

**Customs, Excise & Service Tax Appellate Tribunal**  
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/2300/2009

[Arising out of OIA-110-ANS-GGN-2009 dated 23.04.2009 passed by the Commissioner (Appeals) of Central Excise-DELHI-III]

Botil Oil Tools India Pvt. Ltd. : Appellant (s)

Vs

CCE-Delhi-III : Respondent (s)

**Represented by:**

For Appellant (s) : Shri Amar Pratap Singh, Advocate

For Respondent (s): Shri G. M. Sharma, AR

**CORAM :**

**Mr. Ashok Jindal, Hon'ble Member (Judicial)**

**Mr. Bijay Kumar,, Hon'ble Member (Technical)**

Date of Hearing/Decision: 07.12.2018

**ORDER No. A/63574 / 2018**

***Per : Mr. Ashok Jindal***

The appellant is in appeal against the impugned order wherein duty has been demanded from the appellant under Section 4 of the Central Excise Act, 1944 due to fluctuation of currency rate.

2. The facts of the case are that the appellant is manufacture of Oil equipment and clearing the same on payment of duty. The main buyer of the appellant is ONGC, who placed purchase order on the appellant. As per the terms of the purchase order, the appellant was required to charge the price in US \$ which includes duty. The appellant converted the US \$ into Indian currency and discharged the central excise duty on the date of removal of goods from their factory gates. Later on, when the payment was realized from ONGC, the rate of dollar was increased and due to that

reason the appellant received extra income by way of fluctuation of the currency. As per the balance sheet, the appellant has shown extra income under the head "Other Income" on account of fluctuation in exchange rate of the price charged for the goods supplied to ONGC in US \$ for home consumption. Revenue entertain a view that the said "other income" is none other than the price of the goods sold by the appellant. Therefore, the said extra income is required to be added in the assessable value of the goods cleared by them in terms of Section 4 of Central Excise Act, 1944. Consequently, the duty was demanded by way of issuance of show cause notice. The matter was adjudicated, demand of duty alongwith interest was confirmed and penalty is also imposed. Against the said order, the appellant is before us.

3. Heard the parties.

4. Considering the fact that in terms of Section 4 (3) (d) of the Act the transaction value means the price actually paid or payable for the goods when sold. Admittedly, when the goods were sold by the appellant, the appellant paid duty converting the US \$ into Indian currency, in that circumstances, the appellant has paid duty rightly on the transaction value of the said goods as the duty is payable at the time of clearances of goods, not when the payment of the said goods have been received. In that circumstances, we hold that the appellant has rightly paid the duty on the goods cleared to ONGC and any amount received due to fluctuation in currency rate have no relevance with the price of goods sold. In that

circumstances, we do not find any merit in the impugned order, the same is set-aside.

In result, the appeal is allowed with consequential relief, if any.

*(Dictated & pronounced in the Court)*

**(Bijay Kumar)**  
Member (Technical)

**(Ashok Jindal)**  
Member (Judicial)

G.Y.