

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 800 of 2012

(Arising out of OIA-SRP/125/DMN/SDMN/2012-13 Dated-04/10/2012 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Yashraj Containeurs Ltd

S No. 260/6 & 7, Bhimpore,
Damanu.T. Of Dadra & Nagar Haveli

.....Appellant

VERSUS

C.C.E. & S.T.-Daman

3rd Floor...Adarsh Dham Building,
Vapi-Daman Road, Vapi
Opp. Vapi Town Police Station,
Vapi, Gujarat-396191

.....Respondent

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant

Shri G. Kirupanandan, Authorised Representative for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10664 /2022

DATE OF HEARING: 06.05.2022
DATE OF DECISION: 07.06.2022

RAMESH NAIR

The facts of the case are that the appellant are engaged in the manufacture of M.S Drums falling under Chapter Heading 73 of the Central Excise Tariff Act, 1985. During the course of manufacturing process some scrap generated which is sold in connection with sale of scrap. The appellant collected TCS (Tax collected at source). The case of the department is that the TCS collected from the buyer over and above the price of the goods should be included in the transaction value as the same shall be treated as amount of money value of additional consideration and Central Excise duty is required to be paid. Accordingly, a show cause notice was issued which was adjudicated by the adjudicating authority by confirming the demand of duty on the said TCS amount. In appeal, the Learned Commissioner (Appeals) upheld the demand and dismissed the appeal therefore, the present appeal filed by the appellant.

02. Shri. Prakash Shah, Learned Counsel appearing on behalf of the appellant submits that the TCS is not a part and parcel of sale price of the goods which is collected from the buyer of scrap. As per Section 206 C of the Income Tax Act, 1962 and said amount is deposited to the income tax department, therefore the said amount was neither returned by the appellant nor earned by them. The appellant is only complying the provision of the income tax without any gain out of the TCS collected and paid to the department, therefore, the same cannot be considered as a part and parcel of the assessable value.

2.1 He also submits that the adjudicating authority in show cause notice invoked Rule 6 of the Central Excise Valuation Rules, for demand of duty. He submits that firstly, the TCS is a tax which has to be deducted from the total value of the goods. Secondly, in terms of Rule 6 any amount which is additional consideration flowing from the buyer to the assessee can only be included. In the present case the amount of TCS is not flowing to the appellant whereas, the said amount is as it is deposited to the income tax department therefore, Rule 6 is also not applicable.

03. Shri. G. Kirupanandan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

04. We have carefully considered the submission made by both the sides and perused the records. We find that the Revenue is sought to include the TCS collected by the appellant from the buyer of scrap. The said TCS is collected and deposited to the income tax department in terms of Section 206C of Income Tax Act, 1962 which is reproduced below:-

"Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

206C. (1) Every person being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in column (3) of the said Table of such amount as income tax :

TABLE

Sl. No.	Nature of goods	Percentage
(1)	(2)	(3)
(i)	Alcoholic Liquor for human consumption	One percent
(ii)	Tendu Leaves	Five percent
(iii)	Timber obtained under a forest lease	Two and one-half percent
(iv)	Timber obtained by any mode other than under a forest lease	Two and one-half percent
(v)	Any other forest produce not being timber or tendu leaves	Two and one-half percent
(vi)	Scrap	One percent
(vii)	Minerals, being coal or lignite or iron ore	One percent

[Provided] that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.]

[(1A)] Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes."

From the pain reading of the above Section it is clear that the amount collected as TCS has nothing to do with the price of the goods but it is a tax collected from the buyer of the scrap and the same is deposited in the income tax department, therefore, the amount collected as TCS is a tax and in terms of Section 4, the tax is not includable in the assessable value. Moreover, as regard, invocation of Rule 6 of Central Excise Valuation Rules, 2000, the same is produced below:-

"Explanation 1 - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or

indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely : -

(i)

.....

(ii)

.....

(iii)

.....

(iv)

.....

From the plain reading of the above rule, it is clear that any additional amount if it is flowing from the buyer to the assessee directly or indirectly the same is includable in the assessable value meaning thereby any amount which is coming from the buyer and retained by the appellant alone will be includable in the assessable value. In the present case the TCS is collected not as a additional consideration but explicitly as tax and same is deposited to the income tax department, therefore, it cannot be said that the amount of TCS belongs to the appellant.

4.1 In view of the above facts and observations, we are of the clear view that the amount of TCS cannot be considered as additional consideration flowing from the buyer to the appellant accordingly, the same is not includable in the assessable value for charging Excise Duty, hence, the impugned order is not sustainable. Accordingly, the same is set aside, appeal is allowed.

(Pronounced in the open court on 07.06.2022)

(RAMESH NAIR)

MEMBER (JUDICIAL)

(RAJU)

MEMBER (TECHNICAL)