

In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/51325-51327/2016

(Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-176-15-16 dated 09.02.2016 passed by Commissioner of Appeals-I, Customs, CE&ST, Bhopal)

M/s Kisan Irrigation Ltd

...Appellant

Vs

CCE Bhopal

...Respondent

Appearance:

Present for the Appellant : Shri Mehul Jivani, CA

Present for the Respondent : Shri RK Mishra, DR

Coram: HON'BLE MR SK MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing/decision: 29.08.2017

Final Order No.56389-56391/2017

Per B. Ravichandran,

These three appeals are on identical set-of facts and the dispute being same, are taken up together for disposal. The appellants were engaged in the manufacture of various types of PVC pipes, sprinkler liable to central excise duty. During the scrutiny of records of the appellants, it was noticed that the appellants claimed cash discount on the goods sold to dealer from Depot/branches at the time of clearance of goods @ 1.5 %. The said deduction was claimed for arriving at the assessable value for payment of Central Excise duty. In some cases, the discount was not actually passed on to the buyers. On this ground, the Revenue proceeded to demand differential duty by disallowing the discount claimed by the appellants. The original authority confirmed the

differential duty and imposed equal amount of penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944. On appeal, the Commissioner (Appeals) upheld the original orders.

2. The Id Counsel appearing for the appellants submitted that the impugned orders fell in error in distinguishing the decision of Hon'ble Supreme Court in M/s Purolator India Ltd (2015 TIOL 193 SC CX). It is wrongly recorded that in the said decision, the Hon'ble Supreme Court was not dealing with the situation where the cash discount abated from the transaction value, actually not passed on to the buyer. In fact, the Hon'ble Supreme Court in para 6 of the said order examined the facts of the case with reference to cash discount. Based on findings of the Tribunal, it is clearly recorded that the duty has been demanded in respect of cash discount which was not actually passed on to the customers. The Tribunal concluded that 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. The Hon'ble Apex Court over-ruled such finding of the Tribunal and concluded that cash discount has, therefore, to be taken into account in arriving at price even under Section 4 as amended in 2000. The Id Counsel submitted that the issue has been decided in appellants own case for Unit-III as reported in 2016 (1) TMI 696 CESTAT New Delhi and also in respect of appellant's sister Unit, 2014 (62) RLT 712 CESTAT Delhi. Accordingly, the Id Counsel prayed for setting-aside the impugned orders and allowing their appeals.

3. The Id AR reiterated the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records. Admittedly in appellant's own case, the Tribunal after relying on the decision of the Apex Court in M/s Purolator India Ltd (supra) held that such cash discount is eligible for deduction to arrive at dutiable transaction value. Present impugned orders attempted to distinguish the application of the decision of the Apex Court to the present case. It is very clear that the Hon'ble Supreme Court was also dealing with a case of cash discount which was denied for deduction by the Revenue on the ground that the same was not actually passed on to the customers. In the present case also, the denial of discount for abatement from transaction value is on that ground only. Accordingly, we find no infirmity in the decision of the Tribunal in appellant's own case in following the Apex Court's decision in M/s Purolator India Ltd (supra).

3. In view of the settled legal position, following the decision of the Tribunal in appellant's own case in terms of ratio laid-down by the Hon'ble Supreme Court in case of M/s Purolator India Ltd (supra), we find the impugned orders are without merit. The same are set-aside. The appeals are allowed.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

pcs