

*Implementation of decision of Hon'ble Supreme Court in case of M/s Fiat India Ltd – reg. -
Dated 15-1-2014 - Central Excise*

Circular No. 979/03/2014-CX

F. No. 6/7/2012-CX-1

Government of India

Ministry of Finance, Dept. of Revenue

Central Board of Excise and Customs

New Delhi

New Delhi, the 15th Jan, 2014.

Subject – Implementation of decision of Hon'ble Supreme Court in case of M/s Fiat India Ltd – reg.

Attention is invited to the judgment of Hon'ble Supreme Court dated 29th August , 2012 in case of Fiat India Ltd [2012-TIOL-58-SC-CX or 2012 (283) E.L.T 161 (S.C)] (hereinafter referred to as the FIAT judgment) . References have been received from trade and field formations seeking clarification on implementation of the judgment. The facts in the case of M/s Fiat India Ltd were that the cars were sold at a price substantially lower than the cost of the manufacture and such sales continued for a period of five years. The company admitted that the purpose of such pattern of sale was to achieve market penetration. The Hon'ble Supreme Court held that in such circumstances revenue could reject the transaction value declared under section 4 and invoke the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules , 2000 to assess Central Excise duty . Following clarifications are issued in this regard -

Transaction Value below manufacturing cost and profit

2. The first issue is whether the declared transaction value can be rejected in all cases where the transaction value is lower than the manufacturing cost and profit. The Hon'ble Supreme Court has not ruled that transaction value can be rejected in all cases where the declared value is lower than the manufacturing cost and profit. At paragraph 66 in the FIAT judgment, the Hon'ble Court has declined to hold its earlier judgment in case of Collector of Central Excise, New Delhi Vs Guru Nanak Refrigeration Corpn [2003(153) ELT 249 (SC)] per-in curiam , distinguishing it on the basis of the facts of the case , though the transaction value in case of M/s Guru Nanak Refrigeration Corpn was less than the manufacturing cost and profit .

The Hon'ble Supreme Court has cautioned against drawing general conclusions and inferences quoting the truism stated by Lord Halsbury that "a case is only an authority for what it actually decides and not for what may seem to follow logically from it."

2.1 Further, in paragraph 50, the Hon'ble Supreme Court has cited two instances where a manufacturer may sell goods at a price lower than the cost of manufacture and profit and yet the declared value can be considered as normal price . These instances are when the company wants to switch over its business or where a manufacturer has goods which could not be sold within a reasonable time. The Hon'ble Court has further held that these examples are not exhaustive. Therefore, mere sale of goods below the manufacturing cost and profit cannot be taken as the sole basis for rejecting the transaction value.

Verification of payment of duty

3. The second issue is regarding the procedure to be adopted by the field officers to identify cases where the ratio of the judgment would apply. It may be noted that , under the self-assessment procedure , there is a legal obligation on the assessee to correctly assess and pay the duty in terms of the Central Excise Act , 1944 read with the Valuation Rules , 2000 . Verification of this aspect may be conducted by the Central Excise officer during the audit of units. Aspects such as the percentage of loss at which sale has taken place , the period for which such loss making price has prevailed , reasons for sale at such loss making price , whether such sales are contrary to the standard and accepted business practices , and whether such sale is leading to erosion of capital of the company , may be looked into . In addition, due care may be taken at the level of the Commissioner to see whether the case at hand is similar to the facts and circumstances of the FIAT case.

3.1 Calculations of manufacturing cost may be carried out using CAS-4 standards. Information submitted by the manufacturer, duly certified by a Chartered or Cost Accountant should normally be accepted. Only where a decision to investigate a case has been taken at the level of the Commissioner and it is considered necessary in the interest of investigation, steps such as ordering Cost Audit of the Unit or summoning of the Costing data should be undertaken.

Period of application

4. The third issue is whether the judgment can be applied for periods prior to the date of the judgment i.e. 29-8-2012, invoking the extended period of limitation. Under the provisions of valuation law, in a case where price is not the sole consideration for the sale, money value of any additional consideration flowing directly or indirectly from the buyer to the assessee is added to the transaction value in terms of rule 6 of the Central Excise Valuation Rules, 2000. However, in the FIAT judgment, sale of cars at an abnormally lower price to penetrate the market has been considered by the Hon'ble Supreme Court as constituting extra-commercial consideration, even when there was no additional consideration of money value flowing

directly or indirectly from the buyer to the seller. For the period prior to the date of the judgment, in cases where a show cause notice has been issued on the grounds of the FIAT judgment alone, there may not be a case for invoking the extended period of limitation. In such cases, only the normal period of limitation will apply.

4.1 For the period after the date of the judgment, i.e. from 29- 8-2012 onwards, if there is a sale in the circumstances similar to the case of M/s FIAT and yet transaction value of goods is declared as the correct assessable value, then such declaration would amount to wilful mis-statement of the assessable value.

5 The contents of this Circular may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing Orders / Instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

(M.K. Sinha)

Director – CX-1/6