

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11865 of 2013- DB

(Arising out of OIO OIA-CCEA-SRT-I/SSP-417/2012-13/U/S-35A dated 20/03/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I)

J K Paper Ltd

Fort Songadh,
Dist : Tapi,
Tapi, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-I

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat -395001

.....Respondent

WITH

- **Excise Appeal No. 13142 of 2013- DB (J K Paper Ltd)**
- **Excise Appeal No. 11866 of 2013- DB (J K Paper Ltd)**
- **Excise Appeal No. 12114 of 2016- DB (J K Paper Ltd)**
- **Excise Appeal No. 12116 of 2016- DB (J K Paper Ltd)**
- **Excise Appeal No. 12120 of 2016- DB (J K Paper Ltd)**
- **Excise Appeal No. 12121 of 2016- DB (J K Paper Ltd)**
- **Excise Appeal No. 11713 of 2017- DB (J K Paper Ltd)**
- **Excise Appeal No. 10590 of 2018- DB (J K Paper Ltd)**
- **Excise Appeal No. 10587 of 2018- DB (J K Paper Ltd)**
- **Excise Appeal No. 10622 of 2019- DB (J K Paper Ltd)**

(Arising out of OIA-RKA/282/SRT-I/2010 dated 04/05/2010 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I, Arising out of OIA-CCEA-SRT-I/SSP-416/2012-13/U/S-35A dated 20/03/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I, Arising out of OIA-CCESA-VAD-APP-II-VK-227-2016-17 dated 31/08/2016 passed by Commissioner of Central Excise and Service Tax-VADODARA-I(Appeal), Arising out of OIA-CCESA-VAD-APP-II-VK-226-2016-17 dated 31/08/2016 passed by Commissioner of Central Excise and Service Tax-VADODARA-I(Appeal), Arising out of OIA-CCESA-VAD-APP-II-VK-233-2016-17 dated 31/08/2016 passed by Commissioner of Central Excise and Service Tax-VADODARA-I(Appeal), Arising out of OIA-CCESA-VAD-APP-II-VK-232-2016-17 dated 31/08/2016 passed by Commissioner of Central Excise and Service Tax-VADODARA-I(Appeal), Arising out of OIA-CCESA-VAD-APP-II-VK-43-2017-18 dated 15/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II, Arising out of OIA-CCESA-SRT-APPEALS-PS-190-2017-18 dated 15/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I, Arising out of OIA-CCESA-SRT-APPEALS-PS-192-2017-18 dated 15/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I, Arising out of OIA-CCESA-SRT-APPEALS-PS-637-2018-19 dated 11/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

APPEARANCE:

Shri, Sunil Vatvani , Chartered Accountant for the Appellant
Shri, A.K.Samota, Superintended (AR) for the Respondent

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

Final Order No. 11412-11422/2023

DATE OF HEARING: 13.04.2023
DATE OF DECISION: 03.07.2023

RAMESH NAIR

The issue involved in the present case is that whether the cash discount though given at the time of sale of the goods but subsequently the same was not availed due to breach of condition of payment by the customer is includable in the assessable value of the excisable goods for the purpose of charging excise duty.

02. Shri Sunil Vatvani, learned Chartered Accountant appearing on behalf of the appellant at the outset submits that the identical issue in the appellant's own case has been decided by this tribunal in their favour vide final order no. A/10347/2019 dated 21.02.2019 and A/10891/2019 dated 14.05.2019. He submits that the above decision has been given relying upon the Hon'ble Supreme Court judgment in the case of Purolator India Ltd. 2015 (60) Taxmann.com 471(SC).

03. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing for the revenue reiterates the findings of the impugned order.

04. On careful consideration of the submission made by both the sides and perusal of records, we find that the very issue in the appellant's own case has been decided in their favour in the aforesaid two tribunal's orders which was relying upon the Hon'ble Supreme Court judgment in the case of Purolator India Ltd. wherein, the same issue has been decided in favour of the assessee by the Hon'ble Supreme Court. The order dated 21.02.2019 passed by this tribunal in the appellant's own case is reproduced below:-

"The brief facts of the case are that the appellant is a manufacturer of writing and printing paper and registered with Central Excise. During an audit by departmental officers, it was discovered that appellant has two channels of sale:

A. Sale at factory gate

B. Sale from depot.

Appellant has a cash discount policy where cash discount is given at the rate of two percent, if the bill amount is paid within 10 days and discount is 1% if payment is made within 20 days. While clearing the goods manufactured by them (in respect of factory sales and depot sales) the appellant pays the duty on a value based on fully discounted price. In respect of factory gate sales, differential duty is paid by the appellant subsequently on the value of cash discount not availed by the buyers. However, in respect of godown sales, no duty is paid on the excess value (Cash discount not availed by buyers at depot). The case of the department is that the cash discount which was not availed by the buyers is part and partial of the transaction value and accordingly, excise duty demand was raised by issuing a show cause notice dated 21/7/2008 for the period Jan, 2006-March 2007. Show cause notice was culminated into Adjudication order whereby demand of duty amounting to Rs. 1,50,611/- was confirmed. Being aggrieved by OIO, appellant appealed before Commr. (A) who upheld the demand and penalty under section 11AC. However, an option of 25% penalty was given. Being aggrieved by the OIA, appellant filed the present appeal.

2. Shri H. Vyapari, Ld. CA appearing on behalf of the appellant submits that the discount policy is declared to the customers well in advance on sale of the goods. Discount is shown in the sale invoice. At times against the said invoice the customer did not avail the cash discount as the payment against the invoice was not made within the stipulated time period in order to avail discount. In such a case, the payment of discount is recovered from the customers. He submits that as per section 4, duty is payable on the price which is actually paid or payable for the goods when sold. In present case, the price which was payable at the time of sale of the goods was discounted price. Therefore, only that discounted price shall be treated as transaction value in terms of section 4 (3)(d) of Central Excise Act, 1944. He further submits that on the very same issue bearing the same facts has been decided by the Hon'ble Supreme Court and the larger bench of Tribunal and various benches of High Court are cited below:

- 1. Purolator India Ltd. 2015 (60) Taxmann.com 471(SC)*
- 2. Arvind Mills Ltd. 2006 (204) E.L.T 570 (Tri.- L.B.)*
- 3. TVS Motor Company Ltd. 2016 (344) ELT 246-Tri- Chennai*
- 4. Havells India Ltd 2017 (357) E.L.T. 407 (Tri- Del.)*
- 5. TVS Motor Co. Ltd. 2016 (331) E.L.T. 3)S.C)*
- 6. Jenson & Nicholas (India) Ltd. & Another 1984 (17) E.L.T. 4- Bombay*
- 7. Goodlass Nerolac Paints Ltd. 1993-Taxmann.com- 58 (Bombay)*
- 8. H&R Johnson (India) Ltd. 1999 (112) E.L.T 65 (Tribunal)*
- 9. Bhartia Cutler Hammer Ltd. 1988 (34) E.L.T. 373 (Tribunal)*

3. Shri S.N. Gohil, Ld. Supdt. 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 cash discount is additional discount that in case the buyer make the payment within 4 days from the date of sale, 2% discount is given and in case payment is made in 14 days, 1% discount is given. Being conditional discount operated only when time line given, but the discount is not given to if

the payment is not made within the stipulated time i.e. 4 days or 14 days, as the case may be, the scheme of discount is not operated, in such a case. Amount of discount initially offered by the appellant, which was subsequently paid by the buyer shall become part and partial of transaction value falling under the definition of transaction value given in Section 4 of Central Excise Act 1994. It is reproduced below:

'Section 4(3)(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.

From the definition of 'transaction value' given hereinabove it is clear that the price only paid or payable for the goods sold shall be the transaction value. In the present case, there are two amounts which are paid or payable:

- 1) The discounted price*
- 2) The discount amount that was taken is not made in the given time.*

Therefore in case of failure of payment on given time, the discount amount also become payable on the sale.

The definition also prescribed that not only the amount by the buyers at the time but any amounts that buyer is liable to pay either at the time of sale or thereafter even is part of the transaction. Therefore, in the present case, even the discount amount is not payable at the time of sale of the goods but same is payable subsequently when the payment is not made within the prescribed time limit i.e., 4 days or 14 days as the case may be. In our view the discount amount which is paid by the buyer subsequent to the payment of Bill amount should also form part of assessable value. However, the Hon'ble Supreme Court in the case of Purolator India Ltd. (supra) dealing with the same issue taken a view that transaction value has to be written along with expression for delivery at the time or place of deliveries. Therefore, value of excisable goods even on the basis of transaction value is only to be taken i.e. at the time of clearance of goods from assessee's factory or depo. An expression actually paid or payable for the goods when sold means whatever is agreed to as price for the goods on the basis of value whether such price, has been paid in parts or has not been paid at all. Hence, cash discount which is not at or prior to clearance of goods being contained in agreement of sale between assessee and buyers must, therefore, be deducted from sale price in order to know the value of excisable goods at time. Hence, cash discount was deductible. Since, Hon'ble Apex Court analyzed in detail, the same issue involved common facts and law as per the principals on judicial discipline, we are bound by such judgments. Accordingly, following the ratio of the Hon'ble Supreme Court Judgment in the case of Purolator India Ltd. (Supra), we set aside the impugned order and allow the appeal."

5. In view of the above settled legal position in the appellant's own case, the issue is no longer res-Integra. Hence, the impugned orders are set aside. Appeals are allowed.

(Pronounced in the open court on 03.07.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha