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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 163 of 2011 -DB

(Arising out of OIA-253/2010-AHD-II-CE/CMC/COMMR-A-/AHD dated 28/10/2010 passed by Commissioner of Central Excise-AHMEDABAD-II)

Transformers & Rectifiers (India) Ltd ....**Appellant**
Survey No. 344-350, Opp. Pwd Stores,
Sarkhej-Bavla Highway, Village-Changodar, Taluka-Sanand,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii ......**Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat – 380009

<u>WITH</u>

Excise Appeal No. 790 of 2012 -DB

(Arising out of OIA-189-190/2012-AHD-II-CE/AK/COMMR-A-/AHD dated 23/07/2012 passed by Commissioner of Central Excise-AHMEDABAD-II)

Transformers & Rectifiers (India) Ltd ....**Appellant**
Survey No. 344-350, Opp. Pwd Stores,
Sarkhej-Bavla Highway, Village-Changodar, Taluka-Sanand,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii ......**Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat - 380009

<u>AND</u>

Excise Appeal No. 791 of 2012 -DB

(Arising out of OIA-189-190/2012-AHD-II-CE/AK/COMMR-A-/AHD dated 23/07/2012 passed by Commissioner of Central Excise-AHMEDABAD-II)

Transformers & Rectifiers (India) Ltd ....**Appellant**
Survey No. 344-350, Opp. Pwd Stores,
Sarkhej-Bavla Highway, Village-Changodar, Taluka-Sanand,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii ......**Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat - 380009

<u>APPEARANCE:</u>

Shri Dhaval Shah, Advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 12178 - 12180 /2023

DATE OF HEARING: 31.05.2023
DATE OF DECISION: 27.09.2023

RAMESH NAIR

The issue involved in the present case is that whether excess duty paid due to price variation clause in the contract for supply of goods liable to be refunded to the appellant or otherwise.

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the appellant submits that the Adjudicating Authority rejected the claim of excess paid duty on the ground that the appellant have not opted for provisional assessment and the necessary documents were not submitted. It is his submission that merely on the basis of not opting for the provisional assessment, the excess paid duty refund cannot be denied.

2.1 As regard the documents, he submits that the appellant have submitted all the necessary documents such as contract, supply order, chartered accountant certificate etc. but the Adjudicating Authority has not considered any of these documents and arbitrarily rejected the claim. He invited out attention to the reply submitted by the appellant before the Adjudicating Authority vide their letter dated 19.07.2010 wherein they have submitted all the necessary documents which were not taken note of the same by the Adjudicating Authority. Therefore, rejection of claim on the ground that no documents were submitted is apparently incorrect. He placed reliance on the following judgments including decision in their own case.

- Transformers & Rectifiers (India) Ltd – 2015 (8) TMI 443 – CESTAT AHMEDABAD

  CCE, Hyderabad- IV vs. Victory Electricals Ltd – 2013 (298) ELT 534 (Tri. LB)
- PTC Industries Ltd – 2016 (340) ELT 563 (Tri. Del)

- ECE Industries Ltd - 2009 (237) ELT 428 (Tri. Bang)

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute that the appellant supplied the transformer to government electricity companies and as per the contract there is price variation clause. At the time of the clearance of the goods, price of the goods is fixed on the basis of earlier data given in the IEEMA formula but the price is finally decided on the basis of the current IEEMA formula which is only known at the later stage. Therefore, there is always possibility of variation in prices as compared to the price applied at the time of clearance of goods. The appellant after obtaining the actual price based on IEEMA formula worked out the difference. In case of lower price, for the excess paid duty they claimed refund and in case of higher price they pay differential duty. As per this fact the transaction value shall be actual price which is determined subsequently on the basis of the actual data based on the IEEMA formula of the relevant period of clearance. Accordingly, the appellant is prima facie entitled for the refund of excess paid duty.

4.1 The Adjudicating Authority and Commissioner (Appeals) contended that since the appellant have not followed the provisional assessment procedure they are not entitled for the refund. We do not agree with this contention for the reason that once the price determination on the basis of the relevant IEEMA formula is arrived at, the same shall be considered as transaction value and the duty if any paid on the higher price cannot be retained by the government and the same is liable to be refunded to the appellant. This issue has been considered time and again in the various judgments cited by the learned counsel. Therefore, only on the basis that the appellant have not opted for the provisional assessment, the refund cannot be rejected.

4.3 As regard the documents, we find that on the basis of the reply dated 19.07.2010 submitted before the adjudicating authority and various other records clearly establish that the appellant have submitted all the documents for the processing of the refund, Commissioner (Appeals) has ignored and not considered. In this position, we are of the view that the matter needs to be reconsidered only for purpose of verification of documents for processing the appellant's refund claim.

5. Accordingly, we set aside the impugned order and allow the appeals by way of remand to the Adjudicating Authority for passing a fresh order preferably within a period of two months from the date of this order. Needless to say that appellant should be granted sufficient opportunity for hearing as well as for filing submission, if any.

(Pronounced in the open court on 27.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)

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