CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

Excise Appeal No. 70027 to 70029 of 2016

(Arising out of Order-in-Appeal No. 90, 91 & 92/CE/ALLD/2015 dated 26.08.2015 passed by the Commissioner (Appeals), Central Excise, Allahabad)

M/s. Jaypee Cement Products **.....Appellant**
Sadva Khurd, Paragana- Arail
Tehsil- Bara, Dist. Allahabad

Vs.

Commissioner of Central Excise, **.....Respondent**
Allahabad
38, MG Marg, Civil Lines,
Allahabad

WITH

Excise Appeal No. 70049 & 70050 of 2018

(Arising out of Order-in-Appeal No. 144-145/CE/ALLD/2017 dated 25.09.2017 passed by the Commissioner (Appeals), CGST & Central Excise Appeals Commissionerate, Allahabad)

M/s. Jaypee Cement Products **.....Appellant**
Sadva Khurd, Paragana- Arail
Tehsil- Bara, Dist. Allahabad

Vs.

Commissioner of Central Excise, **.....Respondent**
Allahabad
38, MG Marg, Civil Lines,
Allahabad

APPEARANCE:

Shri Atul Gupta , Advocate for the appellant
Shri Manish Raj (AR) for the respondent

CORAM:

Hon'ble Mr Ajay Sharma, Member (Judicial)
Hon'ble Mr P Anjani Kumar, Member (Technical)

FINAL ORDER No: 70201-70205/2026

DATE OF HEARING : 07.04.2026
DATE OF DECISION : 02.06.2026

PER: Ajay Sharma

These five appeals arise from two Orders-in-Appeal passed by the Commissioner (Appeals), Allahabad — the first dated 26.08.2015 (disposing of three appeals filed by the Appellant) and the second dated 25.09.2017 (rejecting two further appeals filed by the Appellant). Since the Appellant is common to all five appeals and the core issue in each is identical, namely, the disallowance of quantity discount and price support/price difference discounts while finalizing provisional assessments, we find it expedient to dispose of all five appeals by this common order. The period under consideration in all the appeals is from January, 2012 to March, 2013.

2. The Appellant is engaged in the manufacture of Asbestos Cement Corrugated Sheets (hereinafter referred to as 'ACC Sheets'), which are excisable goods within the meaning of the Central Excise Act, 1944.

3. The cleared goods are dispatched from the factory to the Appellant's network of depots situated across several States, including Uttar Pradesh, Madhya Pradesh, West Bengal, Bihar, and others. In addition, a portion of the manufactured goods is sold directly to customers at the factory gate. The pricing of ACC

Sheets is on a FOR (Free on Rail / Freight-on-Road) destination basis, meaning that the sale price includes the cost of freight from the factory to the buyer's location.

4. Since freight costs vary considerably from one destination to another and market-driven price fluctuations make it commercially impossible to determine the exact realizable price at the time of removal, the Appellant applied for, and was duly granted, permission to clear goods under provisional assessment in terms of Rule 7 of the Central Excise Rules, 2002. Under this arrangement, duties were paid on a provisional basis at the time of clearance, with the understanding that the assessment would be finalized upon submission of the relevant documents and information by the Appellant.

5. The Appellant claims to have submitted all requisite documents and information to the jurisdictional authorities for the purpose of finalization of the provisional assessments. At the time of finalization, the Appellant claimed the following deductions from the assessable value viz. cash discount, freight charges, insurance, quantity discount and price support/price difference discount.

6. The respective Jurisdictional Assistant Commissioners, upon finalizing the provisional assessments vide separate Orders-in-Original, disallowed the deductions claimed on account of quantity discount and price support/price difference discounts,

holding that such discounts did not satisfy the conditions for deductibility from the assessable value.

7. Being aggrieved by the said disallowance, the Appellant preferred appeals before the Commissioner (Appeals), Allahabad. The Commissioner (Appeals) disposed of three of these appeals vide Order-in-Appeal dated 26.08.2015. The remaining two Appeals were rejected vide Order-in-Appeal dated 25.09.2017, without granting any relief to the Appellant. The Appellant is therefore before us by way of these five appeals.

8. The learned Counsel appearing for the Appellant addressed detailed submissions before us and also placed written submissions / synopsis on record. Learned Counsel submits, inter alia, that price support / price difference discounts are a legitimate commercial practice in the building materials trade and represent genuine adjustments to the invoice price made on account of market conditions prevailing at the depot locations at the time of actual sale to the customer. It was submitted that these discounts are directly relatable to the clearances in question, are documentarily established, and squarely qualify as admissible deductions from 'transaction value' within the meaning of Section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

9. The learned Authorised Representative appearing for the Revenue sought to support the impugned orders and prayed for dismissal of appeals.

10. Firstly, we are perusing the Order-in-Appeal dated 26.08.2015. At the outset it has been submitted by learned counsel that various grounds were raised before the learned Commissioner which were recorded in the impugned order also but were not addressed by him. The same are reproduced as under:-

> *"The appellant has given credit notes to the buyers on account of price support, sales incentive, breakage claim and quantitative discount. However, no claim has been made by the appellant for deduction from assessable value for inventive and breakage claim and quantitative discount. The appellant has claimed deduction only on account of price support and quantitative discout. However, the Adjudicating Authority while finalizing the assessment has in his order taken the amount claimed to be inclusive of sales incentive and breakage claim.*
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> *The Adjudicating Authority has also concluded that the appellant have not claimed deduction as per their discount policy. The appellant wishes to reiterate that it has given discount as per its policy and any other discount that has been given to the customers has not been claimed in arriving at the assessable value. Moreover, the discount has been passed on to the cunsumers by way of credit notes.*
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> *The observation of the Adjudicating Authority that the appellant has taken deduction and claimed discount at different rates viz. Rs.5/RR, Rs.12/RM as against discount policy declared by them is also not correct as the discounts have been given only on the*

basis of discount policy and the variability is not a factor to be considered in arriving at the deduction to arrive at the assessable value.

The Appellant in support of above contention has relied upon the decision of the Hpn'ble Supreme Court in the case of Collector of Central Excise & others vs. MRF Ltd. Others reported in 1987 (27) ELT 553 (SC) and Union of India vs. Bombay Tyres International reported in 1983 (14) ELT 1896 (SC)."

11. We find that the learned Commissioner (Appeals), instead of examining the grounds of appeal independently and recording his own findings on the issues raised therein, restricted himself to reproducing the findings recorded in the Orders-in-Original in the following terms:

"I do not find any reasons to interfere in the matter and also no records with regards to basis of the averments has been annexed with the appeal to arrive at the conclusion contrary to the decision of the Ld. Adjudicating authority."

12. This observation does not constitute a reasoned order. learned Commissioner has not identified the specific grounds of appeal urged by the Appellant nor examined the evidence and documents filed before him. He failed to examine the relevant statutory provisions to the facts or to record any independent conclusion on the merits. A blanket statement that no reason exists to interfere, without any engagement with the Appellant's submissions, is precisely what the courts have characterized as

a *non-speaking order*. Such an order cannot withstand legal scrutiny.

13. It is a fundamental requirement of adjudicatory fairness and statutory duty that a quasi-judicial authority, while exercising its appellate jurisdiction, must independently assess the matter before it and record its own findings and not merely adopt the view of the authority below. Failing to do so renders the appellate exercise hollow and deprives the appellant of the very purpose for which the appeal mechanism exists.

14. We are also deeply concerned by a further aspect of the Order-in-Appeal dated 26.08.2015. Learned Commissioner did not confine himself to the issues arising from the Appellant's grounds of appeal. He went beyond the scope of the proceedings and, in what appears to be suo motu observations, questioned the very allowability of deductions for freight and insurance charges, the deductions that had been allowed by the Adjudicating Authority in the Orders-in-Original and which were not placed in challenge before him by Revenue. The Commissioner's observation reads as follows:

> *"Therefore, the deductions from the assessable value on expenses of freight & insurance will only be permissible, if and only if, the credit of input service is not availed or taken by the appellant. If availed, the credit taken will be recoverable."*

15. This observation, even if framed as obiter, is legally impermissible and prejudicial to the Appellant. The jurisdiction of the learned Commissioner is circumscribed by the subject matter placed before him in appeal. He may affirm, modify, or reverse the order under appeal in relation to the issues raised but does not possess the authority to introduce new liabilities or create doubt over entitlements already granted by the Adjudicating Authority, particularly when those entitlements have not been challenged by the Revenue either in cross-objection or otherwise.

16. It is a well-settled principle of appellate procedure as consistently laid down by the Hon’ble Supreme Court that an appellant cannot be placed in a worse position as a result of its own appeal. This principle, sometimes referred to by the maxim *reformatio in peius*, serves as an essential safeguard of procedural fairness. A party should not be penalized for exercising its statutory right to challenge an order. Permitting an appellate authority to convert the Appellant's appeal into an instrument for enlarging the revenue's claim would fundamentally undermine the right of appeal.

17. The requirement that a quasi-judicial authority pass a reasoned order is not a mere formality, it is part and parcel of the principle natural justice and the supervisory jurisdiction of superior courts. An order without reasons is an order without a legal foundation. Hon’ble Supreme Court has consistently laid

down that the failure to assign reasons renders an administrative or quasi-judicial order arbitrary and the same is liable to be set aside on that ground alone.

18. The jurisdiction of the Commissioner (Appeals) under the Central Excise Act, 1944 is to pass *'such order as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against'*. This jurisdiction is exercised with reference to the grounds of appeal and the record before the authority. It does not extend to examining matters not raised before it or to creating new demands / disallowances de hors the challenge presented.

19. Section 4 of the Central Excise Act, 1944, provides that the assessable value of excisable goods is the 'transaction value', being the price actually paid or payable for the goods when sold, provided certain conditions are fulfilled. Section 4(3)(d) clarifies that 'transaction value' does not include certain amounts of duty and other taxes actually paid or payable on such goods. So various factual things/documents were required to be examined, which admittedly have not been examined by the Commissioner while passing the impugned order. We are not in a position to render any finding without a prior finding on these aspects by the first appellate authority.

20. For the foregoing reasons, we hold that the Order-in-Appeal dated 26.08.2015 is vitiated by non-application of mind

and failure to pass reasoned orders and cannot be sustained. We are in agreement with prayer made by learned Counsel to remand these appeals to the learned Commissioner for a decision afresh. Whatever deductions are allowed in the Orders-in-Original shall remain undisturbed.

21. Since the issue involved in all the appeals before us are common, therefore without discussing any facts etc of another appeal against the impugned order dated 25.9.2017 and without going into their merits, we are setting aside the said impugned order also, in order to avoid multiplicity of proceedings, to the extent the same is under challenge and remanding all these appeals to the learned Commissioner (Appeals), for fresh decision on merits in accordance with law.

22. While deciding the appeals afresh, the Commissioner (Appeals) shall independently examine all grounds of appeal urged by the Appellant, with reference to the written submissions, documentary evidence, and any other material placed on record and afford the Appellant a adequate opportunity of hearing before a decision is rendered and pass a speaking order. Appellant is also directed to produce all relevant documents/evidence before the learned Commissioner in support of their claim.

23. We are making it clear that we have not expressed any opinion on the merits of the issues and those are required to be decided uninfluenced by any observation of this Tribunal.

24. In view of the fact that the period of dispute dates back to January, 2012 to March, 2013 and the matter has remained unresolved for over a decade, we hope that the learned Commissioner (Appeals) concerned, would dispose of these appeals as early as possible preferably within a period of three months from the date of receipt of this order.

25. The appeals are accordingly allowed by way of remand in the above terms.

(Order pronounced in open court on 02.06.2026)

(Ajay Sharma)
Member (Judicial)

(P Anjani Kumar)
Member (Technical)

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