

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

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51411 of 2019

(Arising out of Order-in-Appeal No. 250(CRM)CE/JDR/2019 dated 18.03.2019 passed by the Commissioner (Appeals), Central Excise, Central Goods & Service Tax, Jodhpur)

**Commissioner, Central Excise,
Udaipur**

..... Appellant

VERSUS

M/s. J.K. Tyres & Industries,
Jaykaygram, Kankroli, Rajsamand

..... Respondent

APPEARANCE:

Shri Sanjay Kumar Singh, Authorized Representative of the Department
Shri Sukriti Das, Advocate for the Respondent

CORAM:

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

Date of Hearing/ Decision: September 01, 2022

FINAL ORDER NO. 50824/2022

JUSTICE DILIP GUPTA

The Commissioner, Central Excise, Udaipur¹, has filed this appeal to assail the order dated March 18, 2019 passed by the Commissioner (Appeals) by which the order dated October 31, 2017 passed by the Assistant Commissioner rejecting the request made by the respondent M/s. J.K. Tyres Industries Limited² for the provisional assessment for the year 2017-18 was rejected.

**1. the Department
2. the respondent**

2. The respondent is engaged in the manufacture and sale of tyres, tubes and flaps which are stock transferred from the factory to the depots/ consignment agents from where the goods are sold to the dealers.

3. The respondent notifies and declares a Uniform Net Dealer Price³, which is a wholesale price for clearance of its goods from the factories to the depots. From such NDP, deduction of discounts and abatements are claimed for the payment of duty at the time of clearance of the goods from the factories. The respondent claims that the following discounts were allowed to dealers on sale of the goods from the depots:

- (i) Turnover discount
- (ii) Prompt Payment Discount
- (iii) Slab Discount
- (iv) Growth Discount/ Special Incentive Discount
- (v) Exclusive Discount
- (vi) Fleet Discount
- (vii) Product Discount
- (viii) Test Discount etc.

4. The respondent further claims that the factum of availability of these discounts was known to the dealers before clearance of the goods but on account of the very nature of the discounts, the same cannot be quantified when the goods are sold from the depots to the dealers and quantification of these discounts is done at a later point of time. It is for this reason that the respondent made a request for provisional assessment for the financial year 2017-18.

5. It also transpires from the records that a show cause notice for the earlier financial year 2016-17 was issued to the appellant, which was adjudicated by order dated June 30, 2016 rejecting the request

for provisional assessment for the financial year 2016-17. An appeal was filed before the Tribunal and by order dated July 29, 2019 the appeal was allowed.

6. The present appeal arises out of the fresh show cause notice dated May 15, 2017 issued to the respondent for the financial year 2017-18. This notice was adjudicated by order dated October 31, 2017 by which the Assistant Commissioner rejected the request for provisional assessment. Feeling aggrieved, the respondent filed an appeal before the Commissioner (Appeals), who by order dated March 18, 2019 allowed the appeal after placing reliance upon the Board Circular dated June 30, 2016 and the relevant portion of the order is reproduced below:

"9. I find that the aforesaid Board's Circular clearly clarified that discounts which are passed on to ultimate customers are not form part of transaction value. It further clarifies that if assessee is not able to ascertain the quantum of discount at the time of clearance of goods from factory they can resort the provisional assessment. I find in the instant case the appellant is not able to quantify certain discounts at the time of clearance of their goods from factory and categorically explained how they cannot ascertain discounts at the time of clearance of goods from their factory. On other hand department has forced to the appellant to clear their goods by presuming that value of similar goods of clearance from their depot is available therefore, they have cleared their goods after final assessment by including the discounts in assessable value of the goods cleared from the factory premises. I find that the appellant is not able to arrive correct assessable value due to quantum of discounts at the time of clearance of goods from their factory premises, therefore they have preferred provisional assessment of goods cleared from their factory premises. I hold that the appellant is correctly paying excise duty on provisional basis by adopting of notional transaction value price."

7. On the last occasion, when the matter was heard, Ms. Sukriti Das, learned counsel appearing for the respondent had placed the Division Bench decision dated July 29, 2019 of the Tribunal in the matter of the respondent itself for the previous year 2016-17, which,

as noticed above, was in respect of the show cause notice dated May 10, 2017 which was adjudicated upon by the order June 30, 2016 and the request for provisional assessment was rejected.

8. Shri Sanjay Kumar Singh, learned authorized representative appearing for the department had sought time to examine the matter.

9. Today, when the matter has been taken up, Shri Sanjay Kumar Singh, learned authorized representative of the department has placed reliance upon two decisions of the Tribunal in **Commissioner of Central Excise, Siliguri vs. Bharat Petroleum Corporation Ltd.**⁴ and **Greaves Cotton Ltd. vs. Commissioner of Central Excise, Chennai-I**⁵.

10. Ms. Sukriti Das, learned counsel appearing for the respondent has, however, placed reliance upon the earlier decision of this Tribunal in the matter of the respondent for the previous financial year and has submitted that the appeal filed by the department should be dismissed.

11. It is seen from a perusal of the aforesaid decision of the Tribunal in the matter of the respondent for the previous financial year that two issues were taken up for the consideration and they are:

(i) Whether, on finalization of provisional assessment, the Respondent was entitled to deduction of discounts known at the time of clearance of goods from the depot but quantified later on? (Appeal No.52691)

(ii) Whether request for provisional assessment has rightly been rejected. (Appeal No. 52692)

4. 2010 (255)E.L.T. 568 (Tri.-Kolkata)
5. 2017(7)G.S.T.L. 350 (Tri.-Chennai)

12. The Tribunal placed reliance upon the decisions of the Supreme Court in **Union of India & another vs. Bombay Tyres International Pvt. Ltd.**⁶ and **Union of India vs. Madras Rubber Factory Ltd.**⁷ and after referring to these two decisions, and the Circular dated June 30, 2016, the Tribunal observed as follows:

"11. The bare perusal of the Circular is sufficient to clarify that the discounts are permissible, even if, quantified subsequent to the clearances of the goods through the sales taking place from depots/consignment agents and that the assessee is correctly paying the excise duty on provisional basis by adopting of notional transaction value twice.

12. In Appeal No. E/52692/2018 the request for provisional assessment has been rejected. The above discussion about adjudicating first issue, as framed, has clarified that though the availability of the discounts was known at the time of clearance of the goods, these were quantified later but are to be deducted from transaction value. Thus, at the time of clearance of goods, since there is no quantification of demand, provisional assessment needs to be resorted to. This is also in line with the Board's Circular dated 30.06.2000. Thus, we are of the opinion that rejection of the request for provisional assessment was incorrect and unsustainable in law and the learned Commissioner (Appeals) has rightly set aside the order passed by the learned Assistant Commissioner, rejecting the request for provisional assessment.

13. As a result of entire above discussion, both the issues as framed stand adjudicated in favour of assessee-respondent. Hence, we do not find any infirmity in the order under challenge. Same is hereby upheld. Resultantly, Department's appeals stand rejected."

13. The present appeal is squarely covered by the aforesaid decision of the Tribunal which is in a matter of the respondent itself for previous financial year.

14. The two decision of the Tribunal, on which reliance has been placed by learned authorized representative appearing for the department, would not be applicable in the present case as they do not deal with discounts which though known at the time of clearance

6. 1984 (17) ELT 329 (S.C.)

7. 1995 (77) ELT 433 (S.C.)

of the goods cannot be quantified at that stage and are quantified later.

15. Thus, in view of the decision of the Tribunal referred to above, the appeal filed by the department deserves to be dismissed and is dismissed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Archana