IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

(1) APPEAL No. E/53373/2014-EX[DB]
(2) APPEAL No. E/70225/2016-EX[DB]
(3) APPEAL No. E/70704/2017-EX[DB]

Sr. No.	OIO/OIA	Dated	Passed by
1.	O-I-O No.54/Commr./Noida/2013-14	17/02/2014	Commissioner of Central Excise & Service Tax, Noida
2.	O-I-A No.NOI-EXCUS-002-APP-0203 & 0204-15-16	16/12/2015	Commissioner (Appeals) Meerut-II, Central Excise & Customs Service
3.	O-I-A No.NOI-EXCUS-002-APP-519-17-18	20/06/2017	

(1) M/s Bayer Material Science Pvt. Ltd.,

(2) M/s Covestro (India) Pvt. Ltd. &

(3) M/s Covestro (India) Pvt. Ltd. **Appellants**

Vs.

Commissioner of Central Excise & Service Tax, Noida **Respondents**

Appearance:

Shri Prasad Paranjape (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR &
Shri Pawan Kumar Singh (Supdt.) AR for Respondents

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/02/2018
Date of Decision : 26/02/2018

FINAL ORDER NOs. – 70807-70809/2018

Per: Anil G. Shakkarwar

The above stated three appeals are arising out of three different impugned orders. However, the issue is same and the appellants are also same and therefore they are taken together for decision.

2. The brief facts of the case are that the appellants were manufacturing Polyurethane falling under chapter 39 Schedule to the Central Excise Tariff Act, 1985. During the period from April, 2008 to March, 2015 appellants spent on transportation of goods manufactured by them from factory to the sales depot. It appeared to Revenue that said value should be added to the assessable value and therefore they were issued with five show cause notices dated 25/07/2012, 03/03/2014, 13/10/2014, 10/04/2015 and 12/06/2015 demanding differential Central Excise duty of Rs.4,31,40,066/-. The show cause notice dated 25/07/2015 was adjudicated through impugned Order-in-Original dated 17/02/2014 and remaining show cause notices were adjudicated and the their appeals were decided through impugned Order-in-Appeal dated 16/12/2015 and 20/06/2017. The contention of the appellants before the Original Authority and first Appellate Authority was that the amount that was shown in the books of account as expenditure was not additional consideration which did not require to be added to arrive at value for payment of Central Excise duty. The contention of the appellants was not accepted by authorities below and therefore they are in appeal before this Tribunal.

3. Heard the Learned Counsel for the Appellants who has taken us through Para-3 of show cause notice dated 25/07/2012 wherein it is stated that expenditure incurred on transportation of excisable goods from factory to the sales depot was not added in the assessable value. He has further submitted that the issue is squarely covered by the Final Order issued by this Tribunal in the case of Eveready Industries India Ltd. Vs. CCE, Noida reported at 2015 (315) E.L.T. 288 (Tri.-Del.).

4. Heard the Learned A.R. who has supported the impugned orders.

5. Having considered the rival contentions and on perusal of records we find that Revenue has misunderstood the whole concept of additional consideration. It is very clear that for manufacture of goods and transportation of goods to the depot various expenditure are to be incurred by the manufacturer on purchase of raw material and transportation of goods to depot on electricity charges and labour etc. It is very simple concept of transaction value that the expenditure incurred by the manufacturer is not the additional consideration and that - if an additional amount in addition to the transaction value is received from the buyer by the manufacturer then such amount is treated as additional consideration and only such amount qualifies for demand of

differential Central Excise duty. We also find that the issue is no more *res-integra* in view of the Final Order of this Tribunal in above stated case. We therefore, hold that the demands raised in above stated show cause notices amounting to Rs.4,31,40,066/- are not sustainable. Therefore, we set aside all impugned orders and allow the appeals. The appellants shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks