

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 13702 of 2013- DB

(Arising out of OIA-RJT-EXCUS-000-APP-374-375-13-14 dated 30/08/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT(Appeal))

Gold Star Battery Pvt Ltd

Rajkot Road,
Hapa,
Jamnagar, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

.....Respondent

WITH

Excise Appeal No. 13703 of 2013- DB

(Arising out of OIA-RJT-EXCUS-000-APP-374-375-13-14 dated 30/08/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT (Appeal))

Shri Navneetbhai Muljibhai Pansara

M/S Gold Star Battery Pvt Ltd,
Rajkot Road,
Hapa, Jamnagar, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

.....Respondent

APPEARANCE:

Shri Paresh Sheth, Advocate for the Appellant

Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11385 - 11386 /2023

DATE OF HEARING: 28.02.2023

DATE OF DECISION: 28.06.2023

RAMESH NAIR

The brief facts of the case are that the appellant M/s. Gold Star Battery are engaged in the manufacture of Lead Acid Battery falling under sub heading 85071000 of the Central Excise Tariff Act, 1985, for use in

automobiles/vehicles and the batteries for inverters etc. With effect from 01.06.2006, the "Parts, components and assemblies of automobiles" falling under "any chapter heading" was to be subjected to Retail sale Price (RSP) based assessment, with a specified abatement of 33.5% from the RSP vide entry No. 97 to the Notification No. 11/2006 –CE (NT) dated 29.05.2006. Subsequently, for the same entry abatement percentage of 31.5% was re-specified vide the entry No. 107 under Notification No. 14/2008- CE (NT) dated 01.03.2008 and later on it was re-specified to 30% vide entry No. 108 of the Notification No. 49/2008- CE (NT) dated 24.12.2008.

1.2 Based on the intelligence that the appellant were clearing their manufactured goods Viz. Lead Acid Batteries by assessing them under Section 4 of the Central Excise Act, 1944 instead of Section 4A of the Central Excise Act, 1944 despite the fact that the said goods were used as components in the automobile industry and were required to be subjected to MRP/RSP based assessment, the officers of Preventive Wing, Central Excise, Rajkot, visited the factory premises of the appellant on 14.07.2009 and searched the factory premises in presence of panch witnesses. The officers recovered documents related to the clearance of batteries during the above period under a Panchnama dated 14.07.2009. During Investigation a statement of Shri Navneet Muljibhai Pansara, Executive Director of the appellant was recorded under Section 14 of the Central Excise Act, 1944. After the investigation is completed the appellant were issued the show cause notice dated 13.05.2011 wherein it was contended that the lead acid batteries cleared to the dealers are required to be assessed under Section 4 A of the Central Excise Act, 1944. Accordingly, demand of differential duty between the value under Section 4 and value under Section 4 A was proposed. The show cause notice also proposed to recover interest and impose penalties under Section 11 AC and also personal penalty on the director of the appellant company Shri Navneet Muljibhai Pansara under

Rule 26 of Central Excise Rules, 2002. The Adjudicating Authority vide order-in-original dated 20.11.2012 confirmed the charges proposed in the show cause notice. Being aggrieved by the order-In-Original, the appellants filed appeals before the Commissioner (Appeals) who concurring with the view taken by the Adjudicating Authority upheld the order of the Adjudicating Authority and rejected both the appeals filed by the appellant. Therefore, the present appeals.

2. Shri Paresh Sheth, Learned Counsel appearing on behalf of the appellants submits that the appellant have been valuing their Lead Acid Batteries supplied to individual customers under Section 4 A whereas in case of supplies made to the dealer, they value the batteries under Section 4 for the reason that the batteries supplied by the appellant to dealers are not ready to use as at the dealer stage the batteries are required to be charged by adding acid into batteries. He submits that the activity of putting acid and water in the batteries and charging of the same before sale of the batteries is the activity which render the product marketable. This activity amounts to manufacture in terms of Section 2(f)(iii) according to which adoption of any treatment on the goods to render the product marketable to the consumer is activity amounts to manufacture of goods. Therefore, the batteries cleared by the appellant was subjected to other manufacture, hence, the valuation was correctly denied under Section 4 and not under Section 4A.

2.2 He also submits that the entire demand was raised for the extended period of limitation. It is his submission that the appellant have been paying duty on the goods in question under Section 4 and they were filing periodical returns, therefore, there is no suppression of fact on the part of the appellant. Hence, the demand is also hit by limitation which is beyond one year before the issuance of show cause notice. He placed reliance on following judgments:-

- Exide Industries Ltd – 2015 (327) ELT 431 (Tri. Kol)
- Exide Industries – 2016 (333) ELT 101 (Tri. Del)
- Amco Batteries Ltd – 1996 (86) ELT 225 (Tri.)
- A.K.S. Bearing Ltd – 2019 (370) ELT 859 (Tri. Del)
- Classic Marble Co. Pvt. Ltd – 2014 (301) ELT 220 (Guj.)
- Gopal Zards Udyog – 2005 (188) ELT 251 (SC)
- Sarita Steel & Industries Ltd – 2011 (272) ELT 572 (Tri.Bang)
- City Lubricants Pvt. Ltd – 2017 (348) ELT 362 (Tri. Hyd)
- M.N. Furniture – 2017 (347) ELT 373 (Tri.Mum)
- Hindustan Cables Ltd – 2022 (382) ELT 188 (Cal)

3. Shri Rajesh K Agarwal, Learned Superintendent (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. The limited issue to be decided is that the Lead Acid Batteries cleared by the appellant whether the value thereof should be determined under Section 4 or Section 4 A of Central Excise Act, 1944. The entire defence of the appellant is on the basis of the affidavit which was filed belatedly that the Lead Acid Batteries cleared by the appellant which is used for automobiles were correctly valued under Section 4A on the ground that they had supplied the uncharged batteries and the charging was carried out at the dealers' place which activity amounts to manufacture. Therefore, any goods cleared which is subjected to further manufacture should be valued under Section 4 and not 4 A. We find that other than affidavit there is no documentary evidence produced by the appellant to establish the claim of the appellant that the battery was cleared uncharged and at the dealers' place the batteries were charged before selling to the customers. In this regard this bench asked the learned counsel to produce the leaflet of the product. From the leaflet also we do not find that the batteries were cleared in uncharged form and subsequently it was charged

by the dealer. This fact has been considered by the Adjudicating Authority in detail. The relevant para of the order is reproduced below:-

"17. The main contention of the notice is that they were clearing the batteries in dry condition only and that according to the decision of Hon. High Court in the case of Exide Industries Ltd., the batteries which requires filling up of acid and charging before it is delivered to the customers after sale will not be covered by the provisions of Standards of Weight and Measure (Packaged Commodities) Rules, 1977. It is contended that where the SWAM Rules are not applicable, assessment under Section 4 A of the Central Excise Act, 1944 cannot be made and therefore they have correctly assessed duty under Section 4 of the Central Excise Act, 1944. I have gone through the judgment of Hon. High Court, as well as various documents relied upon in the SCN. I have also gone through the affidavit filed by Shri Navneet M. Pansara, Director of the notice No. 1 (notice No. 2 in the present case). It is sworn in by the notice No. 2 that the batteries so manufactured and sold were without undertaking the process of battery charging which is to be carried out by the dealer only before delivering the said batter to the customer for their use. In other words, the said batteries are cleared in dry condition and cannot be used for any purpose in as is condition. It is also sworn by the notice No.2 that during the relevant time his company was not equipped with the required facility and therefore could not have carried out such process. The version presented by the noticee No. 1 and 2 is not convincing due to the following reasons:

- (i) The notice No. 2, in his statement dated 14.07.2009, stated that they were selling the batteries through dealers or branch offices or also byway of direct sale to customers. In case, the battery is sold directly to customer, if it was not possible for the notice No. 1 to carry out charging of the battery in his factory, due to non availability of required facility, how the customer who purchases such battery directly from the notice No. 1 would add acid to such battery and the charge it? It is clear that during the relevant period, the notice No.1 was clearing the battery duly charged.
- (ii) During the Panchnama dated 14.07.2009, price lists of the notice No. 1, effective from various dates were recovered and seized. The price list effective from 01.04.2006, 01.02.2007, 01.07.2007, 01.10.2007, 12.12.2007, 01.02.2008, 01.05.2008, etc clearly mentions therein that "Prices are for charged Batteries" If the notice No. 1 was not having the facility for charging in their factory, how the prices were fixed for charged batteries?
- (iii) The invoices issued by the noticee No. 1 during the material period do not indicate that what is sold /cleared is "dry battery". In absence of such description and only on the basis of affidavit filed as late as September-2012, it cannot be said that the notice No.1 cleared only dry batteries.
- (iv) Even the process submitted by the noticee No. 4 as well as Panchnama shows that Sulphuric Acid and D.M. water are added (container filling) to manufacture batteries. Therefore, it cannot be said that the batteries manufactured by the noticee No. 1 were dry batteries.
- (v) In order to ascertain general practice prevailing in trade and industry, an inquiry was made with M/S. Atul Auto Ltd,

Shapar (Veraval), Rajkot, who is leading manufacturer of three wheeler auto rickshaw vide letter dated 12.11.2012, they confirmed that they are buying battery from M/s. Exide Industries Ltd, Pune, which is including acid and charged and fitted directly in their vehicle without any process by them.

It is clear from the above that the affidavit filed by the noticee No. 2 is only an afterthought and the sole purpose is to gain support from the judgement of Hon'ble High Court in the case of Exide Industries Ltd. I find that the affidavit is misleading and therefore I do not take it on evidence. For the same reason, the contention raised by the noticee No. 1 is not tenable and the judgment is also of no help to them, as the material fact of the present case is different from the facts of the cited case law, in as much as in the cited case law, the manufacturer was clearing dry batteries whereas in the present case, the noticee No. 1 was clearing batteries with charging and ready to use condition."

4.1 From the above finding of the Adjudicating Authority it is clear that except affidavit there is no other evidence to show that the battery cleared by the appellant was uncharged Lead Battery. Therefore, there is no difference in the nature of the clearance made to individual customer wherein the valuation was admittedly done by the appellant under Section 4 A and the nature of clearance made to the dealers. Therefore, the clearance made to dealers is also to be valued under Section 4 A of Central Excise Act, 1944.

4.2 As regard the submission made by Learned Counsel on limitation, it is observed that the appellant have not disclosed that whether the battery was cleared charged or uncharged. Moreover, the affidavit was also filed belatedly, this fact was not declared during statement of the director recorded at the time of investigation. Therefore, the appellant have suppressed the vital fact from the department about the nature of clearance. In this fact, the extended period was rightly invoked in the present appeal. As regard the reliance placed on the judgment of Exide Industries Ltd, the same will be of no help to the appellant for the reason that it has not been established beyond doubt that the appellant have cleared the battery in uncharged form.

5. As per the discussion made herein above, we do not find any infirmity in the impugned order. Hence, the same is upheld. Appeals are dismissed.

(Pronounced in the open court on 28.06.2023)

**RAMESH NAIR
MEMBER (JUDICIAL)**

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

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