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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10360 of 2018 - DB

(Arising out of OIA-CCESA-SRT-APPEALS-PS-215-2017-18 dated15/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Savita Oil Technologies Ltd **........Appellant**
10/2, Kharadpada, Naroli,
SILVASSA, DADRA & NAGAR HAVELI

VERSUS

Commissioner of C.E & S.T.-Silvasa **......Respondent**
Commissioner Central Excise, Customs & Service Tax,
Silvassa, 4th floor, AdarshDham Building, Vapi Daman Road Vapi
Opp. Old Town Police Station
VAPI, Gujarat

APPEARANCE:
Shri Mehul Jivani, Advocate, Appeared for the Appellant
Shri Anoop Kumar Mudvel, Superintendent (AR) Appeared for the Respondent

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

Final Order No.12240/2024

DATE OF HEARING: 24.07.2024
DATE OF DECISION: 27.09.2024

RAMESH NAIR

The issue involved in the present case is that in case of valuation of excisable goods in terms of Section 4 of Central Excise Act read with Rule 7 of Central Excise Valuation Rules,2000, the discount given by the appellant while raising the invoice from the depot is to be considered for transaction value or the gross amount including the discount should be the assessable value for the purpose of charging extra duty.

2. Shri Mehul Jivani, Learned Chartered Accountant appearing on behalf of the appellant submits that the transaction value shall not include the discount passed on to the customer. Therefore, the discount given in the invoice while selling the goods from the depot has to be deducted while taking the transaction value for the purpose of assessment of excise duty. Hence, the impugned order is not correct and legal. He placed reliance on the following judgments:-

- Havells India Ltd. 2017 357 (ELT) 407 (Tri. - Del.)
- M/s. Steel Authority Of India Limited 2024 (4) TMI 167 - Cestat Kolkata
- Steel Authority Of India Ltd. 2005 (11) TMI 10 Cestat, New Delhi
- Savita Oil Technologies Limited 2023 (7) TMI 1061 Cestat Ahmedabad
- M/s Cipla Ltd.2016 (2) TMI 67 Cestat Mumbai
- Biochem Pharmaceutical Industries 2016 337 (ELT) 276 (Tri. - Mumbai)
- Hawkins Cookers Ltd. 2018 (364) E.L.T. 849 (Tri. - Chan.)
- Toyota Kirloskar Auto Parts Pvt. Ltd 2012 276 (ELT) 332 (Kar.)
- JK Tyres& Industries Ltd. 2023 (12) TMi 899 Cestat Bangalore

3. Shri Anoop Kumar Mudvel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant have considered the transaction value at which the goods were sold from the depot after deduction of the trade discount passed on to the customer on their goods.Now the question arises whether for the purpose of Rule 7 the value of goods should be taken including discount or excluding the discount.For easereference, Rule 7 is reproduced below:-

> ***"7.*** *Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."*

From the reading of above Rule it can be seen that even in case of valuation under Rule 7 the value shall be the normal transaction value of such goods sold from such other placeat about the same time and where such goods are not sold at or about same time,at the time nearest to the time of removal of goods under assessment. Thus, it is the transaction value at which goods are sold from the place other than the place of removal of goods. The transaction value has been defined under clause (d) of sub section (3) of Section 4 of Central Excise Act, 1944 which is reproduced is under:

"(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 above definition of "Transaction Value", it is clear that the transaction value is such value which is paid or payable for sale of the goods. In the present case, the value excluding the discount is the value which is paid or payable at the time of sale of the goods. There is no dispute that the discount was passed on at the time of sale itself in the sale invoice. Therefore,the discount which is neither paid nor payable against the sale of goods cannot be part and parcel of the transaction value. Therefore, the value which is charged for the sale of goods from depot of the appellant without including the discount shall be the transaction value. Therefore the appellant have correctly paid the excise duty on value minus trade discount passed on to their customer. Hence, the value was correctly determined in terms of Rule 7 of Central Excise Valuation Rules, 2000. This issue has been considered in many judgments some of the judgments are reproduced below:-

- In the case of Havells India Ltd. (supra) considering the identical issue this Tribunal has passed the following judgment:-

"6.*We have heard both sides and perused the records.*

7.*Thecircumstances in which the goods are duty paid at the factory gate, but stock transferred to the depot from where the same is sold to various customers, Section 4(1)(a) of the Central Excise Act is not applicable because at the time of initial clearance of goods from the factory to the Depot there is no sale involved. Such cases would come under Rule 7 of the Valuation Rules. Rule 7 is reproduced below for ready reference :*

"Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to Depot, premises of a consignment agent or any other place or premises, from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the prize is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

8.*The normal transaction value has been defined as the transaction value at which the greatest aggregate quantity of goods are sold. The learned*

Commissioner in the impugned order has interpreted these provisions to mean that the appellants were required to pay duty on the goods cleared from their factory to their depot on normal transaction value referred above. Since at the time of initial clearance of goods from their depot, the appellants had not given any discount to their buyers, the deduction on account of various discounts is not applicable. The stand taken by the 1st appellate authority is clearly erroneous. The benefit of deduction of all types of discounts from the value will be available as long as the price and the discounts are known before clearance of goods from the factory. In the present case there is no dispute that the fact that various types of discounts are being allowed is very well-known. The fact that the discounts are being given is known but the quantum is not determinable at the time of clearance of goods from the factory. This is the main reason why provisional assessments have been resorted to. We also see that this issue is fairly well settled through various decisions of the Tribunal, Hon'ble High Courts and even the Apex Court. The Apex Court in the Purolator case (supra) has held that duty needs to be charged at the transaction value which was the agreed contractual price. Any discounts which are part of the agreement of sale will need to be granted even if such discounts are not passed on. The various other decisions cited by the appellant in their favour have clearly held that the discounts are allowable on the normal transaction value from the place of removal. In the present case the place of removal is not the factory gate but the depot of the appellant. Under such circumstances the discounts allowed in the price contracted for sale from the depot would be allowable as a deduction from such price.

9.*In line with the above discussions, the appeal is allowed and the impugned order is set aside with consequential relief."*

- Similar view was taken in the case of M/s. Steel Authority Of India Limited wherein the Kolkata Bench of the CESTAT passed the following order:-

"6. We have heard the rival contentions of the two sides and perused the case records.

7. To appreciate the admissibility of discounts, it would be necessary to refer to Section 4(1) of the Act as well as Rule 7 of the Valuation Rules. The same are therefore enumerated hereunder: -

▪ ***Section 4(1) of the Central Excise Act, 1944:***

"SECTION 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 the 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.

…."

▪ ***Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:***

"RULE 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where

the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

7.1 It can be seen from the wordings as used in Section 4(1) that the assessable value is the transaction value at which goods are sold by an assessee for delivery at the time and place of removal, whereas transaction value is the price actually paid or payable for the goods. In the instant case, as the goods are not sold from the factory gate and the depot / BSO is the actual place of sale, the assessable value would therefore be required to be determined in terms of Section 4(1)(a) of the Act in accordance with the provisions of Section 4(1)(b) ibid., read with Rule 7 of the Valuation Rules, which caters to sale of goods from a depot to non-related buyers and price being the sole consideration for sale. As pointed out above, the BSOs allow discounts to final customers beyond the price circulars that are duly known to the appellant at the time of removal of goods from the factory (conveyed through the internal communications of the CMO). Such discounts are allowable as deduction from the price of the goods for the purpose of determination of duty due thereon.

8. The appellant has also submitted on record a Chartered Accountant's certificate to that effect, pointing out that the BSOs have passed on a higher MPR to the final customers as against the MPR deducted by the appellant for determining the assessable value. A copy of such a certificate issued by the Chartered Accountant is scanned and reproduced hereinbelow, confirming the said statement made : -

Annexure-2

To Whom It May Concern

It is certified that Central Marketing Organisation (CMO) a unit of Steel Authority of India Limited, has given following discount/dispensation in respect of sale of steel Material pertaining to IISCO Steel plant, having central excise registration Number AAACS7062FXM028.

Financial Year	Turnover Discount (Rs./Lakhs)	Amount of Dispensation (Rs./Lakhs)	Total turnover Discount+ Dispensation (Rs./Lakhs)
2008-2009	355.84	2983.15	3338.99
2009-2010	335.06	6352.79	6687.85
2010-2011	498.21	7094.6	7592.88
2011-2012	387.36	3286.71	3674.07
2012-2013	267.36	4646.09	4913.45
Grand Total	**1843.83**	**24363.41**	**26207.24**

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9. In terms of Rule 7 of the Valuation Rules, any discount given at the time of clearance of goods ought to be allowed for assessment of goods transferred to the BSO when the same is passed on to the final customers. We note that with reference to an Across the Board Rebate (equivalent to MPR), this Tribunal in the appellant's own case ***Steel Authority of India***

***Ltd. v. Commr. [2006 (199) E.L.T. 112 (Tri. – Del.)]** had held as under: -*

> *"8. With regard to the second ground of demand i.e. ineligibility of ABR for deduction while fixing/assessing the value, we find that the appellant had established before the lower authorities that the price realized from the buyers of the goods from the depots were invariably lower than the price at which the goods had been assessed to duty at the time of their removal from the factory. The ABRs in question were determined by the Central Marketing Organisation of the steel plant on a monthly basis and conveyed to the sales depots. It is seen that the sales depots either charged sales prices after deducting the ABRs or the ABRs are passed on to the customers through credit notes. The appellant had also produced the certificate from the Chartered Accountant showing that the ABR has actually been passed on. Before us also, the learned Counsel has produced sample invoices as well as credit note register showing the passing on of ABRs in the invoices themselves or through credit notes. The submission of the learned Counsel for the appellant is that, as a matter of fact, as against an ABR of over Rs. 681 crores, reduction claimed while assessing the goods was only Rs. 449 crores. The law with regard to the valuation of the goods is that the goods should be assessed at the net price, i.e. minus the discount, to Central Excise duty. In the present case, it is clear that the valuation adopted by the appellant was only more than the net realisation at the depot stage. That being the factual position, the finding of the Commissioner that the rebate was not passed on and that differential duty is payable by the appellant is not sustainable."*

*9.1 We find that the law with regard to valuation of the goods is quite clear and in terms of the law, the valuation of goods under clearance is to be done on the basis of sale price prevailing on the date of removal at the time of removal, which in the present case is the depot. To this effect is also enunciated by the Tribunal in the case of Castrol India Ltd. v. Commissioner of Central Excise, New Delhi **[2000 (118) E.L.T. 35 (Tribunal)]**. Paragraph 5 of the said decision is reiterated below: -*

> *"5. "Time of removal" has also been defined with reference to the place of removal, namely , depot by sub-clause (ba) to clause (iv) of Section 4. That definition reads :*
>
> *" "time of removal" in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b), shall be deemed to be the time at which such goods are cleared from the factory."*
>
> *So, in the case of removal of goods from depot the time of removal should be the time at which such goods were cleared from the factory. In other words, time and place of removal provided by Section 4(1)(a), in relation to goods removed from the depot will be the factory gate and depot, respectively. Whenever goods are removed from depot, such goods are to be valued with reference to the time when it was removed from the factory."*

The said case was maintained by the Hon'ble Apex Court [ref. 2000 (121) E.L.T. A224 (S.C.)].

9.2 Therefore, the rebate as was known by way of MPR and uniformly passed on would be required to be taken note of for determination of the assessable value.

9.3 We also note that there is a complete similarity in the factual matrix of the appellant's own case, with the present issue at hand inasmuch as the CMO determined the ABRs (in the present case, MPRs) and indicated the same to the plant as well as depots. The goods were sold from the depots *after allowing such ABRs (in the present case, MPRs) indicated on the face of the invoice. Also, the Chartered Accountant's certificate furnished both in the said case and the present case referred to supra, establishes that the cumulative value of the ABRs (in the present case, MPRs) allowed from the depot exceeded the ABRs (or MPRs) as claimed by the appellant.*

10. The Hon'ble Apex Court's decision in the case of Purolator India Ltd. v. Commissioner of Central Excise, Delhi-III ***[2015 (323) E.L.T. 227 (S.C.)]*** *has also upheld the admissibility of discounts that were passed on to the buyers and were known at the time of clearance of goods as eligible deduction for the purpose of determination of the assessable value.*

11. In support of their proposition, the appellant has also drawn support to the ratio of the law as pronounced in the case of Biochem Pharmaceutical Industries v. Commissioner of C.Ex., Mumbai-III ***[2016 (337) E.L.T. 276 (Tri. – Mumbai)]*** *pointing out that such discounts were clearly admissible.*

12. For the reasons foregoing and the settled position of law, we do not find sustenance in the order of the Ld. Commissioner under challenge herein. We therefore set aside the same and allow the appeal filed by the assessee.

The similar issue in the appellant' s own case has also been considered by this Tribunal in the decision reported at Savita Oil Technologies Limited Versus Commissioner Of Central Excise & St, Vapi2023 (7) TMI 1061 Cestat Ahmedabad, wherein the following order was passed:-

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that there is no fault in appellant's giving quantity discount to their customers. Since the goods first cleared from the factory to appellant's depot, no discount was involved and consequently the quantity discount was given from depot therefore, such discount is not liable to duty. Therefore excise duty paid is clearly refundable.

5. As regards the objection of the Revenue that since appellant have not followed the provisional assessment refund is not payable, we find that this issue is no longer res-integra as in the appellant's own case this Tribunal has taken a view that merely because the assessee has not followed the provisional assessment, admittedly the excess payment of duty must be refunded to the assessee. The said order of this Tribunal is reproduced below:-

"4. We have carefully considered the submission made by both sides and perused the records. We find that the appellant have made excess payment of duty on account of discount. The discount was given at the time of sale of the goods from the depot. There is no dispute about the nature and quantum of discount. The removal of goods from the factory is on presumptive value and the transaction value is finalized only at the time of sale of goods from the depot. Therefore, in our considered view the discount given by the appellant at the time of sale of goods from the depot is legal and correct and the same shall not be includible in the assessable value. Accordingly, if there is any excess payment of duty in comparison with the value at which the goods were cleared from the factory and the same goods sold from the depot, the appellant is prima-facie entitled for the refund.

4.1 As regard the reason given by both the lower authorities that the appellant have not opted for the provisional assessment, we find that firstly the same was not made charge in the show cause notice therefore the order travels beyond the scope of show cause notice which is not permissible under the law as settled in various judgments cited by the appellant. Secondly, merely because the appellant has not opted for the provisional assessment the legal provision for valuation

> *will not get altered. The duty is payable in accordance with the Section 4 of Central Excise Valuation Rules, 2000. In terms of Rule 7 the excise duty is payable at on the value at the time of sale of goods from depot after removal from the factory. Therefore, on the differential excise duty due to the difference between the clearance value from the factory and the sale value from the depot is refundable to the appellant. It is settled by the Hon'ble High Court of Madhya Pradesh in the case of M/s. Godrej Consumers Products Ltd – 2019 (5) TMI 222 that merely because the appellant have not followed the provisional assessment, the methodology adopted for adjustment of excess payment of duty cannot be questioned. Therefore, even though the appellant have not opted for the provisional assessment, the admitted excess payment of duty has to be refunded to them.*
>
> *4.2 As regard the principle of unjust enrichment the appellant have submitted the Chartered Accountant Certificate and JV Entries whereby it is established that the incidence of duty for which the refund was sought for has not been passed on.*
>
> *5. In view of our discussion and finding the appellant is prima facie entitled for the refund subject to verification of the documents. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order after considering the above observation. The appeal is allowed by way of remand to the Adjudicating Authority."*

6. In view of the above order in the appellant's own case, which is based on the decision of Hon'ble High Court of Madhya Pradesh in the case of M/s. Godrej Consumers Products Limited (supra), the issue is no more res-integra. Therefore, the appellant is entitled for refund of excess duty paid due to extending the quantity discount to the customers. However, the factual aspect of correct quantification can be verified by the adjudicating authority, if required. Accordingly, we set-aside the impugned order and allow the appeal in the above terms."

5. In view of the observations made herein above which has support of the above decisions, the issue is no longer res-integra. Accordingly, the impugned order is set aside. The appeal is allowed.

(Pronounced in the open court on 27.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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