

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. II**

**Excise Appeal No. 51943 of 2018**

(Arising out of order-in-appeal No. 484-487(SM)CE/JPR/2017 dated 01.12.2017 passed by the Commissioner (Appeals) Central Excise & Central Goods, Service Tax, Jaipur).

**M/s Linde India Limited**

B-821, RIICO Industrial Area, Phase-II  
Bhiwadi.

**Appellant**

VERSUS

**Commissioner of Central Excise**

Block-A, Surya Nagar, Alwar.

**Respondent**

**WITH**

**Excise Appeal No. 51947 of 2018**

(Arising out of order-in-appeal No. 484-487(SM)CE/JPR/2017 dated 01.12.2017 passed by the Commissioner (Appeals) Central Excise & Central Goods, Service Tax, Jaipur).

**M/s Linde India Limited**

B-821, RIICO Industrial Area, Phase-II  
Bhiwadi.

**Appellant**

VERSUS

**Commissioner of Central Excise**

Block-A, Surya Nagar, Alwar

**Respondent**

**WITH**

**Excise Appeal No. 52255 of 2018**

(Arising out of order-in-appeal No. 484-487(SM)CE/JPR/2017 dated 01.12.2017 passed by the Commissioner (Appeals) Central Excise & Central Goods, Service Tax, Jaipur).

**M/s Linde India Limited**

B-821, RIICO Industrial Area, Phase-II  
Bhiwadi.

**Appellant**

VERSUS

**Commissioner of Central Excise**

Block-A, Surya Nagar, Alwar

**Respondent**

**WITH  
Excise Appeal No. 52405 of 2018**

(Arising out of order-in-appeal No. 484-487(SM)CE/JPR/2017 dated 01.12.2017 passed by the Commissioner (Appeals) Central Excise & Central Goods, Service Tax, Jaipur).

**M/s Linde India Limited**

B-821, RIICO Industrial Area, Phase-II  
Bhiwadi.

**Appellant**

VERSUS

**Commissioner of Central Excise**

Block-A, Surya Nagar, Alwar.

**Respondent**

**AND  
Excise Appeal No. 51944 of 2018**

(Arising out of order-in-appeal No. 208 (SM) CE/JPR/2018 dated 27.04.2018 passed by the Commissioner (Appeals) Central Excise & Central Goods, Service Tax, Jaipur).

**M/s Linde India Limited**

B-821, RIICO Industrial Area, Phase-II  
Bhiwadi.

**Appellant**

VERSUS

**Commissioner of Central Excise**

Block-A, Surya Nagar, Alwar.

**Respondent**

**APPEARANCE:**

Shri Abhishek Agarwal, Advocate for the appellant

Shri H. C. Saini, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)  
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NOS. 53626 – 53630/2018**

**DATE OF HEARING/DECISION: 17.12.2018**

**ANIL CHOUDHARY:**

M/s Linde India Limited (hereinafter referred to as appellant) having its registered office at Oxygen House, P-43, Taratala Road, Kolkata and engaged in the business of manufacture & sale of gases for industrial purpose like nitrogen, hydrogen, oxygen, argon etc. falling under Chapter 28 & 29 of the first schedule to the Central Excise Tariff Act, 1985.

2. The appellant have filed appeals against the order in appeal dated 29.11.2017 and 27.04.2018, passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur.

3. The appellant is supplying gases in cylinders at their factory gate. For taking delivery of these gases, some consumers/ customers used to bring their own cylinders and take the delivery, while others take the delivery at their premises in the cylinders supplied by the appellant. The cost of cylinder (returnable container) is included in the cost of gase, on proportionate basis and a further period of seven days free retention is given to the customers. However, when the customers retained the cylinders after the said free period of seven days, the retention charges (or cylinder holding charges) are recovered from them. If the buyers take delivery of the gases in the cylinders belonging to them or return the empty cylinders within the agreed free period of seven days, nothing is charged from them towards the said cylinder holding charges.

4. The issue involved is whether the 'cylinder holding charges' collected by the appellants who are manufacturers of gas, after a free period of retention of seven days, are required to be added in the assessable value of the gases or not, after 1.7.2000 when the provision of Section 4 were amended.

5. Heard both the parties and perused the records.

6. After hearing both sides and on perusal of record, we find that the similar issue came up before the Tribunal in the case of **BOC India Limited vs. CCE, Chennai-I -2004 (175) ELT 236 (Tri. Kolkata)** wherein it was held as under:-

" 3. We find that the above definition of 'transaction value' refers to the price paid or payable for the excisable goods which the buyer is

liable to pay in connection with the sale, and is an inclusive definition. There is no reference to the Rental Charges of the containers which the buyer may keep after the free period. Undisputedly, the appellants are manufacturers of Gases. Any buyer is free to receive Gases in their own Cylinder, in which case, the question of addition of any Rental Charge does not arise at all. We also take note of the fact that the appellants give a free period of seven days to the customers by returning the empty Cylinder. It is only in those cases where the customers do not honour the above contractual obligation to return the Cylinders within the free period, there is provision for rent of the Cylinders for the period for which the customers keep the Cylinders in their premises. This can be safely termed as a sort of penal provision for the customers in not honouring the contractual obligation. These Rental Charges are not being collected by the appellants from their customers as routine, irrespective of the return of the Cylinders. As such it can be safely concluded that the said charges are not, in any way, related to or connected with the sale of the Gases. As such, the same cannot be said to be includible in the definition of the 'transaction value', as is appearing in the provisions of Section 4(3)(d). As such, we are of the view that even after the introduction of the new Section 4 with effect from 1.7.2000, the same would not form part of the assessable value of the final product i.e. Gases. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellants".

7. In the result, the impugned order are set aside and appeals are allowed with consequential benefits, if any, in accordance with law.

(Operative part of order pronounced in open Court).

(Anil Choudhary)  
Member (Judicial)

(Bijay Kumar)  
Member (Technical)

Pant