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

E/385 to 387/2006 and E/772/2007

(Arising out of Order-in-Appeal Nos. 15, 16 & 17/2006 (M-I) dated 7.2.2006 and Order-in-Appeal No.48/2007 (M-I) dated 31.7.2007 both passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Castrol India Ltd. Appellant

Vs.

Commissioner of Central Excise, Chennai – I Respondent

Appearance

Shri Aksay Arvind, Consultant for the Appellant
Shri S. Govindarajan, AC (AR) and
Shri R. Subramaniyam, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **05.09.2017**

Final Order Nos. 41955 - 41958/2017

Per B. Ravichandran

Appeal Nos. E/385 to 387/2006

These three appeals are involving similar set of facts with reference to valuation of lubricating oil cleared by the appellant and sold through depot. The lubricating oils which are not covered by MRP based assessment are subjected to valuation in terms of Section 4 of the Central Excise Act,1 944. During the material period, the appellants could not get relevant data regarding the sale value with discounts from their depot so that the same could be applied for the clearances from the factory. Since the current data relevant for assessment was not available, they have requested for provisional assessment so that they can provide details of cash discounts as well as quantity discounts and non-recoverable sales tax to arrive at a proper assessable value in terms of the said section. On completion of financial years, instead of providing the exact particulars regarding these discounts, the appellants claimed such discounts on the basis of equated average which apparently included clearances from more than one premises. Revenue rejected the claim of the appellant to allow equated discount on the ground that there is no legal provision for the same. Discounts either cash or quantity based should be on actual basis supported by material evidence. In the absence of such evidence, the lower authorities rejected the claim of the appellant.

2. The ld. Consultant appearing for the appellant submitted that they could not produce the relevant data before the lower authorities and there was some mis-directed plea which resulted in these proceedings. He admitted that these discounts as well as abatement due to sales tax can be based

on actuals with supporting evidence. It is the case of the appellant that they do have all the relevant data like invoice, chartered accountant's certificate and other materials which will categorically establish their claim for discount both cash as well as quantity and also abatement on sales tax. He pleaded that as these materials are relating to the relevant period, the same are to be examined for appropriate valuation so that the correct duty liability can be determined.

3. The ld. AR submitted that the impugned orders are correct in rejecting the claims of the appellant for equated discounts. However, ld. AR submitted that in case if the appellants are able to support their claim on discounts, on actual basis with supporting documents, the same can be considered. He also submitted that, in the appellant's own case, in a similar set of facts, the Tribunal vide Final Order No. 445 & 446/2008 dated 7.5.2008 remanded the matter to the original authority for a fresh decision on finalization of provisional assessment after considering the relevant particulars furnished by the appellant.

4. We have heard both sides and perused the appeal records.

5. Admittedly, the discounts as well as abatement on sales tax can be given only based on actual figures supported by invoice, Chartered Accountant's certificate and other

Customs, Excise & Service Tax Appellate Tribunal documents. This much has been asserted by the appellant also. However, they are pleading that they do have such documents and they can now submit the same with the original authorities. Regarding non-submission on earlier occasion, the appellant pleaded that he same is due to non-receipt of suitable advice. We find that it will be fit and proper for the original authority to examine these documents which are in any case relating to the relevant period only. On such examination, if the discounts are to be allowed in terms of the provisions of Section 4, the same can be considered by the assessing authority. The appellant shall be given adequate opportunity to provide all the supporting evidences in support of their claims.

Appeal No. E/772/2007

6. We note that in this appeal, the appellant is before us against rejection of the request for provisional assessment for the calendar year 2006. The lower authorities rejected their request on the ground that earlier provisional assessment allowed ended in finalisation with the rejection claim of the appellant for the discounts claimed. Hence, the lower authority held that there is no reason to allow any further provisional assessment.

7. In view of our findings above, we note that for the calendar year 2006 also, the assessments are to be considered

provisionally and the assessments can be finalized based on the documents which the appellant promised to submit regarding the discounts and abatement on sales tax. Accordingly, in respect of all the four appeals, the assessment can be finalized after taking into consideration the documents submitted by the appellant. The appeals are allowed by way of remand to the original authority.

(Order dictated in open court)

(B. Ravichandran) 5917
Member (Technical)

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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