IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 77015 of 2016

(Arising out of Order-In-Appeal No. 21/Kol-I/2016 dated 25/08/2016 passed by Ld. Commissioner of Central Excise (Appeal-I), Kolkata)

M/s. Castrol India Ltd.
(Paharpur Plant, P-7 Paharpur Siding Road, Kolkata-700088)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-I
(Kendriya Utpad Shulk Bhawan-1st Floor, 180,
Shanti Pally, Rajdanga Main Road,
Kolkata-700107)

Respondent

APPEARANCE :
Mr. Rajeev Kumar Agarwal, Advocate for the Appellant
Mr. S. Dey, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75641/2025

Date of Hearing : 22 January 2025
Date of Decision: : 22 January 2025

ORDER [PER R. MURALIDHAR]:

The appellant is manufacturer of Lubricants. This product is subjected to assessment under Section 4A of the Central Excise Act, 1944. The appellant packs generally 5 Litre of Lubricant Oil and affixes the MRP for the same. In some cases, towards promotion of their products, they pack 5.5 Litres but retained the same MRP. For the period January 2009 to March 2010, the Department issued Show Cause Notice on 25/5/2010. After due process, the Adjudicating Authority confirmed the demand. On appeal, the Commissioner (Appeals) has set aside the Order-In-Original and remanded the matter back to the Adjudicating Authority for certain verifications. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that the additional oil packed is only for promotional purposes. The MRP charged is the only the consideration received from the buyers of this product by the Appellant.

3. The Learned Advocate also submits that present proceedings are on account of periodical notice issued to the appellant. In respect of the same appellant, Show Cause Notices were issued on the same ground for the period 1999 to 2008. This Tribunal vide Final Order No. FO/A/75381/2015 dated 26/03/2015 has set aside the impugned order and allowed the appeal filed by the appellant. For the subsequent period April 2010 to December 2010, January 2011 to September 2011, two Show Cause Notices were issued. Vide OIO No. 05-06/KOL-VI/Jt. Commr/2012-13 dated 13/09/2012, the Adjudicating Authority dropped the proceedings. The appellant has filed RTI Application to know as to whether any further appeal has been preferred by the Revenue against this OIO. Vide letter dated 15/07/2014, CPIO & Assistant Commissioner, Central Excise has replied to this RTI query stating that the Committee of Chief Commissioner has accepted the Order passed by the Commissioner. Therefore, no further appeal has been filed.

4. The Learned Advocate submits that this shows that both the Final Order passed by this Bench as well as subsequent Order-in-Original passed by the Adjudicating Authority have attained finality. The present proceedings are for the in between period January 2009 to March 2010. Hence, the facts of the present case are identical to the facts of these cases.

5. Accordingly, he prays that the present appeal may be allowed by following the above cited decisions.

6. The Learned AR reiterates the findings of the lower authorities and justifies the confirmed demand.

7. Heard both sides and perused the appeal papers and other documents placed before us.

8. We find that in the case of the same appellant on the same issue, proceedings were initiated. For the period, June 1999 to March 2008, this Bench has passed Final Order No. FO/A/75381/2015 dated 26/03/2015, wherein it has held as under:-

> *14. From the impugned Order, we find that in confirming the demand, the ld. Commissioner has advanced a two fold reasoning. He has observed that since the additional quantity is provided in the bonus/promo pack for the purpose of promotion of sales, which is nothing but attributable to advertisement expenses, hence, duty is chargeable on such expenses in view of the judgement of the Hon'ble Supreme Court in the case of UOI & Ors. Vs. Bombay Tyres International Ltd. 1983(14) ELT 1896 (SC). Secondly, the ld. adjudicating authority has observed that the MRP declared by the appellant in their bonus/promo pack is not the correct MRP, hence as per the provisions of section 4A, the same requires to be re-determined and consequently the same is arrived at by applying the pro-rate value to the additional quantity of lub. Oil unable contained in the said pack.*
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> *15. We are unable to persuade ourselves to accept any of the aforesaid reasoning. The first one is fallacious inasmuch as the ld. Commissioner has himself observed that the present goods are notified under section 4A and its assessable value is to be determined under Sec.4A and not under section 4 of the Central Excise Act, 1944; hence, the additional quantity or reduction in price from the declared MRP allowed by the Appellant to promote their business cannot be equated to the principle of law laid down by the Hon'ble Supreme Court in Bombay Tyres International's case(supra) on the inclusion or exclusion of certain expenditures in the assessable value, as the said principle was laid down in the context of Sec. 4 of CEA, 1994. The second reasoning also devoid of merit in as much as in section 4A, it is laid down that if the MRP is not affixed as per provisions of The Standards of Weights and Measures Act, then the department would proceed to ascertain the correct MRP. In the present case,*

there is no dispute about the fixation of MRP on the bonus/promo pack and no objection has been raised by the department about the compliance of the requirement of the provisions of The Standards Weights and Measures Act and the Rules made thereunder. The Appellant is at liberty to ascertain its own MRP of the goods depending on the market conditions and required to affix the same on the packing, subject to the condition that in selecting the MRP for determination of value and payment of duty, in the event more than one MRP is fixed on the pack, as prescribed in section 4A of Central Excise Act, 1944, the duty is to discharged on the highest MRP. In the event the MRP is affixed correctly and satisfies the conditions laid down under Sec. 4A, then it is not open to the department to dissect the MRP, and to examine its content and arrive at a different MRP for the purpose of determination of assessable value under Sec.4A by applying the principles of valuation laid drawn for determination of value Under Sec. 4 of CEA, 1944. Accepting the contention of the revenue, if the pro rata value attributable to the additional quantity cleared as bonus quantity. in the same pack, is added to the MRP affixed on the said bonus pack, then the declared MRP will increase accordingly, which the appellant had not realized from its customers; also no such allegation has been levelled in the notice nor confirmed in the impugned order that the Appellant has collected any amount in addition to the MRP declared. Besides, as an alternative submission, the appellant has categorically claimed, supported by Chartered Accountant's Certificate that they did not clear/sale, simultaneously the normal pack as well as bonus pack In the same area affixed with the same MRP.

17. On the other hand, we find that this Tribunal in the case of Calcutta Chemicals Ltd. VS. CCE, KOL-V 2008 (229) ELT 117 (Tri.Kol.), Surya Food and Agro Ltd. vs. CCE, Noida - 2003(156) ELT 488 (Tri.-Del.) had more or less expressed a similar view. We also find that the ld. Commissioner of Central Excise for the subsequent period had dropped the demand on the same issue vide Order-in- Original No.05-06/KOL-VI/Joint Commissioner/2012-13 dated 13.09.2012. The ld. Chartered Accountant for the Appellant submits that the said order has been accepted by the department as no Appeal has been preferred against the said order.

In view of above, we do not find merit in the impugned order, consequently, the same is set aside. The Appeal is allowed, with consequential relief, if any, as per law.

9. We also find that the subsequent OIO passed by the Adjudicating Authority has also been accepted by the Committee of Chief Commissioner. This shows the dispute in this case stands resolved and has reached the finality stage.

10. Therefore, we set aside the impugned order and allow the appeal. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja