आयुक्त(अपीलस) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

:079-26305065 टेलेफैक्स : 079 -26305136

Date:-24/11/2020

DIN- 20201164SW000001540A

स्पीड पोस्ट

क फाइल संख्या : File No : V2(28)8/Ahd-South/2019-20 / 16365 To 16370
V2(28)55/Ahd-I/2015-16

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-54-55/2020-21**
दिनाँक Date : 29.10.2020. जारी करने की तारीख Date of Issue : 20.11.2020

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No.MP/10/AC/MA/Div.IV/13-14 दिनाँक: 31.01.2014 and No. MP/04/DC/Div-IV/2015-16 दिनाँक: 22.06.2015 passed by the Assistant/ Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-I.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s AIMS Industries Ltd.,
L.K. Patel Timber Mart, B/h Lake View Hotel,
Narol, Ahmedabad-382405.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–

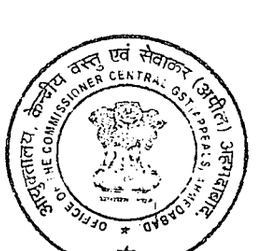
Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

These orders arise on account of two appeals filed by M/s AIMS Industries Ltd., L.K. Patel Timber Mart, B/h. Lake View Hotel, Narol, Ahmedabad-382405 (in short '*Appellant*') against below mentioned two Orders-in-Original (in short '*impugned orders*') passed by the Assistant/Deputy Commissioner, Central Excise, Division-IV of the erstwhile Ahmedabad-I Commissionerate (in short '*adjudicating authority*').

Sr. No.	OIO No. & Dt.	Period involved	Amount involved (Rs.)	Appeal No.
1	MP/10/AC/MS/Div-IV/ 13-14 dated 31.01.2014	Sept. 2012 to July 2013	Duty – 14,858/- + Interest Penalty – 7,429/-	V2(28)8/Ahd-South/ 2019-20 (V2(28)8/Ahd-I/2014-15)
2	MP/04/DC/Div-IV/2015-16 dated 22.06.2015	August 2013 to June 2014	Duty - 8,666/- + Interest Penalty - 4,333/-	V2(28)55/Ahd-I/2015-16

2. Briefly stated, the facts of the case are that the appellant are engaged in the production and clearance of Industrial Gases, falling under Chapter 28 of the Central Excise Tariff Act, 1985 and were having Central Excise Registration for the same. During the course of audit of the records of the appellant for the period from April, 2007 to December, 2011, it was noticed that the appellants were receiving additional payments/consideration, in the guise of "Retention Charges", from their clients/Customers, by raising two separate Invoices, one for supply of excisable goods i.e., Industrial Gases, and another for returnable cylinders, without which the sale of the product is not at all possible. They were not adding the retention charges so collected from their customers in the assessable value /costing of the product. The audit observed that since these retention charges were collected in relation to sale of the product, the same cannot be termed as rental charges for tangible assets and that as the said retention charges collected by the appellant were in addition to the amount charged as price of the goods from the buyer, by "reason of sale" or "in connection with sale", the said charges so collected shall form part of the transaction value of the goods for valuation and assessment purpose and that therefore the retention charges collected by the appellant as amortized cost not included in the costing of product is to be considered as additional consideration which should be included in the transaction value as defined in Section 4 of the Central Excise Act, 1944. On the basis of the above audit observation, Show Cause Notices (in short '*SCN*') were being issued to the appellant periodically. Two such periodical SCNs dated 31.01.2014 and 22.06.2015 pertaining to the period September 2012 to July 2013 and August 2013 to June 2014 were adjudicated by the adjudicating authority vide the impugned orders wherein he had confirmed the demands along with interest and imposed penalty on the appellant.

3. Aggrieved with the impugned orders, the appellant has filed the present appeals, mainly on the following grounds:

(i) The metallic containers or Cylinders, in which Industrial Gases are filled and supplied, call for a heavy investment on the part of the appellants and therefore, they should like

to see that the empty cylinders are returned back by the customers promptly and therefore, in order to see that the customer does not unnecessarily retain their valuable asset, namely cylinders in which Industrial Gases are supplied by them, there is normal practice all over the country, to charge retention or detention charges, to the customers after a certain free period. They have annexed Sample agreement in this regard;

(ii) The contention raised by the Central Excise Authority that the said Retention or Detention Charges earned by the appellants is part and parcel of the Transaction Value of their Industrial Gases, as per Section 4 of the Central Excise Act is unsustainable as per the following decisions, which manifestly maintain that any Service Charges or other Charges, collected by a manufacturer of industrial gases in the form of Cylinder Rent, Cylinder Retention or Detention Charges, etc. do not form a part of the assessable value of the excisable goods and hence, not chargeable to central excise duty:

(a) 1994 (72) ELT 80 (Tribunal) - Steel City Beverages (P) Ltd. Vs. CCE, Patna;

(b) 2008 (232) ELT 338 (Tri.-Bang.) – Inox Air Products Ltd. Vs. CCE, Bangalore;

(c) 2009 (244) ELT 83 (Tri.-Chennai) – CCE, Chennai Vs. Goyal MG Gases Ltd.;

(d) 2009 (246) ELT 170 (Tri.-Chennai) – CCE, Chennai Vs. Goyal MG Gases Ltd.;

(e) 2010 (250) ELT 60 (Tri.-Bang.) – Inox Air Products Ltd. Vs. CCE (Appeals-I), Bangalore;

(f) 2010 (261) ELT 265 (Tri.-Del.) – CCE, Allahabad Vs. Kanoria Chem. & Industries Ltd.;

(g) 2004 (175) ELT 236 (Tri.-Kol) – BOC India Ltd. Vs. CCE, Chennai;

(h) 2007 (211) ELT 440 (Tri.-Del.) – LML Ltd. Vs. CCE, Kanpur;

(i) 2008 (224) ELT 577 (Tri.-Bang.) – Bhoruka Gases Ltd. Vs. CCE, Bangalore-I; and

(j) 2008 (231) ELT 299 (Tri.-Mum) – Govind POY Oxygen Ltd. Vs. CCE, Goa.

(iii)Judicial pronouncements are binding on the quasi judicial authorities in order to maintain judicial discipline as directed by the Hon'ble Apex Court of India, in case of Kamalakshi Finance Corporation Ltd.

4. The present appeals were transferred to Call Book as a departmental appeals on similar issue under Civil Appeal No.3159 of 2004 and No.3455 of 2004, were pending before the Hon'ble Supreme Court of India for decision. The Hon'ble Supreme Court vide their Orders dated 06.02.2019 and 08.07.2019 has dismissed departmental Appeals as withdrawn and as not pressed on the ground of low tax effect. In view of the disposal of the departmental appeals, the present appeals were retrieved from Call Book and appeal proceedings on the same were reopened.

5. The appellants, vide their letter dated 09.09.2019, has requested to consider the representation made in the appeal and to pass a speaking order without any personal hearing. Due to change in appellate authority, the appellants were granted further opportunities of

personal hearing which they did not avail. Therefore, considering the appellant's above request, I proceed to decide the case on the basis of facts and evidences available on records.

6. I have carefully gone through the facts of the case, appeal memorandum and the evidences available on records. It is observed that the issue to be decided in the case is as to whether the cylinder retention charges collected by the appellant from their customers over and above the price of gas charged by them, is includible in the transaction value of the gas sold by them and thereby liable to central excise duty or otherwise?

6.1 I find that demand on similar issue on appellant's own case for earlier period from April, 2007 to December, 2011 and from January, 2012 to August, 2012 has been confirmed by the adjudicating authority as well as Commissioner (Appeals), Ahmedabad. The appellant has preferred appeals in the said matter before the Hon'ble CESTAT, Ahmedabad, where it is pending for decision. The appellant has got unconditional stay in the matter on the ground that the issue involved in the matter was referred to a Larger Bench of the Apex Court in the case of Grasim Industries Ltd. I further find that it was also in the context of the department Civil Appeals, No.3159 of 2004 and No.3455 of 2004 that the matter was referred to the Larger Bench of the Apex Court. It is observed that though the reference made to the Larger Bench of the Apex Court was answered by the Larger Bench vide their Order dated 11.05.2018 [2018 (360) E.L.T. 769 (S.C.)], the above referred Civil Appeals filed by the department were dismissed as withdrawn by the department on account of low tax effect in view of the Government's litigation policy. The Hon'ble Supreme Court, while dismissing the department's appeals in the matter, has made it clear that the question of law is left open.

6.2 It is observed that the reference to the Larger Bench of the Hon'ble Supreme Court was made for an answer on the following questions:

> *"1. Whether Section 4 of the Central Excise Act, 1944 (as substituted with effect from 1-7-2000) and the definition of "transaction value" in clause (d) of sub-section (3) of Section 4 are subject to Section 3 of the Act?*
>
> *2. Whether Sections 3 and 4 of the Central Excise Act, despite being interlinked, operate in different fields and what is their real scope and ambit?*
>
> *3. Whether the concept of "transaction value" makes any material departure from the deemed normal price concept of the erstwhile Section 4(l)(a) of the Act?"*

The Larger Bench of the Hon'ble Supreme Court has answered the above reference as under:

> *"23. Accordingly, we answer the reference by holding that the measure of the levy contemplated in Section 4 of the Act will not be controlled by the nature of the levy. So long a reasonable nexus is discernible between the measure and the nature of the levy both Section 3 and 4 would operate in their respective fields as indicated above. The view expressed in Bombay Tyre International Ltd. (supra) is the correct exposition of the law in this regard. Further, we hold that "transaction value" as defined in Section 4(3)(d) brought into force by the Amendment Act, 2000, statutorily engrafts the additions to the 'normal price' under the old Section 4 as held to be permissible in Bombay Tyre International Ltd. (supra) besides*

giving effect to the changed description of the levy of excise introduced in Section 3 of the Act by the Amendment of 2000. In fact, we are of the view that there is no discernible difference in the statutory concept of 'transaction value' and the judicially evolved meaning of 'normal price'."

6.3 The Larger Bench of the Hon'ble Supreme Court, in their above decision, while answering the reference, also observed that *"the amendment to Section 3 by substitution of the words "a duty of excise on all excisable goods" by the words "a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods" is conspicuous. The amendment of Section 3 to the Act not only incorporates the essentials of a changed concept of charging of tax on additions to the value of goods and services at each stage of production but also engrafts in the statute what was judicially held to be permissible additions to the manufacturing cost and manufacturing profit in Bombay Tyre International Ltd. (supra). This fundamental change by introduction of the concept underlying value-added taxation in the provisions of Section 3 really find reflection in the definition of 'transaction value' as defined by Section 4(3)(d) of the Act besides incorporating what was explicitly held to be permissible in Bombay Tyre International Ltd. (supra). Section 4(3)(d), thus, defines 'transaction value' by specifically including all value additions made to the manufactured article prior to its clearance, as permissible additions to be price charged for purpose of the levy."* Thus, it is not a matter in dispute now that the term 'transaction value' as defined under Section 4(3)(d) covers in its ambit all value additions made to the manufactured product prior to its clearance.

6.4 Now coming to the issue under appeal, the issue relates to the period subsequent to 1st July, 2000, from when the concept of 'Transaction Value' was brought in the statutory provisions for valuation and assessment of duty in respect of excisable goods. Therefore, the provisions of law as it stood after 1st July, 2000 would apply and the assessable value of the excisable goods would have to be ascertained by considering the transaction value as defined under Section 4 of the said Act. From the facts on record, I find that appellants were issuing two separate invoices, one for supply of industrial gas manufactured by them and other for returnable gas cylinder in which gas is filled. It is observed that the appellants have been supplying gas in cylinder on returnable basis within stipulated period i.e., 90 days from the date of delivery as per agreement with their dealers. From the copy of Dealers Agreement produced by the appellants, it is noticed that appellants charged the dealers a fixed charge Re.1.00 per day per cylinder, called as retention charges, for all types of gas cylinder from the date of issue. The appellants were not adding these charges collected by them in the transaction value of their product viz. industrial gas contending that the same do not form part of assessable value of the excisable goods and not chargeable to duty of excise.

6.5 In order to appreciate the issue, it would be appropriate to reproduce the relevant definition of "transaction value" as defined under Section 4 of the Central Excise Act, 1944 which reads as under:

> *"transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to 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 the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.*

From the above definition, it is evident that the transaction value includes, in addition to the price charged, 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 the sale or at any other time. It is undisputed in the present case that the product manufactured by the appellant being in gaseous form was sold after being filled in cylinders and it was not possible to remove or sell the product, gas, without use of such containers or cylinders. Thus, the cylinders in the case of appellant is an inevitable part in the act of sale of the appellant's product viz. industrial gas. When the goods cannot be sold without container/cylinder, any amount recovered in any form or under any description in relation to such container/cylinder used would obviously form an amount recovered in connection with sale of the product and, therefore, it would form part of the transaction value. This aspect has also been very well clarified by the Central Board of Excise & Customs vide Circular No. 643/34/2002-CX dated 1st July, 2000 on the subject of clarification of doubts under the new Valuation Rules. In the said Circular, while dealing with the question as to whether rental charges or cost of maintenance of reusable metal containers like gas cylinders etc. are to be included in the transaction value, it was clarified that since the amount has been charged by reason of or in connection with the sale of goods, such amount has to be added to the assessable value. Thus, considering the definition of the term "transaction value" as under Section 4 of the Central Excise Act read with the Board Circular, it is abundantly clear that once a manufacturer collects any rental charges in relation to the containers of the product sold, it cannot be said that charges cannot be included in the assessable value.

6.6 Further, it is pertinent to mention that in the provisions of Section 4 as it stood prior to introduction of the concept of 'transaction value' with effect from 01.07.2000, there was a specific exclusion for the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee, in the value of the excisable goods. However, the 'transaction value' does not envisage any such specific exclusion of costing with regard to packing of goods in any manner. Therefore, whatever amount collected by a manufacturer during the course of sale of his product would be a part of the transaction value of the product. In fact, the Board, in their above referred Circular, while dealing with the question of what about cost of containers supplied by the buyer has clarified that since in such cases the price will not be the sole consideration for the sale, the valuation would be governed by Rule 6 and the cost of such packing, whether durable or not, will be included in the transaction value of goods and that in respect of packing which can be used repeatedly the cost will have to be amortized

over the life span of the packing material as is done in the case of dies, mould, etc. supplied by the buyer. Therefore, it amply stand clarified that the cost of cylinder/container, irrespective of it's ownership, shall form a part of the value in the concept of 'transaction value' of the goods, when they are sold in such cylinders/containers.

6.7 The appellant's contention in the case is relying on the various Tribunal decisions in similar matter. It is observed that in most of the said decisions, the Hon'ble Tribunals had given their decision by relying on the decision of the Hon'ble Supreme Court in the case of Collector Vs. Indian Oxygen Ltd. [1988 (36) E.L.T. 730 (S.C.)], wherein it was held that the supply of gas cylinders is ancillary to the supply of gases but it is strictly not incidental thereto because there are classes of persons who can take delivery of these gases without supply of cylinders by the respondent and in those cases no question of charging rental nor interest- on those deposits for cylinders, would arise and that this is not an activity for the manufacture of gases and any rental would be though ancillary but would not be the price for the manufacture and would not constitute part of the assessable value. It was the view of the Hon'ble Tribunal that despite insertion of amended Section 4 of the Act w.e.f. 1st July, 2000 introducing the concept of "transaction value" in Section 4(1)(a) of the Act, the ratio of the decision of the Supreme Court in the case of *Collector of Central Excise, Madras* v. *M/s. Indian Oxygen Ltd.*, (1988) 4 SCC 139, still holds the field. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Indore Vs. Grasim Industries Ltd. had [2009 (241) E.L.T. 321 (S.C.)] in fact referred the matter to the Large Bench taking also note of the above fact. The Larger Bench of the Hon'ble Supreme Court in their decision dated 11.05.2018 on the reference made to them [2018 (360) E.L.T. 769 (S.C.)], has held that the measure of the levy contemplated in Section 4 of the Act will not be controlled by the nature of the levy and that so long a reasonable nexus is discernible between the measure and the nature of the levy both Section 3 and 4 would operate in their respective fields. Thus, with the above decision of the Larger Bench of the Apex Court, it stand settled that the valuation of excisable goods contemplated under Section 4 of the Central Excise Act would operate independent of the charging provision under Section 3 of the Act ibid and the duty of excise has to be levied strictly in terms of the provisions of Section 4 of the Act ibid. Therefore, when the said Section 4 specifies the value for assessment as price charged on sale of goods, it can not be contended that the same has to be the price for manufacture. For that view of matter, the decision of Hon'ble Supreme Court in the case of Collector Vs. Indian Oxygen Ltd. [1988 (36) E.L.T. 730 (S.C.)] does not seem to be applicable for the period after 01.07.2000 since when the concept of 'transaction value' was introduced in the Section 4 of the Act ibid. Further, in the concept of 'transaction value', the value is ascertained for each transaction unlike in the period prior to 01.07.2000 when it was based on the price charged in the ordinary course of wholesale trade and the Hon'ble Apex Court's decision in the case of Indian Oxygen Ltd. (supra) was in the context of this earlier provisions of Section 4 of the Act before its amendment with effect from 01.07.2000. Therefore, it is observed that after the decision of the Larger Bench of the Hon'ble Supreme Court in the case of Commissioner of

Central Excise, Indore Vs. Grasim Industries Ltd. [2018 (360) E.L.T. 769 (S.C.)], the case laws relied by the appellant does not support their case for the period under dispute in the present appeals.

7. It is further observed that the matter involved in the case pertains to periodical demand and the Principal SCN has been decided against the appellant by the Commissioner (Appeals). Hence, there is no reason to arrive at a conclusion other than what has been arrived at in previous SCN, particularly when there is no change in legal provision.

8. In view of the above discussions,, it is to be held that the cylinder retention charges recovered by the appellant from their clients, being amount payable by the clients in connection with the sale of goods, would form part of the transaction value of the goods sold by them and excise duty is payable on the said cylinder retention charges.

9. Therefore, I do not find any reason to interfere with the decision taken by the adjudicating authority vide the impugned order and accordingly, I uphold the same and reject the appeals filed by the appellant being devoid of merits.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stand disposed off in above terms.

(**Akhilesh Kumar**)
Commissioner (Appeals)

Attested:

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO :

M/s AIMS Industries Ltd.,
L.K. Patel Timber Mart,
B/h Lake View Hotel,
Narol, Ahmedabad-382405.

Copy to:-

1. The Principal Chief Commissioner, Central GST , Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South (erstwhile Ahmedabad-I).
3. The Deputy/Assistant Commissioner, Central GST & C.Ex., Division-IV, Ahmedabad South.
4. The Assistant Commissioner, CGST (System), HQ, Ahmedabad South.
5. Guard file.
6. P.A. File