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

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 13383 of 2013- DB**

(Arising out of OIA-PJ/198-199/VDR-I/2013-14 dated 12/07/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I( Appeal))

**Transpek Industry Ltd** **........Appellant**
Village- Ekalbara
Taluka- Padra,
Vadodara, Gujarat

*VERSUS*

**C.C.E. & S.T.-Vadodara-i** **......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat – 390007

**WITH**

**Excise Appeal No. 13384 of 2013- DB**

(Arising out of OIA-PJ/198-199/VDR-I/2013-14 dated 12/07/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I( Appeal))

**Transpek Industry Ltd** **........Appellant**
Village- Ekalbara
Taluka- Padra,
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*VERSUS*

**C.C.E. & S.T.-Vadodara-i** **......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat – 390007

**APPEARANCE:**
None appeared 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/ 11211 -11212/2023**

DATE OF HEARING: 21.02.2023
DATE OF DECISION: 07.06.2023

**RAMESH NAIR**

The issue involved in the present case is that whether the cost of empty cylinder received from the customers free of cost and used for packing of Sulphur Dioxide Gas supplied to such customers is to be included in the assessable value of final product or not under section 4 of Central Excise Act, 1944.

2. Shri Saurabh Dixit, Learned Counsel for the appellant submitted a synopsis wherein he submitted that the identical issue has been decided finally in the appellant's own case vide Final order No. A/12250/2018 dated 18.10.2018 by this Tribunal wherein the appeal was allowed holding that the value of empty cylinders owned by the buyers is not includible in the assessable value of Sulphur Dioxide in hands of the appellant. It was also submitted that the issue is no more res – integra in as much as the identical issue stands decided in following cases:-

- SRF Ltd – 2016 (335) ELT 195 (SC)
- Innovative Tech Pack Ltd. 2017 (358) ELT 409 (Tri. Chandigarh)
- L & T Ltd – 20068 (206) ELT 596 (T)

He also submitted that in the appellant's own case the first appellate authority vide Order-In-Appeal No. SRP/502/VDR-I/2003 dated 27.02.2013 while dealing with periodical demand has also allowed the appeal considering the decision of M/s Grasim Industry Ltd – 2004 (164) ELT 257 , TCP Limited - 2008 (22) ELT 209 (Tri.- Chennai) and final order dated 04.09.2012 of this CESTAT Ahmedabad in the appellants own case for the earlier period.

3. On the other hand, Shri G. Kirupanandan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the issue to be decided in these appeals is that whether the cost of empty cylinders supplied by the customers is includible in the assessable value of appellant's final

product i.e. Liquid Sulphur Dioxide . This issue is no longer res- integra particularly in the appellant's own case as this Tribunal has decided the issue in their favour vide Final Order No. A/12250/2018 dated 18.10.2018 wherein the Tribunal has passed the following order :-

> *"The issue involved is whether the value of empty gas cylinders, supplied free of cost by the customers for filling Sulphur Dioxide (NRG), is includable in the value of final product or not.*
>
> *2. Heard both the sides. Shri Saurabh Dixit, ld. Counsel placed a decision passed in their own case by this Tribunal vide order No. A/1382/WZB/AHD/2012 dated 04.09.2012, wherein the similar issue has been decided in favour of the appellant and accepted by the Revenue. The said decision is reproduced below:-*
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>> *"2. On perusal of the records, we find that the issue involved in this case is regarding non-inclusion of the value of the packaging material i.e. cylinders received from the purchaser of the appellants final product. We find that identical issue has been decided finally by the co-ordinate bench of the Tribunal in the case of TCP Limited Vs CCE Madurai 2008 (227) ELT 109 (Tri-Chennai), the ratio of which we respectfully produce below:-*
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>> *"The appellants are manufacturers of liquid Sulphur dioxide and other chemicals. During the period of dispute [November 2004 - August 2005], they cleared liquid Sulphur di-oxide in cylinders supplied by buyers, on payment of duty on the basis of transaction value. The department wanted the amortized value of cylinders to be included in the assessable value. Accordingly, a show-cause notice was issued demanding differential duty of Rs. 9,495/- from the appellants for the above period and proposing penalty on them. Both the lower authorities upheld these proposals. In the result, there is also a penalty of Rs. 10,000/- on the appellants.*
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>> *After hearing both sides and considering their submissions, we note that a similar question was considered by this Tribunal for a post - 01.07.2000 period in the case of Grasim Industries v. CCE, Indore - 2004 (164) E.L.T. 257 (Tri. Del.). In that case, the excisable commodity was liquid chlorine which was sold by the assessee in tonners supplied by buyers. The buyers were not related to the assessee, nor had the Revenue a case that the price was not the sole consideration for the sale. On these facts, no amount attributable to the value of the tonners was held to be includible in the assessable value of the excisable goods. We have not found any factual difference in the present case. The buyers were not alleged be affected by any extra-commercial consideration. Hence the value of the cylinders owned by the buyers was not includible in the assessable value of liquid Sulphur di-oxide.*

*In the result, the impugned order is set aside and this appeal is allowed."*

*3. It can be seen from the above reproduction that the issue is now squarely covered in favour of the assessee and following the same, we hold that the impugned order is liable to be set aside and we do so. The appeal is allowed.*

*3. In view of the above decision, the appeal is allowed."*

4.1 We also observed that following this Tribunal order in the appellant's case for the different period, the Commissioner (Appeals) vide Order-In - Appeal No. SRP/502/VDR-I/2003 dated 27.02.2013 allowed their appeal by setting aside the OIO in that case. The present issue is also covered by the decision cited by the appellant in their synopsis.

5. Accordingly, the impugned order is not sustainable. Hence, the same is set aside, appeals are allowed.

(Pronounced in the open court on 07.06.2023 )

**RAMESH NAIR**
**MEMBER (JUDICIAL)**

**C.L.MAHAR**
**MEMBER (TECHNICAL)**

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