

CHAPTER III VALUATION OF EXCISABLE GOODS

Duty at ad valorem rates is charged on a wide range of excisable commodities. Valuation of such goods is governed by section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Valuation of specified excisable goods is governed by their retail sale price under section 4A of the above Act. We communicated to the Ministry, 8 cases of short levy of duty due to incorrect valuation involving revenue of ₹ 17.57 crore, as mentioned in the following paragraphs. The Commissionerate had accepted (December 2011) the audit observation in one draft audit paragraph involving revenue of ₹ 8.84 lakh.

3.1 Non-Inclusion of additional consideration in value

Section 4(3)(d) of the Central Excise Act, 1944 stipulates that transaction value of goods chargeable to central excise duty would not include the amount of duty of excise, sales tax and other taxes, actually paid or actually payable on such goods.

The Board had clarified (30 June 2000) that tax deferred at the time of transaction and subsequently held as not payable was not deductible from the assessable value. The CEGAT, in the case of M/s. Andhra Oxygen Pvt. Ltd. v/s CCE (Tribunal-Kolkata) {2003 (156) 239} held that sales tax collected from buyers and not paid to the sales tax department because it was exempted under the Sales Tax Act, would be considered as additional consideration flowing to the assessee. Rule 6 of the Central Excise Valuation Rules, 2000 stipulates that in cases where price was not the sole consideration, the assessable value would be based on the aggregate of the price and money value of the additional consideration flowing directly or indirectly from the buyer to the assessee.

3.1.1 The Government of Maharashtra introduced the package incentive scheme for deferred payment of sales tax whereby the assessee was allowed to collect sales tax from the buyer, retain it and repay it after a prescribed period of deferral. The Government of Maharashtra further amended the provisions of Sales Tax Act and issued a notification in November 2002 providing additional incentive for premature repayment of deferred sales tax liability.

M/s Three M Paper Mfg. Co. Ltd., in Kolhapur, M/s Uttam Galva Steels Ltd., in Raigad, M/s Racold Thermo Ltd., in Pune I and M/s ISMT Ltd., in Pune III commissionerates, engaged in manufacture of various excisable goods, opted for premature payment of sales tax during the years 2006-10 under the aforesaid scheme. They received cumulative discount of ₹ 121.15 crore due to premature/pre-payment of sales tax liability accrued at net present value. Sales

tax amount collected but not paid to the Government was an additional income and was liable to be added to the assessable value. Non-inclusion of this additional income resulted in short levy of duty of ₹ 16.11 crore which was recoverable with interest.

When we pointed this out (between August 2010 and March 2011), the Commissionerate in three cases stated (between March and August 2011) that in view of the Board's clarification dated 12 March 1998, sales tax was deductible from the wholesale price for determination of assessable value under section 4(4)(d)(ii) of the Act.

The reply of the Commissionerate was not correct in view of the Board circular dated 30 June 2000 and the CEGAT decision cited.

The reply of the Ministry had not been received (December 2011) in the instant case. It had admitted similar audit observation in cases reported in para 2.1.1 of Audit Report No.23 of 2010-11.

3.1.2 As per section 4(1) of Central Excise Act, 1944, the assessable value of excisable goods is normally the transaction value. The Board vide its letter dated 30 June 2000 clarified that cash discount or prompt payment discount would not form part of the transaction value unless such discount had actually been passed on to the buyer of the goods, which was further reaffirmed by Board's Circular dated 1 July 2002.

M/s Birla Tyres Ltd., in Bhubaneswar I Commissionerate, engaged in the manufacture of tyres, tubes falling under chapter 40 cleared 22,87,916 nos. of different sizes of tyres, tubes and flaps to M/s Tata Motors Ltd. It paid duty after reducing the purchase order value by 1.45 per cent to 2.53 per cent towards bill discounting charges. The bill discounting charges were payable by the buyer to the bank as bank charges on the basis of agreement between the assessee and the buyer. Since the deductions from the purchase price were paid by the buyer to the banker as bank charges on behalf of the assessee, it was an inadmissible deduction from the assessable value as it was not in the nature of cash discount/prompt payment discount and had not been passed on to the buyer. This resulted in short levy of duty of ₹ 1.22 crore during 2008-09 to 2009-10.

When we pointed this out (September 2009), the Commissionerate stated (March 2010) that the value was governed by transaction value as defined in section 4 of the Central Excise Act, 1944 read with Board's circular dated 30 June 2000 regarding discount not forming part of assessable value. The Commissionerate also intimated (April 2011) that three show cause cum demand notices for ₹ 3.10 crore covering the period from April 2005 to September 2010 was issued.

The reply of the Commissionerate was not correct since the bank charge was paid by the buyer on behalf of the assessee. The net effect was that the buyer had actually not received any discount.

The reply of the Ministry had not been received (December 2011).

3.2 Incorrect determination of cost of excisable goods

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. Further, the Board had clarified (13 February 2003) that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standard (CAS-4) method only.

M/s TATA Steel Ltd., in Bhubaneswar II commissionerate, engaged in manufacture of High Carbon Ferro Manganese under chapter 72, transferred 16979.67 tonne of HC Ferro Manganese during 2008-09 on stock transfer basis to its sister unit i.e. M/s Tata Steel, Jamshedpur for captive consumption. As per Board circular dated 13 February 2003, the value of goods consumed captively should have been determined in accordance with the Cost Accounting Standard (CAS-4) and certified by Cost Accountant. We observed that the assessee had not determined the value in accordance with the CAS-4. It had paid duty on transfer price prepared on quarterly cost basis price ranging between ₹ 23,000 per tonne to ₹ 28,125 per tonne. This method of valuation was not in accordance with the Board's instructions. Hence, the total duty paid of ₹ 5.28 crore was subject to review. The department was required to instruct the assessee to carry out the exact calculation and recover differential duty, if any.

When we pointed this out (October 2011), the Ministry stated (December 2011) that a reference had been made to the policy wing of the Board for further examination.

3.3 Other cases

3.3.1 Short payment of duty due to misclassification

Central Excise Tariff 2009-10, under heading 4802 covers 'uncoated paper and paperboard of a kind used for writing, printing or other graphic purposes, and non-perforated punch card and punch tape paper in rolls or rectangular (including square) sheets of any size, other than paper of chapter heading 4801 or 4803, hand made paper and paper board'.

M/s Sampark Industries Ltd., in Noida commissionerate, engaged in manufacture and sale of metallised paper, classified it under tariff item 48026920 (Poster paper). The total sale value during April 2008 to July 2009 was ₹ 3.20 crore, on which the assessee paid excise duty at the rates of 8 per cent and 4 per cent. The assessee manufactured metallised paper, which did not fall under the category of 'uncoated' paper. It should have been classified

under tariff item 48115900, which covers paper, paperboard, cellulose fibers, coated, impregnated etc., with excise duty rates ranging between 14 per cent and 8 per cent. The incorrect classification resulted in short payment of excise duty of ₹ 15.38 lakh which was recoverable alongwith interest.

We pointed this out to the Commissionerate/Ministry in March 2011/October 2011. Their reply had not been received (December 2011).

3.3.2 Non-payment of duty

Rule 4 of the Central Excise Rules, 2002 stipulates that no excisable goods, on which any duty is payable, shall be removed without levy of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided in the Act/Rules.

M/s Neo Carbons Pvt. Ltd., in Patna commissionerate, engaged in the manufacture of Calcined Petroleum Coke, fabricated capital goods namely Rotary Klin with complete accessories for its own use. After using in his factory, the assessee cleared it to another unit without payment of duty. The process carried out by the assessee in fabricating Rotary Klin was a manufacturing process, hence duty should have been paid at the time of removal of goods. However, the assessee cleared capital goods worth ₹ 61.81 lakh without payment of duty during June 2005 to March 2009. This resulted in non-payment of duty alongwith education cess of ₹ 5.97 lakh which was recoverable with interest of ₹ 2.47 lakh.

When we pointed this out (July 2008), the Ministry stated (December 2011) that opinion had been sought from the policy wing of the Board.