IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/131/2009

(Arising out of Order-in-Appeal No.150/2008-CE (SLM) daed 27.11.2008 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Burn Standard Co. Ltd. Appellant

Vs.

Commissioner of Central Excise, Salem Respondent

Appearance

Ms. S. Gayatri, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **21.08.2017**

Final Order No. 41760/2017

Per Bench

Brief facts are that the appellants are engaged in the manufacture of refractory bricks. They raised bonus claim against the buyers to whom the refractory bricks were supplied and which had outperformed the guarantee period as per commercial terms and conditions of the purchase order and realized the above amount during the period 9/2005 to 12/2006 from the buyers. Thus, as per the common practice, appellant entered into an agreement with buyers incorporating a penalty clause and a bonus clause. In terms of the penalty clause, if the

Customs, Excise & Service Tax Appellate Tribunal products do not last the guarantee period or do not withstand the number of heats guaranteed, the buyers would be entitled to charge a penalty as stipulated in the agreement. Conversely, if the refractory bricks outperform the guarantee period or function beyond the stipulated heats, the appellant would be entitled to bonus charges based on the number of heats the refractory bricks survive beyond the guaranteed heats. The department was of the view that these bonus payments received by the appellant has to be included in the assessable value. Seven show cause notices were issued raising the above allegations for the period from September 2005 to December 2006. The original authority confirmed the demand, interest and imposed equal penalty. In appeal, the Commissioner (Appeals) upheld the demand and interest but set aside the penalty imposed under Rule 25of Central Excise Rules. Hence this appeal.

2. On behalf of the appellant, learned counsel Ms. S.Gayatri explained the details of the show cause notice, period involved and the amount as given in the Table below:-

SCN No. Date	Period	BED	CESS	Total
C.No. V/15/68/68-2006 Cx. Adj. 3.10.06	Sept. 2005	3,85,224/-	7704	3,92,928/-
C.No. V/15/68/68-2006 Cx. Adj. 5.10.06	Oct. 2005 to Feb. 2006	2,62,529/-	5,250/-	2,677,79/-
C.No. V/15/68/58-2007 Cx. Adj. 8.3.07	March 2006 to April 2006	15,93,212/-	31,864/-	16,25,076/-
C.No. V/15/68/58-2007 Cx. Adj. 2.4.07	May 2006 to June 2006	2,25,799/-	4,516/-	2,30,215/-
C.No. V/15/68/58-2007 Cx. Adj. 2.4.07	July 2006	4,27,810/-	8,556/-	4,36,366/-
C.No. V/15/68/58-2007 Cx. Adj. 2.4.2007	August 2006 to	2,67,269/-	5,346/-	2,72,615/-

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	Nov. 2006			
C.No. V/15/68/58-2007 Cx. Adj. 2.4.2007	December 2006	3,73,845/-	7,477/-	3,81,322/-
Total				**36,06,401/-**

3. She submitted that the bonus and penalty are post-sales provisions, therefore excise duty cannot be levied on such payments which are based on performance post-sales / clearance of the goods. It is also submitted that the said issue is covered by the judgment in the case of Vishwakarma Refractories Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore – 2015 (320) ELT 622 which was affirmed by the Hon'ble Apex Court as reported in 2015 (320) ELT A257 (SC).

4. The learned AR Shri S. Govindarajan reiterated the findings in the impugned order.

5. Heard both sides.

6. In the above judgment, which has been relied upon by the appellant, the issue whether the bonus/penalty is to be included in the assessable value has been held to be a post-sale payment and therefore not includible in the assessable value. Following the same, we hold that the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief if any.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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