

CHAPTER II

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 with reference to the retail sale price in respect of specified excisable goods is governed by section 4A of the above Act. A few cases of short levy of duty due to incorrect valuation involving revenue of ₹ 101.86 crore, are illustrated in the following paragraphs. These observations were communicated to the Ministry through 14 draft audit paragraphs. The department had accepted (till December 2010) the audit observations in 2 draft audit paragraphs with a revenue implication of ₹ 1.83 crore.

2.1 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 when 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 should 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.

2.1.1 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 and 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 Ispat Industries in Raigarh, M/s Thyssen Krupp Electrical Steel India Pvt. Ltd., in Nasik, M/s Endurance Technologies Pvt. Ltd., in Pune I, M/s Guardian Steels Pvt. Ltd., in Thane I, M/s Hi-Tech Plast Ltd., in Pune III commissionerates, engaged in the manufacture of various excisable goods, opted for premature payment of sales tax during the years 2007-09 under the aforesaid scheme. The records of the assessee indicated that they had received cumulative discount of ₹ 718.77 crore due to premature/prepayment 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 ₹ 97.45 crore which was recoverable with interest.

We pointed this out to the department/Ministry between April 2010 and October 2010; their reply had not been received (December 2010).

The Ministry had admitted the audit observation in similar cases reported in Para 3.2.1 of Audit Report No.12 of 2009-10.

2.1.2 The Government of Andhra Pradesh provided certain incentive schemes for deferred payment of sales tax whereby the assessee was allowed to collect sales tax from the buyer and retain it and repay it after prescribed period. Further, the Government, provided additional incentive for premature payment of deferred sales tax liability at discount rate based on the Net Present Value (NPV) factor.

Twelve assessees, in Guntur, Hyderabad I, II, III, IV, Tirupathi and Visakhapatnam I commissionerates, engaged in the manufacture of various excisable goods, opted for premature payment of sales tax liability of ₹ 17.61 crore between the years 1995-96 and 2007-08 under the above mentioned scheme on which the Government allowed discount of ₹ 5.25 crore. The difference between the actual sales tax collected from the customers and the payment made at discounted rate on the NPV, thus, became additional income to the assessees and was liable to be added to the assessable value. The non-inclusion of this additional income in assessable value resulted in short levy of duty of ₹ 83.64 lakh.

When we pointed this out (between September 2009 and March 2010), the department accepted the audit observation in one case and reported (March 2010) that show cause notice was under issue. In respect of two other assessees, the department stated (May and June 2010) that the discount given by the Government could not be considered as additional consideration to the assessee in terms of section 4(3)(d) and interest earned on prepayment of deferred sales tax by the manufacturer was not a benefit extended by the buyer to the seller and hence cannot be treated as additional consideration in terms of Board circular dated 4 December 2002.

The reply of the department is not acceptable because the discount was actually the amount already collected by the assessees in the form of sales tax from the buyer but not paid to Government and hence retained in the form of additional consideration. Therefore, duty was required to be paid thereon. Reply in respect of other assessees were awaited (October 2010).

The reply of the Ministry had not been received (December 2010).

2.2 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.

2.2.1 M/s Indian Oil Corporation Ltd., (RD) in Haldia commissionerate, engaged in manufacture of petroleum products, cleared intermediate goods viz. straight run gas oil (SRGO) to its sister concern M/s IOCL, Barauni refinery for further use in production of excisable goods. The assessee cleared 11,019.522 tonne of SRGO paying duty on a value which was lower than the value on which duty should have been paid. We observed that the assessee arbitrarily adopted the cost of furnace oil as assessable value of SRGO, instead of determining the value as stipulated in the rule 8. This resulted in short levy of duty of ₹ 1.60 crore during the year 2007-08.

When we pointed this out (September 2008), the department admitted the audit observation and reported (May 2010) that the show cause cum demand notice was under issue.

The reply of the Ministry had not been received (December 2010).

2.2.2 M/s Patil Steel Wire Pvt. Ltd., in Hyderabad IV and M/s Vacmet Packaging Pvt. Ltd., in Lucknow commissionerates, engaged in the manufacture of various excisable goods cleared goods to its sister concern paying duty on the assessable value arrived at on cost data without adding 10 per cent of the profit margin. This resulted in undervaluation of goods of ₹ 4.55 crore with consequential short levy of duty of ₹ 76.94 lakh during the period of April 2006 to March 2009.

When we pointed this out (between September and November 2009), the department stated (between February and March 2010) that the show cause notices for ₹ 2.83 crore for the period from April 2006 to December 2009 were under issue in both the cases.

The reply of the Ministry had not been received (December 2010).

2.3 Valuation on the basis of retail sale price

Ayurvedic and Homeopathic preparations falling under chapter 33 (Cosmetic or Toilet Preparations) are assessed to duty under section 4A, as these were notified under section 4A.

M/s Herbo Foundation Pvt. Ltd., Bamunimaidan, Guwahati, in Guwahati Commissionerate, engaged in manufacture of 'Himani Navaratan Hair Oil' and 'Himani Gold Turmeric Cream', cleared these products under Section 4 of Central Excise Act, 1944 between April 2008 and December 2009 on transaction value of ₹ 268.72 lakh. The MRP affixed on packages of those products indicated that these products were ultimately classifiable under chapter 33 and sold as cosmetics or toilet preparations to the customers at the printed MRP of ₹ 808.14 lakh and corresponding assessable value after allowing abatement from MRP worked out to ₹ 525.29 lakh. Assessable value under section 4A was higher than the value at which the duty was paid. Thus, there was short payment of duty of ₹ 42.06 lakh during the period April 2008 to December 2009.

When we pointed this out (March 2010), the department stated (April 2010) that the assessee had misclassified these two products under chapter 30 and the protective demand-cum-show cause notice had been issued in April 2010.

The reply of the Ministry had not been received (December 2010).

2.4 Excisable goods not fully valued

Section 4 (1) of the Central Excise Act, 1944 (effective from 1 July 2000) stipulates that where the duty of excise is chargeable on any excisable goods with reference to their value, such value shall be the transaction value of the goods sold by the assessee and the price is the sole consideration for sale. Further, section 4(3)(d) of the said Act defines transaction value to mean the price actually paid or payable for the goods, when sold, and includes in addition the amount charged as price, any amount that the buyer is liable to pay to or on behalf of the assessee, by reason of or in connection with the sale, whether payable at the time of sale or at any other time.

M/s APR Packaging Ltd. Ashti (now M/s BILT Ashti), in Nagpur commissionerate, manufactured 'copier paper' and 'maplitho MS paper' in reel form and cleared on payment of duty to its own cutting centers for conversion into sheet form. From these cutting centers, the goods were sold to unrelated buyers at higher value than the value at which excise duty was paid at the factory gate. Difference in value was ranging from ₹ 1,350 to ₹ 2,050 per tonne. Since the goods were sold at the cutting centers, the transaction value of the goods took place at the cutting centers and hence duty was leviable on the transaction value charged from the unrelated buyers. This resulted in short payment of duty amounting to ₹ 49.43 lakh during the period from October 2005 to June 2007.

When we pointed this out (April 2006, October 2007 and December 2009), the department issued show cause notices demanding duty of ₹ 80.85 lakh covering the period from October 2005 to February 2008. The demand of ₹ 29.67 lakh along with a penalty of ₹ 12 lakh for the period from December 2005 to November 2007 was confirmed by the adjudicating authority (April and August 2007). On appeal by the assessee the Appellate Commissioner (Appeal) also (August 2007) upheld the order of the adjudicating officer. Thereafter, the assessee's appeal against Commissioner (Appeal) Order was pending before CESTAT. However, the department in reply to audit observation stated (between March 2008 and December 2009) that in terms of Supreme Court decision in the case of M/s S.R. Tissues Pvt. Ltd. {2005 (186) ELT (SC)} and CESTAT decision in the case of M/s Seshsayee Paper and Board Ltd. {2006 (194) ELT 457}, conversion of reels into sheets does not amount to manufacture and hence cutting charges, being post manufacturing expenses, were not liable to duty. It also stated that the Ministry had clarified on 3 January 2001 that no duty could be charged on value addition outside the factory.

The reply of the department was not acceptable because the Supreme Court judgement cited and the Ministry's clarification related to cases prior to 1 July 2000 when pre amended section 4 was operative. Under amended section 4,

the entire scheme of valuation had been overhauled and new concept of transaction value was introduced from 1 July 2000.

The reply of the Ministry had not been received (December 2010).

2.5 Non-inclusion of freight and other charges

As per section 4(3) of the Act, the term “transaction value” for purpose of levy of duty means the price actually paid or payable for the goods when sold and includes any amount that the buyer is liable to pay to the assessee in connection with the sale whether payable at the time of sale or at any other time, including the transport insurance charges etc.

M/s Surya Lakshmi Cotton Mills Ltd., Mahabubnagar in Hyderabad III commissionerate, engaged in the manufacture of cotton yarn/polyester yarn transferred stock to their consignment agents. The freight and insurance charges incurred up to the point of sale viz. place of consignment agent premises, were to be included in the assessable value of the goods. However, the assessee did not include these charges in the assessable value. Exclusion of such charges from the assessable value resulted in short levy of duty of ₹ 7.25 lakh during the years 2003-04 to 2004-05.

Similarly, M/s Vijai Electricals Ltd., Rudraram in Hyderabad I commissionerate, engaged in the manufacture of distribution transformers, cleared goods at the destinations specified by the buyers. The prices charged by the assessee were composite prices including the cost of freight, insurance, etc. The goods were transported under the cover of transit insurance, the cost of which was borne by the assessee and the title to the goods in all these cases passed on to the buyers only after the goods reached the destination specified by the buyers. Thus, the freight and insurance charges incurred up to the point of sale were to be included in the assessable value of the goods. Exclusion of such charges from the assessable value resulted in short levy of duty of ₹ 10.60 lakh during the year 2009-10. The duty aggregating to ₹ 17.85 lakh was recoverable in both the cases with interest.

When we pointed this out (October 2004 and April 2010), the department reported (August 2006) the recovery of ₹ 8.65 lakh (inclusive of interest) in respect of M/s Surya Lakshmi Cotton Mills Ltd. Reply in respect of M/s Vijai Electricals Ltd. was awaited (July 2010).

The reply of the Ministry had not been received (December 2010).

2.6 Valuation of samples meant for free distribution

Where goods are not sold, the value of levy shall be determined in accordance with the provisions of rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The rule provide that the value shall be based on the value of similar goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable. The Board also clarified on 25 April 2005 that the

value of physician samples distributed free of cost should be determined under rule 4 of the said Valuation Rules, 2000.

M/s Pharmasia Ltd., in Hyderabad IV commissionerate, engaged in the manufacture of P or P medicaments and cosmetics, cleared final products on payment of duty under MRP. The assessee cleared the physician samples viz. Dermadew Aloe cream, Dermadew Aloe lotion and Dermadew Caloe lotion on payment of duty of ₹ 5.77 lakh on agreed price of ₹ 40 lakh instead of the value determined as per rule 4. The value to be adopted as per rule 4 worked out to ₹ 106.20 lakh on which duty of ₹ 15.31 lakh was payable. This resulted in short payment of duty ₹ 9.54 lakh which was recoverable with interest of ₹ 1.63 lakh.

When we pointed this out (January 2009), the department intimated (March 2010) that a show cause notice demanding duty of ₹ 12.87 lakh for the period from March 2008 to December 2009 was under issue.

The reply of the Ministry had not been received (December 2010).