

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 13907 of 2013-DB

(Arising out of OIA-135/2013-AHD-II-CE/AK/COMMR-A-/AHD dated 01/07/2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Transformers & Rectifiers India Ltd

No. 344-350, Opp. Pwd Stores, Sarkhej-Bavla Road,
Village- Changodar, Taluka- Sanand,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-ii

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat - 380009

.....Respondent

WITH

Excise Appeal No. 13908 of 2013-DB

(Arising out of OIA-135/2013-AHD-II-CE/AK/COMMR-A-/AHD dated 01/07/2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Transformers & Rectifiers India Ltd

No. 344-350, Opp. Pwd Stores, Sarkhej-Bavla Road,
Village- Changodar, Taluka- Sanand,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-ii

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat - 380009

.....Respondent

AND

Excise Appeal No. 13909 of 2013-DB

(Arising out of OIA-135/2013-AHD-II-CE/AK/COMMR-A-/AHD dated 01/07/2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Transformers & Rectifiers India Ltd

No. 344-350, Opp. Pwd Stores, Sarkhej-Bavla Road,
Village- Changodar, Taluka- Sanand,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-ii

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat - 380009

.....Respondent

APPEARANCE:

Shri. M.G Yajnik, Advocate for the Appellant

Shri P.Ganesan, 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/ 11705-11707 /2023

DATE OF HEARING: 17.04.2023
DATE OF DECISION: 17.08.2023

RAMESH NAIR

The issue involved in the present appeals is that whether the special inspection charges or special testing charges incurred by the appellant on the request and on behalf of the customers for testing or inspection of finished excisable goods produced by the appellant and payment thereof made to a third party inspector and subsequently recovered from the customer will form part of the assessable value transaction value of the excisable goods under section 4 (post 01.07.2000) of the Central Excise Act, 1944 and hence chargeable to duty of excise.

2. Shri M.G Yajnik, Learned Advocate appearing on behalf of the appellant submits that in a case where special inspection or testing charges incurred by the manufacturer on behalf of the customers on undertaking the third party inspection or testing of their finished goods as instructed by the customers and paid by the manufacturer to the said third party inspector and subsequently recovered from the said customers do not form a part of the assessable value of excisable goods hence, not chargeable to central excise duty in as much as the standard goods produced by the manufacturer were already subjected to normal inspection and testing as per the standards of the manufacturer and to that extent the said testing or inspection charges form a part of the assessable value of the excisable goods which have come into marketable condition but any third party special inspection or testing undertaken by the manufacturer on instruction of the customers and for which the manufacture first pays inspection or testing charges to the said third part inspector or third party inspection agency

and subsequently recovered the same from the said customers do not form a part of the assessable value of the excisable goods and hence such special inspection or testing charges for third party inspection or testing of finished goods on instruction of the customers are not chargeable to central excise duty. In this connection he placed reliance on the following judgments:

- Bhaskar Ispat Pvt Ltd – 2004 (167) ELT 189 (Tri. LB)
- A. Infrastructures Ltd - 2003 (160) ELT 549 (Tri. Del)
- Paxma Axle & Springs (P) Ltd – 2000 (125) ELT 836 (Tri.)
- Bhaskar Industrial Development Ltd – 2003 (161) ELT 822 (Tri. Kolkata)
- Raghavendra Pre-Stress Products (P) Ltd - 2006 (205) ELT 743 (tri. Bang)
- Siddharth Tubes Ltd – 2006 (194) ELT 144 (M.P)
- J.J Confectionary Pvt. Ltd - 2007 (210) ELT 196 (Tri. Bang)
- IDCOL Kalinga Iron Works Ltd – 2007 (214) ELT 511 (Tri. Kolkata)

2.1 In view of above settled position the demand confirmed by the Adjudicating Authority and upheld by the Commissioner (Appeals) is not legal and correct.

3. Shri P. Ganesan, 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 whether the third-party inspection charges for testing and inspection on the behest of the customer collected from the customer and paid to third party inspection agency is includible in the assessable value of finished goods or otherwise. As per the facts of the present case there is no dispute that before carrying out the third party inspection as per the requirement of the customer. The goods have been fully manufactured. The excise duty paid by the appellant

is on the transaction value fixed between the appellant and their customers. It is the customer who wants to get a special testing and inspection done through third party agency. As regard this third party inspection the appellant is not obliged to get this special testing and special inspection done on the product, it is solely on the requirement of the customer who gets this special testing and inspection done on the product. Therefore, the appellant is not otherwise involved in the said third party inspection. It is only for the convenience purpose of the customer, the appellant coordinates such third-party inspection for which the payment for such third-party inspection is though initially paid by the appellant but subsequently and finally incurred by the customer. Therefore, in this fact, in our considered view, the third-party inspection charges cannot be included in the assessable value/ transaction value of the excisable final product i.e. transformers manufactured by the appellant.

4.1 This issue has come up for consideration time and again and in various judgment it was held that in the identical fact the third-party inspection charges for special inspection/ testing on behalf of the customer paid by the manufacturer and recovered from the customer is not includible in the assessable/transaction value of the goods on which such special inspection/ testing was conducted. Some of the decisions are referred below: -

- Bhaskar Ispat Pvt Ltd – 2004 (167) ELT 189 (Tri. LB)

"3. We have perused the decision of the Tribunal in the case of Hindustan Gas & Industries Ltd. v. Commissioner of Central Excise & Customs, Baroda (supra). In that case the Tribunal had taken into consideration the facts that the inspection charges were not in respect of the optional or secondary testing, hence are includible in the assessable value of the goods. While deciding so, it was also held that it is settled law that charges paid for inspection or testing by third party at the option of the buyer cannot form part of the assessable value. As in the case of Hindustan Gas & Industries Ltd. v. Commissioner of Central Excise & Customs, Baroda (supra) that inspection charges were not for the additional or optional testing, therefore, taking into consideration facts and circumstances of case, it was held that these are includible in the assessable value.

4. *The issue before us is to decide whether the additional testing charges at the request of customer and borne by the customer, are includible in the assessable value of the goods for the purpose of Central Excise duty. We find that the Tribunal in the case of Shree Pipes Ltd. v. Collector of Central Excise, reported in [1992 \(59\) E.L.T. 462 \(Tribunal\)](#) held that such additional testing charges born by the customer and which are optional, are not includible in the assessable value of the goods. Revenue filed appeal against this decision and the Hon'ble Supreme Court dismissed the appeal, reported in [1992 \(61\) E.L.T. A63 \(S.C.\) - C.C.E. v. Shree Pipes Ltd.](#) This decision was followed by the Tribunal in the case of CIMMCO Ltd. v. Collector of Central Excise, Jaipur, reported in [1994 \(74\) E.L.T. 687 \(Tribunal\)](#). The appeal filed by the Revenue against this decision was dismissed by the Hon'ble Supreme Court, reported in [1996 \(84\) E.L.T. A167 \(S.C.\) - C.C.E. v. CIMMCO Ltd.](#) The Tribunal further followed the decision in the case of Shree Pipes Ltd. (supra) and in the case of Hindustan Development Corporation Ltd. v. C.C.E., Calcutta, reported in [1996 \(85\) E.L.T. 58 \(Tribunal\)](#) and the appeal filed by the Revenue was dismissed by Hon'ble Supreme Court reported in [1996 \(86\) E.L.T. A162 \(S.C.\) - C.C.E. v. Hindustan Development Corporation Ltd.](#)*

5. *In view of the above settled position, we hold that cost of additional testing conducted at the request of the customer and the cost of such testing being borne by the customer, are not includible in the assessable value of the goods. The issue referred to the Larger Bench is answered in the above terms.*

6. *No other issue is involved in the present appeal. Therefore, we take up the appeal for disposal. The Revenue filed this appeal on the ground that the cost of additional and secondary inspection carried out at the request of the buyer and for which buyer has to pay, is includible in the assessable value of the goods. As discussed above, as we held that such charges are not includible in the assessable value of the goods. Therefore, we find no merit in this appeal and the same is dismissed."*

- A. Infrastructures Ltd - 2003 (160) ELT 549 (Tri. Del)

"3. *We find no merit in this appeal. Respondents are supplying goods manufactured by them to PHED, Rajasthan under a contract, the conditions of which stipulate that inspection fee is to be borne by the Govt. Department and this amount is to be paid initially to the third party Inspection Agency by the manufacturers and subsequently, to be reimbursed by the Govt. Department. As was held by the Commissioner (Appeals) it is not the case of Revenue that respondents have collected extra amount on account of inspection charges or have retained the inspection charges collected from the customers and not paid to the Inspection Agency. This is a case where the third party inspection is carried out at the instance of the buyers and buyers meet the expenses for the same. Merely, because the manufacturers initially paid the amount to the inspection agency it will not be a part of the transaction value as the amount is being reimbursed to the manufacturer by the buyer/Govt. Department. We, therefore, confirm the Order impugned and dismiss the appeal."*

- Paxma Axle & Springs (P) Ltd – 2000 (125) ELT 836 (Tri.)

"The duty demand is in two parts, the first one relates to inspection charges borne by the buyer of the appellants goods. This is with regard to inspection carried out by a third party (RITES) on account of the buyer. This works out to Rs. 28,777. Both sides submitted that it is a covered issue, that testing charges incurred on account of third party inspection and testing (like in the case of DGS&D) is not includible in the assessable value. Reference was drawn in this connection to the decision of the Tribunal in Shree Pipes Ltd. v. Collector of Central Excise [1992 \(59\) E.L.T. 462](#) (Tribunal). In view of this decision of the Tribunal the demand is not correctly made and is required to be set aside.

2. *The second part of the demand of about Rs. 33,000 relates to steel scrap found short in the appellant's premises. Appellants are manufacturers of Elastic Rail Clips from Steel Rounds. These Steel Rounds are put to several processes like Forging, etc. The scrap stated to be found short is about 49 MT. Appellant's explanation is that a loss of about 1.5% to 2% occurs during the processing of steel. Appellants have also produced a certificate of Yash P. Sharma, Chartered Engineer, dated 12-5-1992, wherein it was stated that "Net burning loss (by weight) of the 55 SI Spring Steel Rod of dia 20.64 mm during hot working and subsequent processing (like heating, quenching, tempering, Annealing, etc.) works out to approximately 1.5 to 2%." This certificate was not accepted by the adjudicating authority on the ground that the expert was not produced by the appellant for cross-examination. The adjudicating authority also held that except for the certificate no other evidence has been produced before him. In the present appeal, the appellants have made good this omission by producing an extract from "Forging Practice" by G. Kamenshchikov, S. Koltun, V. Naumov, B. Chernobroykin (page 21 of the paper book). Under the heading "Oxidation and Decarburisation of Steel" it is stated -*

"On being heated in a furnace, the surface of steel, like that of any other metal, becomes covered with a layer of oxides called scale. As the steel becomes hotter, the thickness of the layer of scale increases, until it begins to fall away to combine with the material of the hearth (if the latter is lined with fire-clay brick); this leads to the formation of so called slag deposit. Part of the scale sticks to the surface of the steel. During the forging process, the oxidation of the steel continues, as the red hot steel is subjected to the action of the surrounding air.

Heating thus leads to a certain issue of metal, or the formation of scale due to oxidation of the metal. This loss is called waste, and it is necessary to distinguish between waste due to heating (furnace waste) and waste during forging (forging waste). There exists the widespread opinion that waste occurs mainly during the heating process in the furnace, and that forging waste is insignificant. But investigations have established that the loss of metal due to scale forming outside the furnace is considerable and in some cases is greater than the furnace waste.

Waste results in considerable losses in production and leads to a considerable loss of steel together with the scale. During the production of forgings up to 3 per cent. and more of steel is lost as scale during one heat."

3. *It is clear from the above extract that the expert opinion produced by the appellant, of loss of about 2% being normal is correct. In the appellant's case total steel round involved in manufacture was over 2700 MTs. Since the loss of 49 MT is within the norm, we find the allegation of failure to account for the scrap or its removal without payment of duty, is not justified. Therefore, the demand of duty on this count also is liable to be set aside. We do so. As the demands of duty are not sustainable; the penalty is also required to be vacated. Therefore, the penalty of Rs. 15,000 imposed on the appellant is also set aside. Thus, the appeal is allowed with full relief to the appellants and the impugned order is set aside.*

4. *The amount of Rs. 32,000 which was deposited pending decision of the appeal shall be returned to the appellants forthwith as demands remain set aside."*

- Bhaskar Industrial Development Ltd – 2003 (161) ELT 822 (Tri. Kolkata)

"5. *We have considered the submissions made by both the sides. The only issue that arises for consideration in these appeal is whether the inspection charges incurred by the Railways who is the buyer of the goods, is to be included in the assessable value or not. We note that this issue is no longer res integra as the issue has already been decided against the Revenue by a catena of judgments, such as (i) Paxma Axle & Springs (P) Ltd. reported in [2000 \(125\) E.L.T. 836](#) wherein it was held that inspection charges borne by the buyer with regard to inspection carried out by third party (RITES) on account of the buyer is not includible in the assessable value in terms of Section 4 of the Act, (ii) in the case of Sunrise Structurals & Engg P. Ltd. v. CCE, reported in [2003 \(152\) E.L.T. 387](#) wherein it was held that where the inspection has been carried out on behalf of customers by third party, the charges paid on account of inspection cannot be included in the assessable value, (iii) in the case of Cimmco Ltd. v. CCE, Jaipur reported in [1994 \(74\) E.L.T. 687](#) wherein it has been held that inspection charges incurred by the customers are not includible in the assessable value of the goods. This decision of the Tribunal was challenged by the Department before the Hon'ble Apex Court and the Apex Court has dismissed the civil appeal filed by the department, as reported in E.L.T. 1996 page A-167. The Hon'ble Supreme Court had also dismissed the appeal filed by the Collector of Central Excise against order Nos. 209 and 210/95-A, dated 8-3-95 reported in [1996 \(85\) E.L.T. 58](#) (T)= 1995 (58) ECR 8 in the case of Hindustan Development Corporation Ltd. v. Collector. The Tribunal had held that expenses incurred on account of additional tests conducted at Customers requisitions are not includible in the assessable value, (iv) in the case of General Engineering Works v. CCE, Jaipur reported in [1996 \(81\) E.L.T. 569](#) it was held by the Tribunal that inspection charges paid to RITES by the Railways are not includible in the assessable value. In that case the inspection was done in addition to the regular inspection done by the assessee therein, (v) the Hon'ble Apex Court has dismissed the civil appeal filed by the Collector of Central Excise, against CEGAT order No. 796/91-A, dated 2-12-1991 reported in [1992 \(59\) E.L.T. 462](#) in the case of Shree Pipes Ltd. v. CCE. The Tribunal in the said order had held that when inspection and testing*

are conducted by DGS & D at the request of specific Customers, the inspection charges are not includible in the assessable value. We further find that this Tribunal in the appellants' own case in appeal Nos. E/391 to 392/2002, dated 24-10-02 on identical facts and circumstances have allowed the appeal filed by the appellants by holding that the inspection charges paid to RITES by the Railways are not includible in the assessable value. We also take note of the fact that the South Zonal Bench in the case of Southern Structurals Ltd. v. CCE, Chennai-II reported in [2002 \(146\) E.L.T. 678](#) (T)= 2002 (52) RLT 334 has held that inspection charges for inspection by the third party at the request of the buyer is includible in the assessable value. The said judgment of the Tribunal is distinguishable from the various judgments cited by the assessee inasmuch as in the case of Southern Structurals, the inspection charges @ Rs. 2,400/- per wagon were collected by the assessee therein from the Railways who were the buyers of the goods and it was in that circumstances that it was held that the inspection charges are to be included in the assessable value whereas in the present case, the inspection charges were paid by the Railways to the RITES who had carried out the inspection at the instance of the Railways.

6. *In view of the above, respectfully following the ratio of the various judgments cited supra, we hold that the impugned order is not legal and proper and we set aside the same and allow the appeals"*

4.2 In view of the above judgments and the discussion made by us here in above we are of the view that in the present case, the third party inspection charges are not includible in the assessable/transaction value of the goods. Therefore, the demand on this ground confirmed by the Adjudicating authority and affirmed by the Learned Commissioner (Appeal) is not sustainable.

5. Accordingly, the impugned orders are set aside. Appeals are allowed.

(Pronounced in the open court on 17.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)