

EXCISE

Clarification on implementation of decision of Hon'ble Supreme Court in case of goods sold at a price below the Cost

In the case of M/s Fiat India Ltd (2012-TIOL-58-SC-CX) or 2012 (283) E.L.T 161 (S.C.) the Hon'ble SC held that in case the goods were sold at a price substantially lower than the cost of the manufacture to achieve market penetration, the transaction value declared under section 4 may be rejected.

CBEC has issued a Circular No. 979/03/20014-CX dated 15.01.2014, to clarify the following :

Whether transaction value which is below manufacturing cost and profit can be rejected in all the cases?

It has been clarified that, transaction value can not be rejected merely on sale of goods below the manufacturing cost and profit. In the paragraph 50 of the aforesaid judgment Hon'ble SC held that a manufacture may sell goods at a price lower than the cost of manufacture and profit and yet declared value can be considered as transaction value :

- When the company want to switch over its business
- Where a manufacturer has goods which could not be sold within a reasonable time

The Hon'ble Court has further held that aforesaid examples are not exhaustive.

Identification of Cases where ratio of the judgment would apply?

It has been clarified that 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. 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.

It has been further clarified that calculation of manufacturing cost may be carried out using CAS-4 standards duly certified by a Chartered or Cost Accountant.

Period of Application of aforesaid judgment :

*It has been clarified that periods in respect of matters pertaining to **prior** to the date of the judgment ie. 29.08.2012, the **normal period of limitation** will apply.*

However, for periods after the date of the judgment, ie. 29.08.2012 onwards, if there is a sale in the circumstances similar to the case of M/s FIAT, then extended period of limitation may apply considering willful misstatement of the assessable value.

[Circular No. 979/03/20014-CX dated 15.01.2014]

Source: www.cbec.gov.in

Disclaimer

Information published in the newsletter are taken from publicly available sources and believed to be accurate. The Indirect Taxes Committee of ICAI takes no responsibility of accuracy and reliability of information published in the newsletter. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording, or otherwise without the permission of

ICAI Feedback

The Indirect Taxes Update is an endeavour of the Indirect Taxes Committee to apprise the readers about the amendments made in various central indirect tax laws vide significant notifications, circulars etc.

We welcome your feedback on the Update and its contents. Please email itdc@icai.in for feedback.

You can also write to:

*Secretary
Indirect Taxes Committee
The Institute of Chartered Accountants of India
ICAI Bhawan A-29, Sector -62, NOIDA (U.P.) India*