

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12250 of 2013

(Arising out of OIA-SRP-30-VAPI-2013-14 dated 11/04/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VAPI)

Veena Industries Ltd

.....Appellant

Gate No. 309,
Nanekarewadi, Chakan,
Pune, Maharastra

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

APPEARANCE:

Shri S.Narayanan, 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/ 10394 /2022

DATE OF HEARING: 13.02.2023
DATE OF DECISION: 03.03.2023

RAMESH NAIR

The brief facts of the case are that the appellant are manufacturer of DG sets which are sold and installed at the site of the customers through their dealers (sub – contractors). During the audit of the records of the appellant it is noticed that they collected the charges from their customers in the name of consumable charges through debit notes. These charges were made by the appellant towards supply and use of consumable spares for Installation & Commissioning and Repair & Maintenance of old DG sets. The case of the department is that the said charges are includible in the assessable value of DG sets. Accordingly, a show cause notice was issued to them which was adjudicated vide order in original dated 15.05.2012 wherein the demand of excise duty on the said consumable charges was confirmed along with interest and equal penalty was imposed under section 11 AC of the Central Excise Act, 1944. Aggrieved by the said Order-in-Original the appellant filed appeal before the commissioner (Appeals) who concurring the view of the Adjudicating Authority rejected the appeal in its entirety. Therefore, the present appeal filed before this Tribunal.

2. Shri S. Narayanan, Learned Counsel appearing on behalf of the Appellant submits that the consumable spare parts were used for Installation & Commissioning and Repair & Maintenance of already sold DG sets therefore, the said consumable spares has no nexus with the manufacture and sale of new DG sets. He further submits that the show cause notice has contented on assumption basis that consumable charges are connected to the DG set sold however not a single case was cited that which consumable are related to the DG set sold by the appellant. Therefore, the charge in the show cause notice has no basis. He further submits that the Installation & Commissioning and Repair&Maintenance activity is separate from manufacture of DG sets and sale thereof. Therefore, the consumable charges towards supply of spares cannot be attributed to the manufacture and sale of the DG sets. He submits that the issue is no longer res-integra in view of the following judgments which includes the case of appellant themselves.

- Veena Industries Ltd vs. CCE & ST, vapi- 2020 –TIOL-113-CESTAT-AHM
- CCE, Mysore vs. TVS Motors Co. Ltd. – 2016 (331) ELT 3 (SC)
- Indian Card Clothing Co. Ltd. Vs. CCE, Pune- I- 2017 (5) GSTL 190 (Tri. Mumbai)
- Veena Industries Ltd vs. CCE & ST,Vapi – 2016 –TIOL-401 –CESTAT-AHM
- Thermax Limited vs. CCE – 1998 (99) ELT 481 (SC)
- CCE, Agra vs. Goverdhan Transformer Udyog Pvt. Ltd. – 2015 (37) STR 161 (All.)
- Maruti Suzuki India Ltd . vs. CCE, Delhi- III- 2010 (257) ELT 226 (Tri.-LB)
- Union of India vs. Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC)

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. We find that the appellant have 2 separate activities one is manufacture and sale of DG sets on which excise duty is paid on transaction value. The other activity is Installation & Commissioning and Repair & Maintenance which is provided through their sub contractor. There is separate contract for such services. In this fact, the activity of manufacture is completed when the DG set is sold by the appellant from their factory on transaction value. The other activities such as supply of

spares for Installation & Commissioning and Repair & Maintenance of DG sets is all together different activity which cannot be clubbed with the assessable value of manufactured DG set sold by the appellant. It is also observed that in the show cause notice the department failed to even co-relate the consumable charges raised through debit note with a particular DG set manufactured and sold by them. Therefore, the case of the department cannot be sustained. This issue is no longer res- integra as the same was decided in the appellant own case reported at Veena Industries - 2020-TIOL-113-CESTAT-AHM wherein this Tribunal considering various judgments passed the following order :-

"5. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant have discharged the excise duty on sale price of DG set. The activity of testing of DG set at the site of the customer and the use of diesel is not part and partial of sale of DG set. It is an independent activity of service therefore the cost of diesel which was recovered by the appellant from the customer as reimbursement for the testing of the DG set is not includable in the transaction value towards the sale of DG set. The activity of filling of Diesel in the DG Set at the site Company is at most can be considered as pre-delivery inspection charges.

6. On this issue the Hon'ble Supreme Court in the case of TVS Motors Co. Ltd. (Supra) held that the charges for pre- delivery inspection is not includable in the Assessable Value. The Hon'ble Supreme Court over ruled the Larger Bench judgment of Maruti Suzuki India Ltd.(supra) which was relied upon by the revenue. It is also noted that on the activity of installation/commissioning the appellant have paid the Service Tax therefore, the said activity is altogether different from the sale of DG set. For these reasons also the cost of diesel cannot be included in the Transaction Value charged for sale of DG set.

6. In view of our above discussion we hold that the demand of duty on the cost of diesel is not sustainable, accordingly the impugned order is set aside, appeal is allowed."

4.1 The similar issue has been considered by the Hon'ble Supreme Court in the case of TVS Motors Co. Ltd (Supra) wherein the Apex court agree with the legal position stated by the Hon'ble High of Bombay in the case of Tata Motors Ltd vs. Union of India 2012 (286) ELT 161 (Bom.) and thereafter passed the following order:-

"16. *We have also to keep in mind these cases pertain to the period post 2000. It is also to be borne in mind that the clarification very categorically proceeded on the basis that the services were provided free by the dealer 'on behalf of the assessee' and the same was 'during the warranty period'. The clarification given, keeping in mind the aforesaid two features, makes all the difference inasmuch in these cases, we find that the services which are provided by the dealers are on their behalf and not on behalf of the assessees. The*

facts disclosed that the amount which was reimbursed by the assessee to their dealers pertaining to free service was being claimed as abatement in relation to the normal transaction value. It was one of the contention of these assessees that free service charges is a post sale activities and all post sale activities continued to be excludable in determining transaction value.

17. *On the other hand, we would like to refer to Circular dated 12-5-2000 which was issued contemporaneously with the amendment in Section 4. It expressly states that amount should be recovered from the buyer by the assessee-manufacturer and makes the following reading in this behalf :*

"2.2 Definition of 'transaction value' has also been modified to make it more transparent. Any amount paid by the buyer himself or on his behalf to the assessee by reason of, or in connection with the sale, would form part of the transaction value. Any amount that is charged or recovered from the buyer on account of factors like advertising or publicity, marketing and selling organization expenses, storage and outward handling etc. will also be part of the transaction value. In fact, most of the charges that are recovered on account of the specific activities by advertising or publicity, etc. mentioned in the definition of transaction value are includable in the computation of 'value' under the existing section.

4. As such, the definition of transaction value does not seem to be divergently wider in content and scope from the interpretation of 'value' under existing Section 4. The definition of 'transaction value' should help set at rest any doubt regarding amounts that are charged or recovered from the buyer in respect of specific kind of operations done by the assessees. In essence, whatever is recovered from the buyer by reason of, or in connection with the sale, whether payable at the time of sale or at any other time is included in the transaction value.

(emphasis supplied)"

18. *This very position is reiterated by the Board in its circular Letter F. No. 354/81/2000-TRU, dated 30-6-2000 which gives clause by clause explanation of the Section. Relevant extract from the same is reproduced herewith as under:*

"6. ...It may also be noted that where the assessee charges an amount as price for his goods, the amount so charged and paid or payable for the goods will form the assessable value. If, however, in addition to the amount charged as price from the buyer, the assessee also recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value for valuation and assessment purposes. Thus if assessee splits up his pricing system and charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value as it is a charge in connection with production and sale of the goods recovered from the buyer ...

7. It would be seen from the definition of 'transaction value' that any amount which is paid or payable by the buyer to or on behalf of

the assessee, on account of the factum of sale of goods, then such amount cannot be claimed to be not part of the transaction value. In other words, if, for example, an assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the assessee cannot claim that such charges are not includable in the transaction value. The law recognizes such payment to be part of the transaction value that is assessable value for those particular transactions."

19. *The sequitur of the aforesaid discussion would be to hold that PDI charges and free ASS charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The view taken by the Tribunal in favour of assesseees in this behalf is correct in law and all the appeals of the Department, i.e. C.A. Nos. 5155-5156/2007, 1763-1764/2009, 2204/2013, 2205/2013, 957-959/2014, 7854-7865/2014 and 7444/2008 are dismissed. On the other hand, Larger Bench view in Maruti Suzuki does not lay down the law correctly and is, therefore, overruled and the appeals filed by the assesseees, i.e. C.A. Nos. 7007/2011, 7550/2011 and 3768-3769/2011 are allowed."*

This Tribunal's Division bench dealing with the identical facts though in the matter of different product, in the case of Indian Card Clothing Co. Ltd. (Supra) passed the following order :-

"4. *We have carefully considered the submission made by both sides. We find that the Revenue sought to include the repair charges of old card clothing in the value of goods cleared from the factory of the appellant. On observation of the facts of the case, department could not establish that the repairing activity is carried out by the appellant on the newly manufactured goods cleared from the factory to the depot and from there to the customer. It is the submission of the appellant that as regards the newly manufactured card clothing, it is fully manufactured at the factory even though some small quantity is transferred to depot that is only for onward sale as such and on such goods no activity of repair is carried out. The repairing is carried out on the old card clothing where after use by the customer the card clothing got damaged and the same is repaired for which a separate service charge is collected by the appellant. Since the repairing activity is carried out on the old card clothing which also includes the goods initially supplied by some other manufacturer, therefore the said repairing activity has no relation to the manufacture and clearance of new card clothing manufactured by the appellant. In such case the service charge of the repairing is not in relation to the sale of the newly manufactured card clothing cleared by the appellant. Therefore, there is no question of addition of service charge of the repairing activity of old card clothing in the assessable value of newly manufactured card clothing. We also observe that as regards the repairing of old card clothing the appellant is registered as service provider and discharging the service tax on the repairing service of old and used card clothing. As per our discussion based on the facts available on record, we are of the considered view that the repairing service charge of old card clothing is not includible in the assessable value of the appellant's newly manufactured card clothing. Therefore, the impugned order is not sustainable. Hence the*

same is set aside. Appeals are allowed with consequential relief, if any, in accordance with law.”

5. In view of the above judgments, the issue is no longer res- integra. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 03.03.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)

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