

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12914 of 2013

(Arising out of OIA-PJ/94/VDR-I/2013-14 dated 21/05/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Karia Can Co Limited

Amul Dairy Compound,
Anand, ANAND, GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-i

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

.....Respondent

APPEARANCE:

Shri Nirav Shah, Advocate for the Appellant

Shri G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 10881 /2023

DATE OF HEARING: 03.04.2023
DATE OF DECISION: 17.04.2023

C L MAHAR

The brief facts of the matter are that the appellant assessee are engaged in the manufacture of metal containers falling under Central Excise Tariff Heading 73 of Central Excise Tariff Act, 1985. During the course of the departmental audit, it was noticed that the assessee has not included cost of packing material received by them from their buyers free of cost. It is a matter of record that the buyers of the appellant assessee have been supplying corrugated boxes for packing and delivery of metal containers which were purchased by the buyers for further packing of various products of the M/s. Amul Dairy.

02. It has been the contention of the department that the cost of the packing material received free of cost by the appellant from their buyers should have formed part of the transaction value for the purpose of payment of central excise duty. The department is of the view that the additional consideration has flown back to the manufacturer from their buyers in the form of free supply of the corrugated boxes resulting in under invoicing of

the excisable products in terms of the provision of Clause (a) of Sub-section (1) of Section 4 of the Central Excise Act, as the price does not seem to be sole consideration of the sale as the appellant has received packing material namely corrugated boxes from their buyers free of cost. The packing materials were essential part of the goods as without the packing material the goods could not have been cleared from the factory and sold. The department has taken a stand that since the price was not the sole consideration for sale, the value for charging duty was to be determined in accordance with the manner as prescribed under Rule 6 of the Central Excise Valuation (Determination of price on excisable goods) Rule, 2000 and accordingly, eight show cause notices were issued to the appellant for different periods demanding central excise duty of Rs. 31,96,147/- along with interest and penalty. The show cause notices were adjudicated by the learned Assistant Commissioner vide his order dated 29.03.2012 whereunder, the charges as invoked in the show cause notices were confirmed. The Order-In-Original was challenged by the appellant before Commissioner (Appeals) who vide his order no. V.2(73)155/VDR-I/2012 dated 21.05.2013 had upheld the findings of the Order-In-Original. The appellants are before us against the above mentioned Order-In-Appeal.

03. We have heard both the sides. In the present case, we are of the view that the cost of corrugated boxes supplied free of cost by the buyers to the appellant is includible in the transaction value of the metal containers manufactured and supplied by the appellant as per the provision of Section 4 of the Central Excise Act, 1944 and rules made thereunder. We also find that the matter is no longer res-integra as this tribunal in the appellant's own case has already decided the issue against them and has held that the cost of free supplied corrugated boxes need to be included into the assessable value of the metal containers for the purpose of payment of Central Excise duty. We rely on this tribunal's order in Excise Appeal No. 423 of 2012 in the case of M/s. Kaira Can Company Limited vide Final Order No. A/12297-12326/2019 dated 02.12.2019. The relevant portion of the above decision is reproduced below:-

10. In this regard, on going through all the judgments and the statutory provision we find that as far as inclusion of cost of packing material supplied Free of Cost for the purpose of packing of final product by the appellant there is no ambiguity in the law. For the ease of reference we reproduce the new Section 4 .

"1[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 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. 2[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.]"

10.1 From the above section 4 it can be seen that only in cases where the transaction value is sole consideration such transaction value shall be the Assessable Value for charging of Excise Duty. However, in the present case apart from the transaction value the packing material supplied Free of Cost by the customer was also used by the appellant. The value of such packing material was not included. When any Excisable product is manufactured and cleared the value of such goods shall be the total value of the goods in the form it is cleared from the factory of the Assessee. It is immaterial that whether a part of the material contained in the final product to borne the cost. In the present case undisputedly the case of the appellant i.e. Metal Container cleared were packed in the corrugated boxes. Therefore, the value of the Metal Containers duly packed in the corrugated box has to be valued. Since the appellant have charged the value excluding the Cost of packing material the revenue is right in including the Cost of the packing material for a very simple reason that the goods were cleared duly packed in such corrugated boxes. Merely because the corrugated box was supplied by the customer that does not make difference as far as inclusion of cost of packing material required to arrive at the Assessable value. Since the Transaction Value is not the sole consideration as the packing cost was not included the value has to be determined resorting to the Valuation Rules made by authority of Section 4. The relevant Rule 6 of the Central Excise Valuation (Determination of price on excisable goods) Rules 2000 reads as under:

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.

Explanation 1. - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional

consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely :-

(i) value of materials, components, parts and similar items relatable to such goods;

(ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;

(iii) value of material consumed, including packaging materials, in the production of such goods;

(iv) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

Explanation 2. - Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit.

Illustration 1. - X, an assessee, sells his goods to Y against full advance payment at Rs. 100 per piece. However, X also sells such goods to Z without any advance payment at the same price of Rs. 100 per piece. No notional interest on the advance received by X is includible in the transaction value.

Illustration 2. - A, an assessee, manufactures and supplies certain goods as per design and specification furnished by B at a price of Rs. 10 lakhs. A takes 50% of the price as advance against these goods and there is no sale of such goods to any other buyer. There is no evidence available with the Central Excise Officer that the notional interest on such advance has resulted in lowering of the prices. Thus, no notional interest on the advance received shall be added to the transaction value.

10.2 From reading of the above rule it is absolutely clear that the said rule was made amongst other circumstances for the purpose of inclusion of Cost of packing material, if it is supplied Free of Charge by the buyer. Therefore, by virtue of the above Rule 6 read with Explanation 1 Clause-iii the value of packing material supplied Free of Cost by the buyer mandatorily needs to be included in the price of final product. Therefore, in view of the above Section 4 read with Rule 6 there is absolutely no ambiguity on the issue involved in the present case in as much as the cost of corrugated boxes supplied by the buyer to the appellant is includable in the Assessable Value. As regard the submission made by the appellant that the final product of the appellant in Metal Containers is fully manufactured without packing, therefore, the packing cost of the corrugated box supplied by the buyer is not part of the manufacture of the final product.

11. We find that every goods manufactured is otherwise complete in its manufacturing before packing. However, even though the packing is part of the manufacturing activity or otherwise, the Excise Duty is chargeable on the value of the goods in the form it is cleared from the factory of the manufacturer. In the present case, there is no dispute that the Metal

Containers manufactured by the appellant are packed in the corrugated box and the same duly packed are cleared for sale to their customers. Therefore, since the goods are cleared in the packed form, the cost of packing material needs to be included in the Assessable value. Hence the argument of the appellant that the packing of the Metal container is beyond the stage of manufacturing will not help as long as the Valuation of goods for the purpose of charging Excise Duty in the form it is cleared. As regard the judgment of the Hon'ble Gujarat High Court in the appellants own case. We find that the said judgment was given with reference to the old Section 4 and the judgments delivered in that reference. We agree that with reference to the old Section 4, as per the various judgments of the Hon'ble Supreme Court in the case of JAUSS polymers Ltd., Hindustan Polymers Ltd. 1989 (43) E.L.T. 165(SC), the cost of packing material supplied Free of Cost by the buyer was not included in the Assessable Value. The legislature to overcome the judgment of the Hon'ble Supreme Court on the issue of inclusion of cost of packing material amended the Section 4 and made new Valuation Rules of 2000 according to which no scope was left for interpretation of the issue which was existing prior to 1.07.2000. Therefore, after introduction of amended Section 4 and New Central Excise Valuation Rules, 2000 the law is very clear that in case where the packing material is supplied Free of Cost by the buyer to the assessee the cost thereof is includable in the Assessable value.

12. As regard the heavy reliance placed on the Hon'ble Supreme Court Judgment which are with reference to the New amended Section 4 from 1.07.2000. We find that in case of TVS Motors Co. Ltd. the issue was related to Pre-Delivery Inspection and after sale service charges. These chargers were not collected, the same was incurred by the manufacturer of Motor Vehicle after clearance of the goods. Therefore, there is no extra consideration flowing to the manufacturer. On that basis the Hon'ble Supreme Court held that the Pre-Delivery Inspection and after Sale Service Charges are not includable in the value. The facts of that case is totally different from the facts of the present case. As in the present case the issue of inclusion of packing material supplied Free of Cost by the buyer is involved. Therefore, the judgment of Hon'ble Supreme Court in the case of TVS Motors Co. Ltd being on altogether different facts and the issue shall not apply in the present case. In case of Grasim Industries Ltd. (supra) the Larger Bench of the Hon'ble Supreme Court dealing with old Section 4 and New Section 4 held that there is no difference in statutory concept of Transaction Value and judicially evolved meaning of normal price. The appellant on this basis argued that with these judicial pronouncements all the judgments given with reference to the old Section 4 i.e. before amendment of 2000 shall equally apply in the cases related to the period after amendment of 2000.

13. On going through the facts of the said judgment we find that the assessee are charging to their customer certain amounts under different heads namely packing charges, facility charges, Service Charges, Delivery and Collection charges, rental charges, repair and testing charges. The facts of the present case is different as the appellant is not charging separately. The issue involved in the present case is that the Cost of corrugated boxes which were supplied by the customer Free of Cost and such corrugated boxes

are used for packing of the final product is includable as clearly provided under Rule 6 of Central Excise Valuation Rules, 2000. Therefore, the facts of the present case is completely different from the facts of the Hon'ble Supreme Court judgment in the case of *Grasim*. Moreover, as per Rule 6 of Central Excise Valuation Rules, 2000 it is explicit wherein, the provision for inclusion of cost of packing material supplied Free of Cost by the customer is provided. The Hon'ble Supreme Court in the case of *Grasim* (supra) have not dealt with the provision of Rule 6 of the Central Excise Valuation Rules, 2000. It is also pertinent that the Central Excise Valuation Rules, 2000 have not been struck down by the Hon'ble Supreme Court in the case of *Grasim's* judgment (supra). It is also observed from the judgment that the Hon'ble Supreme Court in Para 18 referring to the *Bombay Tyres International Ltd.* on principle agreed that the Cost of primary packing needs to be included. This provision was not under dispute even in the old Section 4. In the present case there is no dispute that the corrugated box even though supplied by the buyer was used as primary packing. For this reason also the judgment of Hon'ble Supreme Court of *Grasim* would not adversely affect the revenues case. As regards the judgment in the case of *Innovative Tech Pack Ltd.*, decided by this tribunal, we find that the entire case was decided on the fact that the packing material was meant only for transportation of manufactured goods to the buyer and it is not necessary for rendering the said goods marketable. In the present case, since the box was used as a primary packing it would not be said that it is used only for transportation of the goods. Moreover in some of the supplies the appellant's units are located within the premises of the customer i.e. M/s. AMUL despite that the Metal Containers were packed and supplied in corrugated box. Therefore, the corrugated box used for packing of Metal Containers is not for transportation of goods, therefore, the decision of *Innovative Tech Pack Ltd.* is clearly distinguished. As regards the reliance placed on the *Nova Iron and Steel Ltd.*, we find that in the said judgment it was decided that the cost of packing is not includable only on the basis that the goods otherwise was marketable in the loose form and the fact was also noted that the goods namely sponge iron were being supplied without packing if dispatched through road transport. In the said case the packing was done particularly for dispatch of goods through Railways. In the present case, it is undisputed that in some cases where the customer has not provided the corrugated box the goods i.e. Metal Container were not supplied in loose condition whereas, the same were supplied on the pallet therefore the goods of the appellant i.e. Metal container is not capable of being dispatched without any packing. Therefore, the facts of the present case is different from that of M/s Nova Iron Steel Ltd. (supra).

14. As per our above discussion we are of the view that the cost of corrugated boxes supplied Free of Cost by the customer to the appellant is includable in the Transaction Value of the Metal container manufactured and supplied by the appellant. As regard the limitation vehemently argued by the Learned Senior Counsel on behalf of the appellant, we have examined the facts. We find that the issue involved in the present case is based on strict interpretation of Section 4 of Central Excise Act, 1944 and rules made there under. There are various judgments on this issue therefore, it cannot be said that the appellant had any mala fide intention. It is also observed that the appellant have never suppressed any fact as regard non-inclusion of the Cost of corrugated box supplied Free of Cost by their buyer for the reason that

this facts was noticed by the Audit Officer from the records which was existing at the time of Audit. It is also observed that the appellant have made a specific declaration about the fact that they are receiving corrugated cartons Free of Cost from their customers. It is also mentioned in the declaration that there is no impact on the assessable value and the value of such corrugated box was not included in the Assessable Value. Therefore, when the supply of corrugated box Free of Cost by the customer to the appellant was declared by the appellant to the department, it was open for the department to make out a case if they desire and issue the Show Cause Notice well within the stipulated time period of one year but despite all the details available with the department the Show Cause Notice was not issued in the normal period. In this fact the demand for the period before one year of the date of Show Cause Notice is time barred and we set aside the demand for extended period.

15. As per our discussion and finding given herein above on merit the demand is sustainable

04. Following the above decision, we hold that demand on merit is sustainable and accordingly, the appeal filed by the appellant is devoid of any merit and same is dismissed.

(Pronounced in the open court on 17.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Mehul