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

REGIONAL BENCH- COURT NO. 3

Exicse Appeal No. 11698 of 2017-DB
(Arising out of OIA-VAD-EXCUS-001-APP-032-2017-18 Dated-17.04.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Vadodara-I)

M/s Koch Chemical Technology Group India Pvt Ltd **........Appellant**
315-317, Sankarda-Bhadarwa Road,
Village:-Moxi, Tal:-Savli,
Vadodara-Gujarat

VERSUS

CCE & ST- Vadodara-I **........Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri Sanjay Saraswat, Consultant appeared for the Respondent
Shri P. Ganesan, Superintendent, (Authorized Representative) appeared for the Appellant

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

FINAL ORDER NO. 10959 /2024

DATE OF HEARING:25.04.2024
DATE OF DECISION:25.04.2024

RAMESH NAIR

Shri Sanjay Saraswat, learned consultant appearing on behalf of the appellant, at the outset submits that in the appellant's own case for the previous period on the same issue, the matter was remanded by this Tribunal vide Final Order No. 12186 of 2023 dated 04.10.2023, therefore, he pray for remand in the present case also.

2. Shri P. Ganesan, learned (Superintendent) Authorized Representative has no objection in remanding the matter.

3. Considering the submission made by both the sides and perusal of records, we find that the issue involved in the present case as well as the case decided by this Tribunal vide Order dated 04.10.2023 is identical. The order No. 12186 of 2023 is reproduced below:

4. We have considered the rival submissions. We find that the order-in-original holds that the premises of the buyer, where the appellant makes delivery on FOR basis, is the 'place of removal'. For reaching this conclusion, the order-in-original relies on the decision of Hon'ble Apex Court in the case of Roofit Industries Limited in Civil Appeal No. 5541 of 2007. In the said decision following has been observed:

"11. In Commissioner of Central Excise, Noida, v. Accurate Meters Ltd. -(2009) 6 SCC 52-2009/03)LCX0001 Eq 2009 (235) ELT 0581 (S.C), the Court took note of few decisions including in the case of Escorts JCB Ltd. anci reiterated the aforesaid principles by emphasizing that the place of removal depends on the facts of each case.

12. The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules.

14. The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under:

"19. Property passed when intended to pass. -

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer,"

15. These are clear finding of facts on the aforesaid lines recorded by the Adjudicating Authority. However, the CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in the case of Escorts JCB Ltd. Obviously the exact principle laid down in the judgment has not been appreciated by the CESTAT.

16. As a result, order of the CESTAT is set aside and present appeal is allowed restoring the order passed by the Adjudicating Authority."

The order-in-original compares the three contracts and holds that the terms and condition of all the contracts are identical except for the fact that the price quoted in contract dated 19.06.2013 and 31.07.2014 mentioned the freight charges separately. Following are the details of the three contracts:

Sr No	PO No./ Date	Terms of Sale	Nature of Sale
01	HSBR/MX7/7410470 dated 26.09.2012	FOR/ Door Delivery	Price quoted was inclusive of freight charge.
02	IJ/MXU/7641031 dated 19.06.2013	FOR/ Door Delivery	Price quoted was excluding freight charge. Freight charge shown separately.
03	IJ/MW4/7496665 dated 31.07.2014	FOR/ Door Delivery	Price quoted was excluding freight charge. Freight charge shown separately.

The impugned order observes as follows:

"6. I find that the appellant has contended that they have removed goods for sale from the factory to the buyer's premises.

I find that as per purchase order, the appellant has agreed to supply the material with certain conditions and on the given date and place. I further find from purchase order that there are three purchase order, all are FOR/door delivery basis, out of one purchase order, in two purchase order, price quoted was excluding freight charge and ht charges has shown separately.

7. I find that:

i. The payment is to be made only within certain terms and conditions. Again any losses would be liquidated from the appellant's account.

ii. In case of transit lost or damage, it was the onus of the appellant to provide replacement, at no cost to their customers/client.

iii. The sale was actually closed only after receipt of the goods in good condition at site as per the terms and conditions agreed.

iv. The Ex factory price are not quantified in the contract, cannot be arbitrarily accepted as there is no separate contract for transportation.

8. In view of the above, I find that, the case is that of ownership of the goods resting with the appellant till finally delivered and accepted by their client, after due inspection and certification at the site. The compensation/payment are made on account of any loss till such acceptance, and also even later. I find the case more similar to that in case of order of the Supreme Court in case of M/s. Prabhat Zarda Factory Limited vs. CCE [2002 (146) E.LT. 497 (S.G)], which held that costs upto the depot is includable in the assessable value. In view of the above, I find no reason to interfere with the impugned order and uphold the same."

The finding in the impugned order are not supported by the exact provisions / clauses of the contracts examined. It is not understood from which clause of the contract or purchase order these conclusions have been reached.

5. We find that the impugned order reaches to the conclusions mentioned above in para 7 of the impugned order without stating the exact provisions on the contract from which these conclusions have been reached. In this background, we do not find that the impugned order is a speaking order. The impugned order is therefore set aside and matter remanded to the Commissioner (Appeals) for fresh adjudication after giving exact reasons along with evidence for reaching the conclusions arrived at therein. Needless to say the appellants will be provided an opportunity of natural justice. The appeal is allowed by way of remand."

From the above order, it can be seen that the identical issue and facts are involved. Accordingly, in the interest of justice, both the matters should be decided together by the adjudicating authority. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority for deciding afresh considering the observations made in the above decision of this Tribunal.

(Dictated and Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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