CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.E/717/2011

[Arising out of Order-in-Appeal No.YDB/71 & 72/RGD/2011, dt.31.01.2011, passed by the CCE (Appeals), Mumbai-II]

M/s Zenith Birla (India) Ltd **......Appellant**
Works-Khopoli, Dist.: Raigad 410 203

VERSUS

CCE Raigad **......Respondent**
Raigad Commissionerate,
Raigad

WITH

Appeal No. E/727/2011

[Arising out of Order-in-Appeal No.YDB/71 & 72/RGD/2011, dt.31.01.2011, passed by the CCE (Appeals), Mumbai-II]

M/s Zenith Birla (India) Ltd **......Appellant**
Works-Khopoli, Dist.: Raigad 410 203

VERSUS

CCE Raigad **......Respondent**
Raigad Commissionerate,
Raigad

Appearance:
Shri H.G. Dharmadhikari, Advocate for the Appellant
Shri N.N. Prabhudesai, Supdtt. (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86397-86398/2019

Date of Hearing: 01.08.2019
Date of Decision: 01.08.2019

PER: D.M. MISRA

These two appeals are filed against Order-in-Appeal No.YDB/71 & 72/RGD/2011, dt.31.01.2011, passed by the CCE (Appeals), Mumbai-II.

2. Briefly stated the facts of the case are that the Appellants are engaged in the manufacture of M.S. Steel Pipes, Tubes (Galvanized) etc. falling under Chapter Heading No.73 & 79 of Central Excise Tariff Act, 1985. Alleging that the Appellant had allowed cash discounts from the price, but later recovered a part of this discount so passed on, by way of issuing debit notes and showing in their books of account as financial charges, since in the nature of additional consideration, accordingly includible in the assessable value, differential duty of Rs.16,80,129/- for the period from October 2003 to June 2009 was demanded by issuing notice dt.05.01.2008, with interest and penalty. On adjudication, the demand was reduced to Rs.2,59,813/- with interest and penalty. Aggrieved by the said order, both the Appellant as well as the Revenue have filed the appeals before the learned Commissioner (Appeals), who has rejected the Assessee's appeal and allowed the Revenue's appeal. Hence, the present appeals.

3. At the outset, the learned Advocate for the Appellant has submitted that the Appellant by a Price Policy Note allowed cash discount to the customers at the time of removal of the goods from the factory and the policy was made known to the buyers before purchasing of the goods. In the said pricing policy, it is clearly spelt out that cash discount is allowed as well as slab-wise interest is also

chargeable if the payment is delayed. In the event, if the dealer fails to make the payment within 16 days from the date of delivery of goods, interest is required to be paid at the rate of flat 3% which sometimes is equal to the cash discount of 3%. Further, in case the dealer is making the payment within four days from the date of delivery, no interest is charged and also he is eligible to cash discount. It is their contention that the allegation that the Appellant had recovered in excess of the cash discount is incorrect inasmuch as these are two separate transactions. One transaction is that of sale on which the terms and conditions are agreed and accordingly as per the policy, various discounts are allowed against the transactions. The second set of transactions is extending the credit facility for certain period which was mutually agreed and the financial charges are required to be paid by the customers in the event they delay in making payment. Therefore, recovery of interest or financial charges or financial cost cannot be considered as an additional consideration from the buyers to the sellers, hence not includible in the assessable value. In support, the learned Advocate referred to the following judgments:-

a) Distant Horizon Orchard Pvt. Ltd Vs CCE (A)
2015 (37) STR 202 (Cal.)

b) John Dere (I) Ltd Vs CCE
2014 (311) ELT 189 (Tri-Mumbai)

c) CCE Vs Raja Ram Corn. Products
2004 (167) ELT 410 (Tri-Del)

d) Shree Renuka Sugar Ltd Vs CCE
2007 (210) ELT 385 (Tri-Bang.)

e) Simplex Infrastructures Ltd Vs CST
2016 (42) STR 634 (Cal.)

4. It is further submitted that the Adjudicating authority, taking note of the fact that the transactions entered into by the Appellant with their customers were known to the Department from the letter addressed to the Superintendent way back on 25.02.2002 and 14.06.2002, dropped the demand for the extended period. The learned Commissioner (Appeals) erred in holding that the Appellant has camouflaged the recovery of cash discount as financial charges while confirming the demand for the extended period. He further submits that since the demand is unsustainable in law and consequently penalty also cannot be imposed on the Appellant. The learned Advocate has further submitted that Hon'ble Supreme Court in the case of Purolator India Ltd Vs CCE, Delhi-III – 2015 (323) ELT 227 (SC) observed that the deduction of cash discount from the value in consideration of expeditious payment, is admissible.

5. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

6. Heard both sides and perused the records.

7. The short question involved in the present appeals is whether the charges recovered from the customer for the delayed payment by issuance of debit note to be added to the assessable value being in the nature of additional consideration while computing the assessable value of the goods sold. Revenue's contention is that the Appellants had passed cash discount to the customers specifying the period within which if the payment is made by the customer, would be entitled to cash discount @ 3%. In the event the customer

delays in making such payment, beyond four days, slab-wise charges are recovered from the customers. It is pleaded by the Revenue that the said recovery of financial charges are nothing but additional consideration flowing from the customers to the Appellant and consequently requires to be included in the assessable value. The Appellant, on the other hand, contended that the cash discount is allowed to the customers who makes the payment within the stipulated period and there is no dispute on it. However, if the customers delay in making payment beyond specified period, interest is charged, which is the financial cost to the Company for late receipt of payment and accordingly debit notes were issued to the Appellant for recovery of said financial charges separately.

8. We find that this issue of inclusion of financial charges in the value has been considered by this Tribunal in the case of Arham Spinning Mills Vs CCE Jaipur – 2006 (197) ELT 365 (Tri-Del), wherein it is observed as follows:-

> "4. The invoices made available to us by the Revenue and the assessee also show that the appellant is not seeking any reduction from the price of the material towards financial cost; but is seeking non-inclusion of financial cost which is charged extra. We reproduce the particulars mentioned in the invoice:
>
> (1) "Excise duty to be charged extra.
> (2) Sales Tax to be charged extra.
> (3) Freight/Insurance to be charged extra.
> (4) Financial cost will be charged extra.
> (5) Cash Discount equivalent to Financial cost, will be allowed if payment made within 7 days.
> (6) Trade Discount as indicated above will be allowed at the time of taking delivery of the goods.
> (7) Interest at the rate of 24% will be charged on overdue payments".
>
> Thus, invoices show price of yarn and other costs like sales tax, insurance freight, octroi and financial cost etc. over and above the price of the yarn sold. It is clear from this also that the appellant manufacturer as well as its buyer treat financial cost as additional cost and not as part of the cost of the yarn. In such a situation, there is no ground for holding that the assessee is seeking any reduction from the sale price of the yarn or that financial cost is a realisation towards yarn sold. It is a realisation towards interest for the time taken in making payment.

> 5. It is well settled that assessable value is to be worked out with regard to time of removal of the goods under assessment. Collection towards delay in payment, be it called 'interest' or 'Financial cost' or by any other term, is a cost subsequent to the time of removal of the goods. Such a cost cannot find place in the price of the goods at the time of removal.
>
> 6. The appellant has also placed reliance on the decision of the Supreme Court in the case of CCE,. New Delhi v. Vikram Detergent Ltd. — 2001 (127) E.L.T. 641 (S.C.) that banking charges, being in the nature of post-removal expenses, is deductible from the sale price. Para 11 of the judgment also clearly mentions that "interest on receivables earned on account of the time lapse between the delivery of the goods and the realisation of the monies is deductible from the assessable value of the goods at the time of removal from the respondents' factories". This being the legal position, there is no justification for including 'financial cost' in the assessable value. Duty demand is clearly not sustainable.
>
> 7. In the result, the impugned order is set aside and appeals are allowed with consequential relief, if any, to the appellants."

9. Both sides fairly agree and submit that the financial charges cannot form the part of the assessable value and also cash discount from the price is admissible in view of the ratio laid down by Hon'ble Supreme Court in the case of Purolator India Ltd (supra). However, the objection of the Revenue is that the Appellant had collected extra amount by not passing the cash discount and in the guise of financial charges, hence, being an additional consideration, hence to be included in the value of the goods. Rebutting the said argument, the Appellant had referred to their price policy, disclosing there under the slab-wise cash discount admissible on the sale price slab-wise; also in the said policy, they disclosed interest for delayed payment depending upon the number of days delay, for which rate of interest also varies. The learned Advocate for the Appellant referring to the example mentioned by the learned Commissioner in the impugned order has submitted that the interest is recovered for the delayed period and also they had recovered certain financial charges in addition to the interest for delayed payment by the customers. In this regard, he has referred to the letter

dt.14.06.2002 addressed to the Superintendent (Pages 66-67 of the Appeal Paper Book). Therefore, it is their contention that the financial charges are recovered only when the delay exceeds more than 33 to 43 days. It is their contention that measures have been taken to discourage the late payment and also to compensate the financial cost incurred by the Appellant for not receiving the payment such charges are made. The amounts received are reflected in their balance sheet as financial charges only. We find merit in the contention of the learned Advocate for the Appellant. It could be a coincidence that in certain cases the financial charges recovered from the customers may be equal to the cash discount, but reading their credit policy structure as a whole annexed to the appeal memo, it is clear that no recovery is made in excess of cash discount passed on as alleged by the Revenue other than recovery of the financial charges, for delay payment than the prescribed period.

10. In these circumstances, we do not find merit in the impugned orders, accordingly, the same are set aside and the appeals are allowed with consequential relief, if any, as per law.

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

(D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Bahalkar