CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2.

Excise Appeal No. 20875 of 2014

[Arising out of the Order-in-Appeal No. 72/2013-CE dated 13.12.2013 passed by the Commissioner of Central Excise (Appeals-II) Bangalore.]

Kerala State Electronic Development Corporation Ltd
Keltron Equipment Complex,
Karakulam, Trivandrum,
Kerala **.......Appellant**

VERSUS

Commissioner of Central Excise, Trivandrum
T.C. No. 26/334(1&2),
ICE Bhavan, Press Club Road,
Trivandrum, Kerala -695001 **..... Respondent**

Appearance:
Shri Manoj Pillai, Advocate for Appellant
Shri Rajesh Shastry, Authorized Representative for Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Pullela Nageswara Rao, Member (Technical)

Final Order No. 20235 of 2025

Date of Hearing: 20.08.2024
Date of Decision: 19.02.2025

Per: Pullela Nageswara Rao

M/s. Kerala State Electronic Development Corporation, Ltd., (KSEDC), the appellant is a Government of Kerala public sector unit manufacturing various electronic products. The issue in the present appeal is regarding valuation of goods manufactured by the appellant during the period from 28.08.1986 to 31.03.1989.

2. The brief facts are, the Appellant manufactured UPS on the basis of purchase orders canvassed and sent to the appellant by M/s. Keltron Controls, a sister concern of the appellant and the goods were sent to M/s. Keltron Controls by following the procedure laid down in Rule 173 C (11) of Central Excise Rules, 1944, which is reproduced below.

> *"173 C (11) Notwithstanding the provisions of sub-rules (1) to (6), the Collector may, having regard to the nature of goods manufactured or the frequent fluctuations of market price of such goods, allow an assessee or a class of assessees to declare the price of goods transacted by the said assessee or assessees for the particular wholesale consignment on the Gate Pass or accompanying Challan or Advice Note and to determine the duty payable on such goods intended to be removed on the basis of the said declared price:"*

3. The Appellant was following the above procedure for clearing the UPS from their premises on Sectional Debit Advises (SDAs) and duty was paid on the price mentioned in SDAs. However, alleging that appellant undervalued the goods, proceedings were initiated, and a show cause notice was issued on 21.01.1991 demanding payment of differential duty of Rs.5,88,725/- and also proposing imposition of penalty. Thereafter, the matter was adjudicated by the Commissioner of Customs vide order dated 24.12.1991 and it was held that the demand beyond the normal period of 6(six) months is unsustainable and dropped the demand, however the assessment of the UPS system will have to take into account definitely the value of the batteries also. Aggrieved by the order of the Commissioner, department filed an

appeal before the Tribunal and Tribunal remanded the matter to Original Adjudicating Authority for De-novo Adjudication with the following observation;

> *"We find that under rule 173 C (11) it is permissible to produce the SDA also. But it is not clear from the Order as to whether any Invoice was produced along with RT-12 returns. This is a basic factor which is required to be looked into and more particularly in view of the fact that the Respondents were operating under Rule 173 C (11) of the Central Excise Rules, 1944."*

4. On remand, the Adjudication authority as per the order dated 21.09.1999 held that there was suppression of fact with an intent to evade duty and confirmed the demand and imposed penalty of Rs. 60,000- under Rule 173Q of Central Excise Rules, 1944. Aggrieved by the said order, appeal was filed before the Commissioner (Appeals) and on rejection of said appeal vide order dated 27.11.2002, an appeal was filed before this Tribunal in 2005. As per the Final Order dated 26.08.2005, of the Tribunal the matter was remanded to the Adjudicating Authority. On De-novo Adjudication, the Adjudicating Authority confirmed the demand with the following observation:-

> *"The party did not make these invoices available to the department and the fact of excess collection was suppressed in order to evade duty. I find from the records of the case that there was fraud, collusion, willful misstatement and suppression of fact for the department to be justified to claim duty beyond a period of six months".*

5. The Appeal filed before the Commissioner (Appeals) was again rejected and thereafter present appeal is filed before the Tribunal.

6. When the appeal came up for hearing, learned counsel for the appellant submits that there is no reason or justification to allege illegality against the appellant. Appellant was following the procedure laid down in Rule 173C (11) of Central Excise Rules, 1944 and moving the goods as observed by the Adjudication Authority in the initial order issued on 24.12.1991. Learned counsel for the appellant further submits that in the statement of the Senior Manager in-charge of the appellant recorded on 30.10.1990, he had admitted that the purchase orders were received from their sister concern M/s. Keltron controls and transactions were regulated through Sectional Debit Advices (SDAs) and duty payment was based on value shown in the SDAs. He also stated that the appellant was not aware of the original orders of M/s.Kelton Controls and had also not verified the invoices of the Kelton Controls involving the supply of UPS systems and the excise duty remittance was not based on the realization of the amounts by M/s. Keltron controls. He also deposed that the additional component parts of UPS system are purely an optional standby equipment for use, batteries were an additional item to the system and UPS can work with or without battery depending on the period of power failure and also do not form part of the system.

7. Considering the above facts, Adjudication Authority in its initial order held that since the appellant had filed SDAs along with RT-12 Returns and when it is made available to the concerned officer, there is a failure on the part of department to probe the matter further rather than alleging suppression and confirming demand of duty by invoking the extended period of limitation. The learned counsel also drew our

attention to the first Order-in-Original dated 21.09.1999, issued by the Adjudication Authority, where it is held that;

> *"I observe that the party has been filling RT-12s every month along with all copies of Sectional Debit Advices (SDAs). Further these SDAs clearly show that it was only an internal document on the basis of which Keltron Controls transfers certain amount to KSEDC and it was not a sale invoice in any case. In the above circumstances, the officers who assessed the RT-12 should have definitely pursued the matter and find out the actual sale proceed which accrued to M/s. Keltron Controls, in as much as the facility under Rule 173(C) II clearly stipulates that the price should be in accordance with Section 4. This was not merely an obligation on the part of the assessee but equally it was the responsibility of the Departmental officers to ensure that the price is in accordance with the provisions of section 4. I, therefore, agree that suppression cannot be alleged against the party in view of the fact that the SDA was filed along with the RT-12 or at least made available to the officers, later on and there is a failure on the part of the Department to probe the matter further. The above observations apply equally to the addition of the cost of batteries, since it was a well known fact that batteries were being supplied by KSEDC as part of the contract."*

8. Learned Authorized Representative (AR) reiterated the submissions and submits that the Adjudicating Authority rightly confirmed the demand and imposed penalty in accordance with law.

9. Heard both sides and perused the records.

10. We find that it is an admitted fact that the dispute pertains to the period from 28.08.1986 to 31.03.1989 and the issue is coming up for hearing for the third time. The appellant was following the procedure laid down in Rule 173C (11) of Central Excise Rules, 1944 and duty payment was based on value shown in the SDAs. It was further sold by the sister concern of the appellant at higher rate by adding additional items as optional items, including battery etc., which are manufactured by other manufactures. Even as per the statement of the Senior Manager dated 30.10.1990, the purchase order was received from sister concern M/s. Keltron controls and transactions were regulated through Sectional Debit Advices (SDAs). He also stated that the appellant was not aware of the original orders of M/s. Keltron controls and has also not verified the invoices of M/s. Keltron controls regarding sale of UPS system including optional items and the excise duty remittance was not based on the realization of the amount by their sister concern M/s. Keltron controls. The original Adjudicating Authority, only after considering the above facts, held that since the appellant had filed SDAs along with RT-12 Returns and when it is made available to the concerned officer, there is a failure on the part of department to probe the matter further and due to that reason, the demand invoking the extended period of limitation and penalty proposed in the show cause notice were dropped.

11. We find that in the facts and circumstances of the case, invoking extended period of limitation is unsustainable. Considering the above, demand, if any for the normal period is confirmed in accordance with law. The demand by invoking the extended period of limitation and

penalty imposed as per the impugned order on the appellant are set aside.

12. Accordingly, the Appeal is partially allowed in the above terms with consequential relief, if any, as per law.

(Order pronounced in open court on 19.02.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar