
(2015) 11 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 532 of 2008 with C.A. No. 2463 of 2008

Castrol India Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Chennai

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Citation : (2015) 326 ELT 420

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri S.K. Bagaria, Senior Advocate, Udit Jain, Alok Yadav, Siddhartha Chowdhury and K. Ajit Singh, Advocates, for the Appellant; S/Shri Rupesh Kumar, T.M. Singh, Ms. Sadhana Sandhu, Jitin Singhal, Pratik and B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. The appellant-assessee herein is a registered manufacturer of lubricating oils and its allied preparations falling under Chapter sub-heading 2710.90 and 3403.10 respectively of the Schedule to Central Excise Tariff Act, 1985.

2. It has been selling goods to its customers on cash sales basis as well as on credit. If the goods are sold on cash sales basis, i.e., against the delivery of goods, immediate cash payment is realised and the assessee has been giving cash discount of 1.75 per cent. Insofar as credit sales are concerned, it receives the payment after the expiry of credit period given. The price which is charged by the assessee from the customers is by uniform price. Insofar as credit sales are concerned, for the purpose of arriving at the transaction value, the assessee is entitled to adjust the interest on receivable. Since that is known only at the end of the year, provisional assessment is carried out during the year when the goods are cleared from time to time and excise duty is paid thereupon. Thereafter, at the time of final assessment, the assessee has been submitting documents in support of interest on receivables.

3. This happened for the period in question as well, which is April 1996 to December 1996. Vide letter dated 15-4-1996, the assessee had requested the Assistant Commissioner of Central Excise, Division I, Nandanam, Madras, for assessment on provisional basis. It was specifically stated in this letter that the assessee had given to its dealers various discounts for the period January, 1995, to December, 1995, as per discount scheme set out in Exhibit "E" to the said letter and the main features of the said scheme were also disclosed in the letter. Acceding to the request contained in the letter, the Assistant Commissioner vide his communication dated 25-6-1996 informed that provisional assessment had been ordered under Rule 9B of the Central Excise Rules, 1944, in respect of clearances made during the aforesaid period.

4. Thereafter, vide letter dated 30-6-1997, the assessee requested for finalisation of provisional assessment made during the aforesaid period. Along with this letter, the assessee had also enclosed the certificate of its Chartered Accountant certifying the rebates, interest on receivables and sales tax (non-recoverable) during the period in question and on that basis carried out calculations. To say it precisely, interest on receivables was calculated at the rate of Rs. 0.563 per unit quantity and benefit thereof was claimed. This request of the assessee was not accepted by the Assistant Commissioner, who issued Show Cause Notice dated 29-1-1998 in this behalf. The proposed move in the Show Cause Notice was thereafter confirmed vide Order-in-Original dated 17-4-1998. This order was upheld by the Commissioner (Appeals) as well as Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the Tribunal) [2007 (216) E.L.T. 30 (Tribunal)].

5. The appeal was filed against the order of the Tribunal [2006 (206) E.L.T. 573 (Tribunal)] in this Court. The said appeal being Civil Appeal No. 4142 of 2006 was disposed of by remitting the matter to the Tribunal with a direction for fresh consideration of the appeal in view of law laid down in some of the judgments of this Court, as is clear from the following short order passed in the said appeal [2007 (218) E.L.T. A127 (S.C.)] :-

"Counsel for the parties are agreed that the impugned order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for short "the Tribunal") be set aside and the case be remitted back to the Tribunal for a fresh decision thereon in accordance with the law laid down by this Court in A. Infrastructure Ltd. v. Commissioner of Central Excise, Jaipur [2004 (167) E.L.T. 369] and Commissioner of C. Ex., Hyderabad v. Novapan Industries Ltd. [2007 (209) E.L.T. 161 (S.C.)]. Ordered accordingly.

All contentions are left open to be agitated before the Tribunal.

The appeal stands disposed of accordingly."

6. After remand, the Tribunal has passed Final Order dated 26-6-2007 [2007 (216) E.L.T. 30 (Tri.-Chennai)] dismissing the appeal filed by the assessee and disallowing the deduction claimed on account of interest on receivables. This

order is the subject matter of the instant appeal at hand.

7. A perusal of the order of the Tribunal would reflect that after examining the invoices which were produced on record by the assessee, on such invoices, unit price of given commodity shown in the Cash on Delivery (CoD) invoice is less by 1.75 per cent of the unit price of the same goods shown in the credit sale invoice. From this, the Tribunal concluded that the price mentioned in the credit sale invoice for a given product is the normal price and the one mentioned in the CoD invoice is the discounted price. Further, according to the Tribunal, none of these credit sale invoices indicate any claim of interest on receivables. On that basis, finding is arrived at to the effect that the assessee has not been able to establish that the price charged on the goods sold to the customers on credit basis contained an element of interest inbuilt therein and since there is no evidence of such interest having been separately recovered by the assessee from the customers, the assessee was not entitled to claim any deduction of any "interest on receivables" from sale price for the purpose of determining the assessable value of the said goods.

8. After going through the records with the assistance of the learned counsel for the parties, we feel that the aforesaid conclusions arrived at by the Tribunal are contrary to the record and, thus, perverse.

9. The Tribunal has, itself, in paragraph 4 of the impugned order, mentioned that the price charged in the invoices for sales on credit terms are of WHEEL BEARING GR 88 and ALL PURPOSE GRS 88 as Rs. 68.00 and Rs. 69.50 respectively. On the other hand, price charged in invoices for cash sales was Rs. 66.81 and Rs. 68.28 respectively.

10. The Tribunal itself, after mentioning those prices, failed to notice that the difference between price charged on credit terms and cash sales was to the extent of 1.75 per cent, which was nothing but cash discount. For the sake of convenience, we demonstrate the same as under :-

Details of the invoices considered by the Tribunal

WHEEL BEARING GR 88

ALL PURPOSE GRS 88

Prices charged in invoices for sales on credit terms

Rs. 68.00

Rs. 69.50

Prices charged in invoices for cash sales

Cash Discount of 1.75% deducted from credit price

Rs. 1.19

Rs. 1.22

Cash prices charged in invoices for cash sales

Rs. 66.81

Rs. 68.28

11. Thus, in the invoices for sales on credit terms, interest for the credit period was in built in the credit price.

12. We, thus, allow these appeals and thereby set aside the order of the authorities below and quash the demand.

13. The appellant shall also be entitled to consequential relief of refund of the differential amount paid by it to the Revenue.