CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. 1

EXCISE APPEAL NO. 50183 OF 2020

[Arising out of Order-in-Appeal No. 318 (CMR) /CR/ JPR/ 2019 dated 26.11.2019 passed by the Commissioner (Appeals) Central Excise & CGST, Jaipur]

Linde India Limited **Appellant**
B-821, RIICO Industrial Area,
Phase-II, Bhiwadi

Versus

Commissioner of Central Excise,
Alwar **Respondent**
Block A, Surya Nagar, Alwar

Appearance:.
Present for the Appellant : None
Present for the Respondent: Shri O P Bisht, Authorised Representative

COARM:
HON'BLE MR. JUSTICE DILIP GUPTA ,PRESIDENT
HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 13.07.2022

FINAL ORDER NO. 50648 /2022

P V SUBBA RAO:

1. This appeal is filed by the appellant assailing the order-in-Appeal dated 26.11.2019 passed by the Commissioner (Appeals) Central Excise and CGST, Jaipur, whereby he upheld the order of the lower authority and rejected the appellant's appeal.

2. M/s Linde India Ltd.[1] manufactures and sells various types of gases in cylinders and paid duty on the sale price of the gas. In addition, the appellant also collects some charges in the name of the Cylinder Holding Charges[2] from its customers if the customers do not return the re-usable cylinders within a specified period. The appellant had not included CHC in the value for calculating the central excise duty.

3. It is the case of the Revenue that the transaction value under section 4 (1) (a) of the Central Excise Act, 1944[3] is the price at which goods are sold by the assessee for delivery at the time and place of removal, provided the buyer and seller of the goods are not related and price is sole consideration for sale. In other cases, the value shall be determined as per section 4 (1)(b) read with Rules. Rules 6 of the Valuation (Determination of Price of Excisable Goods) Rules 2000 reads as follows:

> "**Rule 6** Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section of the Act except the circumstances where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee."

4. According to the Revenue, in terms of Rule 6, the additional consideration in the form was CHC collected by the

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1 the appellant
2 CHC
3 the Act

appellant from its customers must be added to the transaction value and differential duty must be collected accordingly. According to the Revenue, CBEC's Circular No. 643/34/2002.EX dated 01.07.2002 also clarified that rental charges for containers like gas cylinders charged by the manufacture in connection with the sale of goods forms part of the transaction value.

5. The case of the appellant is that they are not liable to pay central excise duty on the rental charges, as has been decided in its own case by the Tribunal by Final Order No. 53626-53630/2018 dated 17.12.2018 following the decision of the Tribunal in **BOC India Limited vs. Commissioner of Central Excise, Chennai**[4]**.**

6. After perusing the appeal memorandum and other records and considering the submissions made by the Revenue, we find that this issue has already been decided by the Tribunal in appellant's own case in its favour by the order dated 17.12.2018. Paragraphs 6 and 7 of the order are reproduced below:

> "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:-
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> > " 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

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4 2004 (175) ELT 236 (Tri.-Kolkata)

> 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."

7. We also find from the submissions made by the Revenue that the appellant is not charging CHC as a condition for sale of its gases. In fact, any customer can buy the gas without paying the CHC and return the cylinder within the time and in such a case no CHC will be payable by the customer to the appellant. If the customer delays returning the cylinder the appellant recovers CHC from the customer in the form of a penalty for delayed return of the cylinder. Central excise duty should be charged on the value of gas for delivery at time and place of removal i.e. at the factory gate. This price does not include the CHC. The CHC is charged only if, after delivery, the customer does not return the cylinder in time. Therefore,

it cannot be called an additional consideration for sale but can only be a penalty for not returning the cylinder within time after the sale is completed.

8. Respectfully following the previous decision of this Tribunal we hold that the CHC is not includable in the assessable value.

9. Consequently, we find that the impugned order is not sustainable. The appeal is allowed and the impugned order is set aside with consequential relief, if any, to the appellant.

[Pronounced in open court]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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