector vs. Panchmukhi Engineering Works[1], whereby this Court held that Dharmada charged by the assessee is liable to be included in the assessable value.

6. In the appeal filed by the appellant before a Division Bench of this Court, it was contended that the decision in Panchmukhi (supra) followed an earlier decision of Tata Iron & Steel Co. Ltd. vs. Collector of Central Excise, Jamshedpur[2] which did not apply to the present case at all. The Tata Iron & Steel case was a case where steel plants added a surcharge to the ex-works price at the instance of a committee under the Iron and Steel (Control) Order, 1956. This surcharge was added to generate money for a steel development fund to implement schemes entrusted to the committee by the Central Government. The surcharge went to the committee for use in its various schemes and for the expenditure incurred towards discharge of the committee's functions. Thus, the question before this Court was if surcharge being a charge that was compulsorily payable by the customers could be considered as a part of the price i.e. the assessable value.

This Court held that the surcharge was a part of the price fixed by the committee under the statutory provisions. The appellant's contention was that the decision in Panchmukhi (supra) which merely followed the decision in Tata Iron & Steel (supra) was no authority for the proposition that Dharmada being a donation for

1 2003 (158) ELT 550 (SC)
2 2002 (146) ELT 3 (SC)

charitable purposes was liable to be included in the assessable value.

7. In addition, the appellant contended that this Court has clearly held in the case of The Commissioner of Income Tax (Central) Delhi, New Delhi vs. Bijli Cotton Mills (P) Ltd. Hathras, District Aligarh[3] that amounts received for Dharmada and earmarked for charitable purposes are amounts received by the assessee under an obligation to spend the same for charitable purposes. Therefore, these receipts cannot be regarded as income of the assessee.

8. On noticing the above contentions, a Division Bench of this Court vide order dated 29.7.2015 has referred the following question to this larger Bench: -

Whether the Dharmada collected by the appellant which is clearly an optional payment made by the buyer can be regarded as part of the transaction value for the sale of goods.

9. An important fact that needs to be noted at the outset is that there is no dispute before us that though paid along with the sale price, the payment for Dharmada was made voluntarily by the purchasers and that upon receipt was made over to charity. There is no challenge that it is in fact not voluntary. There are certificates on record by the chartered accountant that shows the Dharmada collection was credited to a separate account and donated to a

3 (1979) 1 SCC 496

trust during the period of the show cause notices.

10. The only question that arises for decision is whether the amount included as Dharmada by a manufacturer and credited for charitable purposes is liable to be included in the assessable value of manufactured goods; the seller having merely acted as conduit between the purchaser and charity.

11. It is necessary to enquire into the nature of the transaction i.e. what was sold, the price that was paid and the transaction value for the purpose of arriving at the assessable value.

**WHAT WAS SOLD**

12. The appellant manufactured and sold chewing tobacco to their customers. A price was paid by the customers as 'consideration' for these goods i.e. transfer of property of the goods to the customers. This is clear from the invoices.

**THE 'TRANSACTION VALUE' FOR THE PURPOSE OF ARIVING AT ASSESSABLE VALUE**

Sale and purchase have been defined vide Section 2 (h) to mean any transfer of the possession of goods for payment or other valuable consideration. A contract of sale under The Sale of Goods Act, 1930 means a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price vide Section 4[4]. The transaction in this case was the sale of chewing

4 **Section 4 of The Sale of Goods Act, 1930**

4. **Sale and agreement to sell**.— (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

tobacco.

13. Under the Act, excise duty is chargeable with reference to their value on removal of the goods. In case of sale of goods where price is the sole consideration for the sale, duty is charged on the transaction value vide Section 4[5]. Additional consideration if any is also included in the duty payable on such goods vide explanation.

"Transaction value" is defined vide Section 4(3)(d) of the Act to mean "the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of the

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

5 **Section 4 of The Central Excise Act, 1944**

**4. Valuation of excisable goods for purposes of charging of duty of excise. -**

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

***Explanation.*** - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

(2) .....

(3) (a).....

(b).....

(c) .....

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.]

assessee by reason of or in connection with the sale……., but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods".

14. In case of a sale of goods, excise duty is chargeable where price is the sole consideration of a sale on `Transaction value'. `Transaction value' means the price actually paid or payable for the goods and any additional amount the buyer is liable to pay to the assessee or anyone on his behalf in connection with the sale vide Section 4(3)(d) supra. Rule 6 of the Central Excise Valuation (Determination of Price and Excisable Goods), Rules 2000[6] provides that in case of a sale, the value of such goods shall be deemed to be the transaction value and the amount of money value of any considerations following directly or indirectly from the buyer to the assessee. Thus, duty is chargeable on the "price actually paid for the goods", in other words, the price paid as consideration for transfer of property in the goods. The test for determining whether in a transaction of sale any amount has been paid as price so that it can be treated as transaction value is only whether, the money was paid for the goods as consideration or the money value on any additional consideration paid in connection with the sale of goods. No amount not paid as consideration for the goods can go to make transaction value.

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6 **Rule 6 -** Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

`Consideration' means, vide Garner's Dictionary of Legal Usage, 3rd Edition: `the act, forbearance or promise by which one party to the contract keep the promise of another'. The term valuable consideration refers to an act, forbearance or promise having an economic value. In this case, it is clear that only the money paid for the promise of transferring goods was the valuable consideration contemplated by the Excise Act and the Rules. The transaction value was the sale of goods and the consideration was the price or value paid for the goods. The transaction value must be construed accordingly.

This fairly clears up the character of any other amount paid at the time of the transaction of sale of goods. Thus, if an amount is paid at the time of the sale transaction for a purpose *other* than the price of the goods, it cannot form part of the transaction value; also for the reason that such payment is not for the transaction of sale i.e. for the transfer of possession of goods. Any payment made along side such a transaction cannot be treated as consideration for the goods.

**DHARMADA**

15. This takes us to the nature of the "Dharmada" when given along with the sale price of goods. Dharmada is well known in India to be a donation or an offering made for the purpose of charity as distinct from a commercial transaction. This Court

considered the nature and character of Dharmada in Bijli Cotton Mills (supra). That case arose under the Income Tax Act. The assessee used to realise certain amounts on account of Dharmada from his customers on sales of yarn and bales of cotton. The rate was one anna per bundle of ten pounds of yarn and two annas per bale of cotton. The receipts of Dharmada were not credited to the trading account but the assessee maintained a separate account known as the Dharmada account. The authorities under the Act held that the amounts held by the assessee could not be regarded as having been held under trust for charitable purposes.

16. The High Court, however, held that the impugned amounts paid as Dharmada were never the income of the assessee and assessee was merely acting as a conduit for passing on the amounts to the objects of charity. These amounts were never treated as trading receipts or as surcharge on the sale price which was evident from the fact that such realisations were never credited to the trading account nor shown in the profit and loss statement for any year.

This Court considered the question in great detail and after referring to Professor Wilson's Glossary and Molesworth's Dictionary observed that Dharmada means "an alms or a gift in charity". This Court observed that though there might be some vagueness as a matter of law, in the word Dharma, there was none in relation to Dharmada or Dharmadaya and such a payment would

not be invalid for vagueness or uncertainty. This Court accepted the decision of the Allahabad High Court in Thakur Das Shyam Sunder vs. Additional CIT[7] and observed that "it cannot be disputed that among the trading or commercial community in various parts of the country, a gift or payment for Dharmada is by custom invariably regarded as a gift for charitable purposes". This Court observed that the answer to the question depended on the nature of the obligation created by the customer and approved the finding of the Allahabad High Court to the effect that merely because under the law relating to trust legal ownership over the trust fund and the power to control and dispose of always vest in the trustees, the discretion vested in the trustee to spend the amount over charities will not affect character of the deposit.

17. This Court also relied on CIT, West Bengal, Calcutta vs. Tollygunge Club Ltd., Calcutta[8]. In that case, the Court considered the nature of a surcharge of eight annas over and above the admission fees into the enclosure of the club at the time of the races. The proceeds of this surcharge were to go to the Red Cross Fund and other local charities. This Court approved the decision of the Calcutta High Court and held that the "surcharge was not part of the price for admission but made for the specific purpose of being applied to local charities". It observed "the admission to the enclosure is the occasion and not the consideration for the

7 93 ITR 27
8 (1977) 2 SCC 790 : (1977) 107 ITR 776

surcharge taken from the race-goer. It rejected the contention that the payment was involuntary, observing "that does not render the payment of the surcharge involuntary, because it is out of his own volition that he seeks admittance to the enclosure".

Applying the above decisions to the case before it, this Court held in Bijli Cotton Mills (supra) that Dharmada amounts cannot be said to have been paid involuntarily by the customers and in any case the compulsory nature of the payments, if there be any, cannot impress the receipts with the character of being trading receipts.

18. We find from the facts of the case before us that the receipts on account of Dharmada were voluntary, earmarked for charity and in fact credited as such. Though the payment as Dharmada has been found to be voluntary, it would make no difference to the true character and nature of the receipts even if there were found to be paid compulsorily because the purchaser, purchased the goods out of their own volition. The purchase of the goods is the occasion and not consideration for the Dharmada paid by the customer as held in Bijli Cotton Mills (supra) vide para 15: -

> **"15.** ..... It is true that without payment of "Dharmada" amount the customer may not be able to purchase the goods from the assessee but that would not make the payment of "Dharmada" amount involuntary inasmuch as it is out of his own volition that he purchases yarn and cotton from the assessee. The "Dharmada" amount is, therefore, clearly not a part of the price, but a payment for the specific purpose of being spent on charitable purposes.

……..”

19. In this case, the CESTAT decided against the assessee relaying on Panchmukhi (supra). The case of Panchmukhi (supra) was apparently decided not after a discussion on facts and law but because the counsel for the revenue submitted that the matter is covered by the decision in Tata Iron & Steel (supra) and the counsel for the assessee “was not in a position to dispute this legal position”. The judgment in Panchmukhi (supra) has little precedential value. The point whether Dharmada involved in Panchmukhi (supra) and the surcharge held as price in Tata Iron & Steel (supra) were identical and liable to be included in the transaction value passed sub-silentio. Salmond on Jurisprudence Twelfth Edition p.15h states that a decision held is not binding since it was decided “without argument, without reference to the crucial words of the rule, and without any citation of authority”, therefore, would not be followed. The author also states that precedents sub-silentio and without arguments are of no moment. This is enough reason for not treating the decision in Panchmukhi (supra) as a binding precedent.

It is, therefore, necessary to take a look at Tata Iron & Steel (supra). That was a case where the customer paid a surcharge on the price of steel. This surcharge was added to generate money for a steel development fund to implement schemes entrusted to the committee by the Central Government. The surcharge went to

the committee for use in its various schemes and for the expenditure incurred towards discharge of the committee's function.

20. Nonetheless, the surcharge was part of the consideration paid by the customer for the price of steel. The notifications under which the surcharge was added clearly stated as follows: -

(i) "The Committee may add an element to the ex-works prices determined ....."

and

(ii) "The Committee may require members steel plants to add the elements listed below to their ex-works....."

The purpose of this addition was to constitute a steel development fund for modernisation, research & development, diversification etc. for improving the quantum of technology and efficiency of production of iron and steel and their quality.

21. The other objects of the fund, were to implement specific schemes entrusted to the Committee by the Central Government and towards the Engineering Goods Export Assistance Fund. This Court considered the question whether the addition would fall under the meaning of the term "other taxes" within the meaning of Section 4 (ii) which excluded the amount of other taxes payable on such goods from value. It was contended on behalf of the assessee that they were compelled by law to collect this charge over and above the price without the right to appropriate it for themselves

and with a duty of making it over to a third party and therefore the charges could not be regarded as part of the consideration of the sale price of goods.

This Court held that the charges were clearly added as an element of price and observed, “thus what was being added was to the price”. Another aspect to be kept in mind is that the ultimate beneficiaries of these amounts are the steel plants themselves.

22. We find that the decision in Tata Iron & Steel (supra) is completely inapposite to the circumstances of the case before us. The reliance placed on Tata Iron & Steel (supra) and Panchmukhi (supra) which was a case of Dharmada, is misplaced. Panchmukhi (supra) cannot be said to be good law.

23. In the circumstances we hold that when an amount is paid as Dharmada along with the sale price of goods, such payment is not made in consideration of the transfer of goods. Such payment is meant for charity and is received and held in trust by the seller. If such amounts are meant to be credited to charity and do not form part of the income of the assessee they cannot be included in the transaction value or assessable value of the goods.

24. Thus, the answer to the question referred by the Division Bench is as follows: -

“The Dharmada collected by the appellant which is clearly an optional payment made by the buyer cannot be regarded as part of

the transaction value for the sale of goods.”

25. The judgment of the CESTAT is accordingly set aside.

The appeal is allowed.

.....J.
**[S.A. BOBDE]**

.....J.
**[DEEPAK GUPTA]**

.....J.
**[VINEET SARAN]**

NEW DELHI
APRIL 9, 2019

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No.531 OF 2008**

Commissioner of Central Excise and
Customs, Bangalore ... Appellant(s)

Versus

M/s JSW Steel Ltd.
(formerly known as Jindal Vijayanagar Steel Ltd.) ... Respondent(s)

**J U D G M E N T**

**S.A. BOBDE, J.**

The Revenue-Appellant has come in appeal against the order of the Central Excise and Service Tax Appellant Tribunal (for short "CESTAT") dated 04.04.2007. The Respondent manufactured goods falling under Chapter 72 of The Central Excise Tariff Act, 1985. The Respondent manufactured Pig Iron and HR Coil Sheets. While selling the goods they raised invoices on the price of goods plus 'Dharmada' a charitable donation from customers. According to the Respondent, the Dharmada was meant for charity and was accordingly credited to charity.

2. However, show cause notice dated 19.03.2004 was issued by the office of the Deputy Commissioner of Central Excise and Customs, Bellary under Section 4 of the Act calling upon the

Respondent to show cause as to why penalty under Rule 25 of Central Excise Rules, 2002 and interest under Section 11AB of the Central Excise Act, 1944 should not be levied. After hearing the Respondent, the Deputy Commissioner vide order dated 10.09.2004 held that the Dharmada is to be added to the assessable value for the payment of central excise duty.

3. Thereafter, in an appeal filed by the Respondent, the Commissioner (Appeals), confirmed the decision of the Deputy Commissioner and rejected the appeal and held that Dharmada should be added to the assessable value. Therefore, the goods were liable to be assessed on the basis of their price plus Dharmada.

The CESTAT in an appeal filed by the Respondent, by judgement dated 04.04.2007, allowed the appeal and set aside the order passed by Commissioner (Appeals) dated 29.03.2005. The CESTAT purported to follow its judgment in the case of Mohan and Co., Madras vs. CCE Madras, which was affirmed by the Supreme Court in appeal, whereby this Court held that Dharmada was not liable to be added in the assessable value.

4. Thereafter, in Civil Appeal No.531 of 2008 before this Court, it was contended by the Appellant before a Division Bench of this Court, that the decision in Collector vs. Panchmukhi Engineering Works[9] was to be followed. Thus, contending that Dharmada should

9 2003 (158) ELT 550 (SC)

be a part of the assessable value.

5. The present case has been tagged with the case of M/s D.J. Malpani vs. Commissioner of Central Excise, Nashik which has been referred to this Bench vide order dated 29.07.2015. We have held that the amount of Dharmada cannot be included in the transaction value for the purposes of assessments.

6. In view of the judgment in the case of Civil Appeal No. 5282 of 2005, M/s D.J. Malpani vs. Commissioner of Central Excise, Nashik, we hereby dismiss the present appeal.

.....J.
**[S.A. BOBDE]**

.....J.
**[DEEPAK GUPTA]**

.....J.
**[VINEET SARAN]**

NEW DELHI
APRIL 9, 2019