CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70181 of 2018

(Arising out of Order-In-Appeal No.464-465/CE/Alld/2017 dated 11.12.2017 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s HIL Limited **.....Appellant**
(A-49 & A-50 Satharia
District-Jaunpur (U.P.)

VERSUS

Commissioner of Central Excise & Service Tax, Allahabad
....Respondent

(38 M.G. Marg, Allahabad)

AND

Excise Appeal No.70182 of 2018

(Arising out of Order-In-Appeal No.464-465/CE/Alld/2017 dated 11.12.2017 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s HIL Limited **.....Appellant**
(A-49 & A-50 Satharia
District-Jaunpur (U.P.)

VERSUS

Commissioner of Central Excise & Service Tax, Allahabad
....Respondent

(38 M.G. Marg, Allahabad, U.P.)

APPEARANCE:

Shri S.P. Ojha, Consultant for the Appellant
Shri S.T. Khairnar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70228-70229/2023

DATE OF HEARING : 27.09.2023
DATE OF DECISION : 27.09.2023

P.K. CHOUDHARY:

Since both the appeals are arising out of the common Order-In-Appeal No.464-465/CE/Alld/2017 dated 11.12.2017 passed by Commissioner (Appeals), CGST & Central Excise, Allahabad and the dispute in both the appeals are similar, both the appeals are taken up together for hearing and disposal.

2. The issue in the present appeals is that the Appellant/assessee is engaged in manufacture and sale of asbestos cement products classifiable under Chapter 68 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant requested for provisional assessment of their final products under Rule 7 of the Central Excise Rules, 2022 for the period January 2017 to March 2017 and for the period from April 2017 to June 2017 on the ground that they are selling their finished goods both from the factory gate as well as depots situated at different places. Since the price at which the products are sold from different depots varies depending upon the market conditions and conditional discounts are required to be given to their prospective dealers, they are not in a position to determine the conditional discounts to be given to the prospective buyers, at the time of transfer of goods from the factory gate.

3. The Assistant Commissioner has earlier allowed provisional assessment for the period from October 2016 to December 2016 vide Provisional Assessment Order No.01/2016 dated 17.03.2016. It is the case of the Appellants that they allowed conditional discount which is not known at the time of sale of the goods, hence they have no authority to assess the duty of excise in the manner prescribed under Rule 6 of the Central Excise Rules, 2002. Therefore, they submitted an application to the Assistant Commissioner to allow to resort to provisional assessment in the manner required under Rule 7 of the said Rules.

4. Heard both sides and perused the appeal records.

5. We observe that the goods are sold at uniform rate all over India and in all the cases, the goods are removed from the manufacturing unit only on payment of Central Excise duty. Upon enquiry by revenue, the Appellant stated that they have allowed cash discount for prompt payment, quantitative discount etc. to their dealers/buyers/consignment agents and such discount structure was known to every dealer undisputedly and the said discount was adjusted in the invoices by way of issue of credit notes and further they have passed on the discount to their customers and made relevant adjustment in the books of accounts. Accordingly, they have paid the correct duty payable on the recalculated transaction value.

6. The provisions of Central Excise Act, Rules, 2002, to the extent relevant in resolving the issue are extracted below;

> *"Rule 7. Provisional Assessment: (1) Where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto, he may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be, in writing giving reasons for payment of duty on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, may order allowing payment of duty on provisional basis.*
>
> *(2) The payment of duty on provisional basis may be allowed if the assessee executes bond in the form prescribed by the Board with such surety or scrutiny in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be, deem fit binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed."*

7.1. The impugned order seeks to raise the following substantial question of facts and law.

(i) Whether the learned Assistant Commissioner is justified in denying the provisional assessment so far it relates to grant of conditional discount.

7.2. That the appellants crave leave to submit the following facts which will go a long way in proving that the impugned order is not justified in law.

(i) Denial of provisional Assessment is unjustified

7.3. That as envisaged in Rule 7 (1) of the Central Excise Rules, 2002 provisional assessment is resorted to in the event the duty cannot be determined for any of the following reasons.

(i) Transition value is not known at the time of clearance from the place of removal.

(ii) assessee is not in a position to determine the rate of duty applicable on the goods or there is dispute regarding classification of goods.

7.4. That from the perusal of Rule 7 of the Central Excise Rules, 2002, (extracted supra), it is evident that where the firm price of the excisable goods satisfying the measures of value as provided under Section 4 (1) (a) of the Central Excise Act, 1944 is absent, the assessee is required to assess the duty provisionally in the manner prescribed under Rule 7 of the Central Excise Rules, 2002. In such case, the assessee has no authority to assess the duty in the manner prescribed under Rule 6 of the said Rules. The Appellants state and submit that they allow conditional discount which is not known at the time of clearance from the place of removal but is known after specified period. Such discounts affects the value of the goods. The Appellants therefore, submitted an application for resorting to provisional assessment during the period from 1st January 2017 to 31st March 2017.

7.5. That denial of provisional assessment relating to grant of provisional assessment is repugnant to the provisions of Rule 7 of the Central Excise Rules, 2002 as the final price is known after deduction of discount which is determined only after the removal of the goods. The Appellants state and submit that the officers cannot ignore the provisions of Rule 7 of the Central Excise Rules, 2002 governing the provisional assessment.

7.6. That in view of the above discussions, the impugned order is liable to be revised to the above effect.

8. Accordingly, the appeals filed by the Appellants are allowed.

(Pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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