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**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-10-2002

**Reported in** : (2003)(87)ECC701

**Judge** : K Usha, a T V.K.

**Appellant** : Kripa Chemicals Ltd.

**Respondent** : Cce

**Judgement** :

1. This is an appeal at the instance of the assessee challenging the order passed by the Commissioner of Central Excise, Indore dated 30.10.2001. The issue raised for consideration is whether quantity discount availed by the appellant from the suppliers of raw materials is liable to be added to arrive at the assessable value of its product.

2. The appellants are engaged in the manufacture of LINEAR ALKYL BENZENE SULPHONIC ACID (LABSA) falling under Chapter Heading 3402.90 of the Schedule to the Central Excise & Tarif Act, 1985 and Spent Sulphuric Acid falling under Heading 2807. In these appeals we are concerned only with the dispute relating to assessable value of LABSA.The main inputs for manufacture of LABSA are (1) LINER ALKYL BENZENE (LAB) and (2) Sulphuric Acid. The appellants are procuring LAB from three manufacturer suppliers, namely, M/s. Indian Petrochemicals Corporation Ltd. (IPCL), M/s. Tamil Nadu Petro Products Ltd. (TPPL) and M/s. Reliance Industries Ltd. (RIL). They were procuring Sulphuric

Acid from M/s. Rama Phosphates, Indore and M/s. Khaitan Fertilizers Ltd. LABSA manufactured by the appellant are sold to M/s. Hindustan Lever Ltd. (HLL), M/s. Vikram Detergent Pvt. Ltd. (VDPL), M/s. Guljag Chemicals Pvt. Ltd. and M/s. Indira Poly Fab Pvt. Ltd., M/s. Varuna Detergents and M/s. Oriclean Pvt. Ltd. M/s. HLL is a bulk buyer of LAB from IPCL. They were therefore being granted bulk discount by IPCL. On the recommendation of HLL the appellants were granted such discount by IPCL.

3. Show cause notice was issued to the appellant on 5th July 1996 demanding a duty of Rs. 6,08,28,462 on two grounds. It was alleged that Modvat credit taken by the appellants on the raw material (inputs) was not included in the assessable value of LABSA and the demand on the above basis accounted for Rs. 4,19,53,363. This demand was dropped by the Commissioner in view of the decision of the Tribunal in Dai Ichi Karkaria v. CCE, Pune 1996 (81) ELT 676, which was later upheld by the Supreme Court in CCE, Pune v. Dai Ichi Karkaria, 1999 (65) ECC 354 (SC) : 1999 (112) ELT 353 (SC).

4. The second part of the demand covering Rs. 1,88,75,099 was on the basis on non-inclusion in the assessable value of LABSA the bulk quantity discount availed by the appellants from the suppliers of raw materials LAB. It was alleged that the appellant receives this discount on account of their buyers HLL. Therefore, the amount of discount is to be treated as additional consideration received by the appellant which is to be added to the assessable value of LABSA. The Commissioner passed a common order in respect of ten show cause notices and confirmed the duty demand of Rs. 2,32,84,360. Penalty of an equal amount was imposed under Section 11AC of the Central Excise Act read with Rule 173Q of the Central Excise Rules. Appellant was also held liable to pay interest under Section 11AB.5. It is contended on behalf of the appellant that discount received from raw material supplier cannot be treated as additional consideration in terms of Rule 5 of the Central Excise Rules. It is submitted that prior to 1.4.94 they were paying duty on the gross price without taking into consideration the discount due to mistake. But from 1.4.94 the discounted price was taken into consideration and they paid duty on the discounted price. In any view of the matter, it is submitted by the Learned Counsel for the appellant that the net price charged by the buyers of

LABSA prior to 1.4.94 and after 1.4.94 was the same. According to the appellant they are, in no way, related to HLL or any buyer. The transaction was on principal to principal basis. The department has no case that the assessable value of LAB was wrongly given and no proceedings had been initiated against the manufacturer of LAB on that ground. It is further contended that the price of HLL is in no way depressed for the reason of receiving bulk discount on the raw material LAB. The sale price of other manufacturers of LABSA is approximately the same as of the appellant.

6. It is also submitted that sustained part of the demand is barred by limitation. The appellant had not suppressed any relevant information from the Central Excise authorities and as such extended period of limitation cannot be applied. Since the major portion of the demand relates to the period prior to 28.9.96 no penalty could be imposed under Section 11AC and no interest under Section 11AB could be demanded for that period. Learned Counsel placed reliance on the decisions of this Tribunal in support of its contention that the quantity discount received from the supplier of LAB cannot be treated as additional consideration flowing from HLL, the buyer, so as to include the same in the assessable value of LABSA.In Mazagon Dock Ltd. v. CCE, 2000(115) ELT 396 the question that came up for consideration was whether subsidy received by the assessee could be added to the assessable value. ONGC had placed orders to the appellant-assessee for the manufacture of two jack-up rigs. As per contract between the parties the price was fixed. Later a show cause notice was issued on the ground that the assessee had received subsidy from Government. Out of the amount of subsidy which came to 30% of the price of the rigs, 20% was receivable directly from the Central Government and 10% from ONGC. Revenue, therefore, took the view that the subsidy received from ONGC is additional consideration flowing to the appellant manufacturer. On the facts of the case the Tribunal came to the conclusion that there was no material to show that that the price shown in the contract between the appellant and ONGC was not the real prices. Subsidy paid by the Central Government to maintain the ship building yards by the appellant cannot be considered as consideration flowing from the buyer, namely, ONGC. Merely because 20% of the subsidy amount was paid by ONGC on the directive of the Central Government, it cannot be taken that such payment-was additional

consideration for the jack-up rigs.In CCE, Meerut v. Coolade Beverages Ltd., 2000 (116) ELT 622 the question arose was whether payment made by the present company in order to set off huge losses sustained by the assessee company is includible in the assessable value of the goods manufactured by the assessee. The Tribunal took the view that in order to come under Rule 5 it must be an additional consideration flowing directly or indirectly from the buyer to the assessee. A payment by parent company in the above nature cannot be treated as additional consideration flowing from the buyer.

8. In IFGL Refractories Ltd. v. CCE, Bhubaneswar 2001 (134) ELT 230 the question that came up for consideration was whether benefit of import of raw materials by manufacturer without payment of customs duty in lieu of licenses surrendered by buyer can be treated as additional consideration following from buyer to the manufacturer when there is no dispute about the price charged by the manufacturer. The Tribunal took the view that it cannot be treated as additional consideration flowing from the buyer for discarding the contract price between the buyer and the seller.In Brindavan Beverages Ltd. v. CCE, Banglore, 2001 (135) ELT 766, the tribunal held that any additional consideration paid by the supplier of raw materials cannot be added to the assessable value of the final product.

10. Learned Departmental Representative reiterated the reasoning given by the Commissioner in support of his finding.

11. We find merit in the contention raised by the appellant, Even though IPCL granted quantity discount to the appellant in respect of purchase of LAB it cannot be contended that it is an additional consideration flowing from HLL, buyer of final product LABSA. The provisions of Rule 5 can be applied only when it is shown that the price is not the sole consideration. If it is so established, then the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee has to be added for arriving at the assessable value. In the present case, there are no materials placed before us by the Revenue, which could justify taking recourse to Rule 5. The appellant's price to HLL and other buyers were the same. It would therefore show that the quantity discount obtained from IPCL had no effect on the price agreed between the parties. The Revenue

has not been able to show that appellant had depressed the prices of their goods sold to HLL in view of the quantity discount obtained from IPCL for purchase of the raw material LAB. The ratio of the decisions of the Tribunal relied on by the appellant would support its contention.

12. In the light of the above, we set aside the order impugned and allow the appeal.

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