

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 916 of 2012

(Arising out of **Order-in-Appeal** No.18/2012 (H-IV) CE dated 31.01.2012 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Deccan Enterprises Pvt Ltd.,

Plot No. B-58 to 60, APIE,
Balanagar, Hyderabad,
Telanagana – 500 037.

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APPELLANT

VERSUS

**Commissioner of Central Tax
& Central Excise**

Medchal - GST

Medchal Commissionerate,
H.No. 11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI Bazarghat Branch,
Lakdikapool, Hyderabad,
Telangana – 500 004.

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RESPONDENT

APPEARANCE:

Shri Lalit Mohan Chandna, Advocate for the Appellant.

Shri S. Hanuma Prasad, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30109/2023

Date of Hearing:24.04.2023

Date of Decision:24.04.2023

[ORDER PER: BENCH]

The Appellants are manufacturers of "Isolators" falling under Chapter 8546 during the period 2008-09 to 2010-11. They have been dispatching their finished goods after testing was conducted by RITES. It is an admitted fact that the inspection by RITES were specifically insisted upon by the customers and ultimately the charges paid to RITES were being reimbursed by the buyers. The Department issued a Show Cause Notice on the ground that the charges paid to RITES and finally reimbursed to the Appellant by the buyer is includable in the Assessable Value on which Excise Duty is paid. The Appellants were also clearing the metal scrap being generated in the course of manufacture of their finished goods. Show Cause Notice was issued on the ground since they are able to sell the metal scrap, the same would be liable for Excise Duty Payment.

After due process, the Lower Authorities confirmed the demands. Being agitated by the impugned Order-in-Original the Appellant is before the Tribunal.

2. Learned Counsel submits that the issue is covered by the decision of the Tribunal in the case of Hindustan Development Corporation Ltd., Vs CCE Kolkata [1996 (85) ELT (58) (T)] (HDCL for short) which has been upheld by the Supreme Court reported in Collector Vs Hindustan Development Corporation Ltd., [1996 (86) ELT A162 (S.C.)] He further submits that similar issues had come up before in the case of Cimmco Ltd., Vs Collector, Jaipur [1994 (74) ELT 687 (T)]. He also cites the judgment of Hon'ble Supreme Court in the case of CCE , Mysore Vs TVS Motors Co. Ltd., [2016 (331) ELT 3 (S.C.)]. Accordingly, he prays that the present Appeal is required to be allowed. In respect of the confirmed demand on metal scrap he relies on the Supreme Court judgment of Union of India Vs Ahemadabad Electricity Company Ltd., [2003 (158) ELT 3 – SC].

3. Accordingly, he prays that the confirmed demands are required to be set aside.

4. Learned AR submits that the very issue has been gone into by the Delhi Tribunal in the case of Commissioner of Central Excise, Raipur Vs Surya Alloys Industries (P) Ltd., [2015 (316) ELT 104 (TRI-DEL)]. In this case it has been held that when the inspection is mandatory on the insistence of the buyer, the same is required to be included in the valuation. He also points out that in this case the case law of Hindustan Development Corporation Ltd., cited by the Learned Counsel is distinguishable on account of factual details. In respect of the confirmed demand on account of metal scrap he reiterates the findings of the Lower Authorities and submits that the demands have been correctly confirmed against the Appellant.

5. Heard both sides and perused the documents.

6. On going through the case law of HDCL cited by the Learned Counsel, it is seen that in that case the amount was being paid by Railways to Rail India directly, whereas in the present case, the amount was being paid to RITES by the Appellant which was subsequently being reimbursed by the buyers. Therefore the facts are not similar or identical. So far as the Supreme Court's decision in the case of TVS Motors Company Ltd., is concerned, it is seen that

the issue before the Hon'ble Supreme Court was on account of pre delivery inspection and in respect of after sale service charges, which are different from the mandatory inspection fee paid by the Appellant in the present case. The relevant portion is reproduced below:

11. The expression 'any amount that the buyer is liable to pay to' is of significance. This expression shows that, apart from the price of the goods, the buyer should also be liable to pay an additional amount to the manufacturer/seller. In other words, the sale of the goods would not be made unless the buyer is also to pay an additional amount to the manufacturer, apart from the price of the goods. This is also supported by use of expression 'by reason or' or 'in connection with the sale' of the goods. The expression 'in connection with the sale of the goods' would only mean that but for the payment of the additional amount, the sale of the goods would not take place. When we keep in mind the aforesaid legal position, we find no error in the amount, the sale of the goods would not take place. When we keep in mind the aforesaid legal position, we find no error in the view taken by the Tribunal giving benefit to the assessee. Both the sides were in unison in accepting the position that no major change had been incorporated w.e.f. 1-7-2000 with emphasis on the 'different transaction value' from the 'assessable value' the essence of valuation principles had not undergone major change and the decisions delivered by this Court with regard to unamended provision on the principle of valuation were still applicable in determining the transaction value under the new provisions of Section 4 of the Act read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In fact, the Order-in-Original in M/s TVS Motors Company Ltd. Or in other cases itself proceeds on that basis. [emphasis supplied]

From a careful reading of above extract, it gets clarified that on account of certain charges being paid without which the sale could not have taken place, the same is required to be included in the Assessable Value. In the present case also since it was insisted on by the buyer, the sale could not have taken place without the mandatory inspection by the RITES. Hence the case law cited of TVS Motors does not come to the rescue of the Appellant. Further, we see that in the case of Surya Pvt Ltd., cited by the Learned AR, the issue is squarely covered against the Appellant. The inspection was conducted by RITES and the amounts were paid to them by the Appellant they were being reimbursed by the buyers. The Tribunal has held as under;

4. We have considered the matter. It is seen that sale of "Inserts" was to Railways or to others on behalf of Railways and inspection by RITES was a necessary condition of sale. It was not in the nature of secondary or optional inspection and therefore the Commissioner (Appeals) was not right in holding the inspection charges to be not includible in the assessable value on that ground. As a matter of fact, the said goods could not be sold without the said inspection by RITES and therefore cost of inspection is clearly includible in the assessable value under Section 4 of the Central Excise Act, 1944. The need for an elaborate discussion on this issue is obviated in the wake of the CESTAT judgment in the case of Hindustan Gas & Industries Ltd. (*supra*) which covers an identical issue in identical circumstances. The said judgment having considered the judgments in the case of Shree Pipes Ltd. v. CCE - [1992 \(59\) E.L.T. 462](#) (T) and in the case of Hindustan Development Corpn. Ltd. v. CCE - [1996 \(85\) E.L.T. 58](#) (T) which were referred to by the Commissioner (Appeals) came to a clear finding that the impugned charges were includible in the assessable value. Paras 4 and 5 of the said judgment are quoted below :

"4. It is settled law that charges paid for inspection or testing by a third party at the option of the buyer cannot form part of the assessable value. This is because such inspection or testing inspections has nothing to do with the marketability. In cases where the buyer does not opt for inspection by a testing agency, the same goods have become marketable without it. The position would be different in a case where every buyer insists upon such inspection by a testing agency. In that case, the goods cannot be sold till that inspection takes place. In no case can the appellant sell the goods without testing by RITES. The inserts manufactured by the appellant cannot be sold unless they are tested and approved by RITES. They therefore do not become marketable till that such testing takes place. As we have seen, it is the buyer who pays the testing charges to the appellant. It is contended that the buyer is in turn reimbursed these charges by Railways. We have to keep in mind that the sleeper manufacturers sell, not inserts themselves, but sleepers, fitted with the inserts. As far as the appellant is concerned, it recovers, in every case, the charges for inspection from its buyers, the Railways or the sleeper manufacturers. The costs incurred for such testing would therefore form part of their value.

5. This aspect, the absence of optionality and the existence of every buyer insisting upon tests by RITES do not appear to have been present in Hindustan Development Corporation v. C.C.E. In that case, the Tribunal has recorded a finding of the fact that the inspection charges were paid, not by the manufacturer, but incurred by the Railways, the only buyer. The ratio of that judgment, and of the judgment in Shree Pipes, would not apply to the facts before us.

7. It would be observed that the Hon'ble Tribunal has also considered the earlier decision in the case of Hindustan Development Corporation Ltd., and has distinguished the case on the ground when the inspection is carried on account of mandatory requirement, the value of the same would be included whereas if the inspection carried out is optional, the value of the same is not required to be included in the Assessable Value. We find that this case law referred by Learned AR squarely supports the Department's view. Accordingly, the appeal on account of the confirmed demand of Rs. 1,15,419/- on account of the reimbursement to RITES is rejected.

8. In respect of the metal scrap sold by them, it has been held in catena of decisions that marketability alone is not sufficient to levy the Excise Duty but proper manufacture in terms of Section 2(f) of the Central Excise Act, 1944 should have taken place. Further, it has been held that scrap is a necessary by-product when the manufacture takes place and accordingly it has been held that Excise duty cannot be demanded on sale of such scrap. Even in this case, going by the facts presented before us, it is seen that what is sold is only a metal scrap arising in the course of manufacture of their finished goods. Accordingly, the Appeal is allowed in respect of confirmed demand of Rs. 4,318/-.

9. The Appeal stands partly allowed on the above terms.

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)