

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10576 of 2016- DB

(Arising out of OIO-DMN-EXCUS-000-COM-0005-0006-15-16 dated 30/12/2015 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Panama Petrochem Ltd

Plot No. 78/2, Daman Industrial Estate,
Polycab Road,
Daman, Daman (UT)

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-Daman

3rd Floor...Adarsh Dham Building,
Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat, 396191

.....Respondent

APPEARANCE:

Shri Nimish K Oza, Advocate for the Appellant

Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10769/2024

DATE OF HEARING: 05.12.2023
DATE OF DECISION: 05.04.2024

RAMESH NAIR

The present appeal has been filed to assail the Order-in-Original No. DMN-EXCUS-000-COM-0005-0006-15-16 dated 30.12.2015 *vide* which the learned Commissioner has confirmed the duty demand by including the freight/insurance charges for delivery at buyer's place in the transaction value.

1.1 Brief facts of the case are that the appellant entered in contract with IOCL, HPCL. As per the contract the appellant is responsible for delivery of goods to the destination of different location as mentioned in contract. The case of the department is that the freight/insurance charges collected by the appellant in addition to the price of the goods is includible in the transaction value and excise duty is chargeable on such freight/ insurance charges. Accordingly, two show cause notices were issued to the appellant

and subsequently demand was confirmed by the Original Adjudicating Authority *vide* Order-in-Original dated 30.12.2015. Being aggrieved by the impugned Order, appellant is before this Tribunal.

2. Shri Nimish K Oza, Learned Counsel appearing on behalf of the appellant submits that the excisable goods were removed from the factory gate of the appellant. The price of the excisable goods are firm and fixed in which freight charges are not included. The Purchase order specifically provided for charges pertains to freight over and above the price of excisable goods. The freight charges shown separately in the invoices cannot be added in the assessable value. He placed reliance on the following judgments:-

- JCB Ltd. Vs Commissioner of Central Excise-2002 (146) ELT 31 (S.C)
- Commissioner Of Central Excise, Noida Versus Accurate Meters Ltd,2009 (235) E.L.T. 581 (S.C.)
- Commissioner of Central Excise, Allahabad Vs. Bharat Conductors Pvt. Ltd- 2009(11) LCX0124 (CESTAT-Delhi)
- Escorts JCB Limited V Commissioner of Central Excise, Delhi II, 2002 (146) ELT 31(SC)
- Prabhat Zarda Factory Limited V Commissioner of Central Excise 2002 ELT497(SC)
- Commissioner of Central Excise, Shillong vs. India Carbon Ltd. (2011(269) E.L.T.6. S.C)
- Savita Oil Technologies Ltd- 2022 (06) LCX0218, Ahmedabad Tribunal
- IDMC Ltd- 2023(03) LCX0019, Ahmedabad Tribunal

2.1 He also submits that there is no evidence on record to show by the department that the said charges are nothing but, arrangement for depressing the assessable value. In absence of any such evidence the amount shown separately in the invoices as freight charges cannot be included in the transaction value.

2.2 He further submits that the demand for extended period is time bar in as much as the appellant unit frequently audited by the audit department. He referred to the copies of audit reports which are placed on

page 34 to 49 of the appeal memo. Therefore there is no suppression of fact on the part of the appellant.

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have considered the rival submissions and perused the material available on record. The issue involved in the present case is that whether the freight/insurance charged separately in the sale invoices of excisable goods is includible in the assessable value of such excisable goods.

4.1 Having considered the rival contention we find that freight/insurance have been charged separately and received separately. We also take notice that the buyers of the goods Indian Oil Corporation Ltd. and Hindustan Petroleum Corp. Ltd. have issued purchase order specifying the price for the goods separately and also specifying the transportation cost for the supply of goods. Accordingly, appellant have supplied the goods and raised invoices for the price of goods and the transportation. Thus, it amounts to showing the cost of transport separately in the invoices.

4.2 The relevant Rule 5 of the Valuation Rules is reproduced below:-

“Rule 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1. - “Cost of transportation” includes -

- (i) the actual cost of transportation; and*
- (ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.*

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods”.

From the above rule it can be seen that when goods are sold for delivery at a place other than place of removal, transaction value of excisable goods shall not include actual cost of transportation from the place of removal up to the place of delivery of such excisable goods. As per the rule reproduced above, in order to allow the deduction of the cost of transportation following criterion should be fulfilled :

- (a) The goods should be sold for delivery at a place other than place of removal.
- (b) Cost of freight/insurance should be in addition to the price for the goods.
- (c) Cost of transportation should be shown separately in the invoices.

4.3 As regards the first criterion, the place of removal is factory gate, however the goods were delivered at customer place. Therefore goods were sold for delivery not at the place of removal (i.e. factory gate) but at other place i.e. customer door step. We have perused copies of the purchase contract placed by the Indian Oil Corporation Ltd and Hindustan Petroleum Corp. Ltd. and invoices issued by the Appellant. From the invoices, it is seen that the freight/insurance shown in the invoices is in addition to basic price of the goods. It is clear from the terms of the purchase contract that basic price and other components have to be indicated separately. Therefore, there is no dispute that basic price and the freight/insurance components are clearly indicated separately in the invoices and therefore criterion i.e. cost of transportation should be in addition to the basic price of the goods stand fulfilled.

4.4 In the light of these facts and legal provisions, we find no valid reason for disallowing the deduction for the freight/insurance paid inasmuch as the sales are FOR destination. We also find that a coordinate Bench of CESTAT in the case of *Sterlite Optical Technologies Ltd. v. CCE & C, Aurangabad* - 2015 (329) E.L.T. 341 (Tri.-Mumbai) has taken a view in identical facts that freight/insurance will be allowable as a deduction from the composite price. Thus, the contention of the Department to include the freight/insurance amount in the assessable value does not meet the test of

law and hence not legally sustainable. Hence, we find no merit in order passed by the appellate authority.

4.5 We also find that in view of the various judgments cited by the Ld. Advocate, freight/insurance amount is not includable in the assessable value of the goods for charging excise duty. Since we have decided the matter on merits of the case, we are not going to the issue of limitation raised by Ld. Advocate.

5. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 05.04.2024)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**

Raksha