

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

PRINCIPAL BENCH - COURT NO. 1

Date of Hearing/Order : 29.3.2017

Excise Appeal No. 610 of 2012

(Arising out of Order-in-Appeal No. 598-CE/MRT-II/2011 dated 26.12.2011. passed by the Commissioner (Appeals) Customs & Central Excise, Bhopal)

M/s Century Pulp & Paper

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Appellants

(Rep. by Sh. Ashish Vaish, Adv.)

VERSUS

CCE, Meerut

.....

Respondent

(Rep by Sh..R.K. Manjhi, DR)

**CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 52681/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed against the Order-in-Appeal No. 598/2011 dated 26.12.2011.

2. The brief facts of the case are that the Appellant is engaged in the manufacture of writing and printing papers falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985.

3. In the instant case, the main issue is: whether the cash discount realized back by the Appellant through debit notes is

chargeable to central excise duty. It is observed that the transaction value defined in clause (d) of sub-section (3) of Section 4 of the Central Excise Act, 1944 is as under:

"d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

The lower authorities have disallowed the claim of the Appellant. Being aggrieved, the assessee-Appellants have filed the present appeal.

4. With this background we have heard Shri Ashish Vaish, learned counsel for the Appellant and Shri R.K. Manjhi, learned DR for the Revenue.

5. After hearing both the parties and on perusal of record, it appears that the issue is squarely covered by the assessee's own case for the previous period in Excise Appeal No.400/2011 dated 20.12.2016 as well as in Excise Appeal 629/2008 dated 15.6.2016 where the Tribunal has also relied upon the ratio laid down by the Hon'ble Supreme Court in the case of **Purolator India vs. C.C.E.**,

Delhi III, 2015 (323) ELT 227 (SC), wherein the Supreme Court observed as under:

"6. When it came to cash discount, the Tribunal [2005 (182) [E.L.T.](#) 385 (Tri.-Del.)] upheld the finding of the Commissioner on the following basis :-

"10. Regarding cash discount, it is not in dispute that the duty has been demanded in respect of cash discount which was not actually passed on to the customers. The learned Advocate has relied upon the decision in *Pace Marketing Specialties Ltd., supra*, wherein it has been held by the Tribunal that cash discount is a discount allowed for prompt payment for the goods and when this discount is reduced from the invoice price, transaction value at the time of delivery of goods is obtained, otherwise, the invoice price is a future price and as the assessable value is to be determined with regard to time of removal financing and other cost cannot form part of the assessable value. With due regard, we find ourselves unable to agree with this view. The measure for valuation under New Section 4 of the Central Excise Act (with effect from 1-7-2000) is the "transaction value" and not the "deemed value" which was the case under the Old Section 4 of the Act. Under Old Section 4 the value shall be deemed to be the normal price, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade or delivery at the time and place of removal. In view of this clear language of the Section itself, the Bombay High Court in the case of *Jenson & Nicholson (India) Ltd. v. Union of India*, 1984 (17) [E.L.T.](#) 4 (Bom.) has held that the wholesale cash price on which the excisable duty is assessable will naturally be the price minus the cash discount allowed in the invoice. The Hon'ble High Court has proceeded on the basis that the sales are effected on the basis of the price basis which themselves mention the various terms subject to which the sales are effected. The Tribunal followed the said Judgment in *CCE, Meerut v. Station Shox Ltd.*, 1996 (85) [E.L.T.](#) 139 (T). The provision of Section 4 of the Central Excise Act have since then completely changed. As per new Section 4. Value shall "in a case where the goods are sold by the assessee, for delivery

at the time and place of the removal, the assessee and the buyers of the goods are not related and the price is the sole consideration for the sale, be the transaction value.” Thus in the present matter, the value for the purpose of Section 4 shall be the transaction value which has been defined in clause (d) of sub-section(3) of Section 4 of the Act as under :-

“transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to amount charged as priced, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of sale or at any other time, including , but not limited to, any amount charged for, or to make provision for, advertising or publicity marketing and selling organization expenses, storage, outward handling, servicing ,warranty, commission or any other matter, but does not include the amount of duty of excise, sales tax and other taxes, if any actually paid or actually payable on such goods.”

11. Thus the value has undergone a complete change. The question to be asked for determination of the assessable value under new Section 4 is what is the “transaction value” of the goods that is “the price actually paid or payable for the goods when sold.” Contrary to these provisions, under the old Section 4 the value was a deemed one, that is to say, the price at which goods are ordinarily sold in the course of wholesale trade. Now under New Section 4, one has not to look as to what is the price at which goods are ordinarily sold in the course of wholesale trade. The price actually paid or payable is to be taken up as the assessable value. In the present matter, the transaction value has to be taken for the purpose of assessment of duty under Section 4 of the Central Excise Act and as admittedly no cash discount has been given to the customers, the actual price paid by them shall be the assessable value.

12. Accordingly, we reject the appeal as far as it relates to the allowance of deduction on account of cash discount. In respect of volume discount and sales tax and duty liability

in respect of returned goods, the matter is remanded to the jurisdictional Adjudicating Authority for re-adjudication in terms of our direction. We leave the issue regarding imposition of penalty open to be decided by the Adjudicating Authority.”

7. *Shri Lakshmikumaran, learned counsel for the appellant, has argued that Section 4 of the Central Excise and Salt Act, 1944 as amended in 2000, has made no change in the situation qua cash discount as it obtained under the old Section 4. According to him, what has to be seen in order to arrive at the correct value of excisable goods under Section 4 is such value at the time of removal, and this being so under both the old Section and the new Section, cash discount has to be allowed as has been held in Union of India v. Bombay Tyre International Limited, 1984 (17) [E.L.T.](#) 329 (S.C.), and Government of India v. Madras Rubber Factory Ltd., 1995 (77) [E.L.T.](#) 433 (S.C.).”*

6. In the light of the Supreme Court’s decision followed by the Tribunal (supra), the issue is settled. Hence, there will be no need to add back the discounts to the assessable value, even if the same are subsequently recovered.

7. In the result, impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

RM