CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 53370 of 2015

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-141-15-16 dated 16.06.2015 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Pearl Drinks Ltd. **......Appellant**
Phase-I, Industrial Complex, Bari
Brahmana, Jammu & Kashmir-181133

VERSUS

Commissioner of Central Excise **......Respondent**
And Service Tax, Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir-180012

WITH

Excise Appeal No. 61195 of 2018

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-349-50-17-18 dated 16.03.2018 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Pearl Drinks Ltd. **......Appellant**
Phase-I, Industrial Complex, Bari
Brahmana, Jammu & Kashmir-181133

VERSUS

Commissioner of Central Excise **......Respondent**
And Service Tax, Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir-180012

AND

Excise Appeal No. 61265 of 2018

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-462-17-18 dated 22.03.2018 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Pearl Drinks Ltd. **......Appellant**
Phase-I, Industrial Complex, Bari
Brahmana, Jammu & Kashmir-181133

VERSUS

Commissioner of Central Excise **......Respondent**
And Service Tax, Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir-180012

APPEARANCE:

Shri V.M. Doipohode, Advocate for the Appellant

Shri Kanish Saini, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.61590-61592/2025

DATE OF HEARING/DECISION: 13.10.2025

P. ANJANI KUMAR:

The appellants, M/s Pearl Drinks Ltd., Jammu, are engaged in the manufacture of PET Preforms and supply to IRCTC under an Agreement; on conducting of an audit, it appeared to the Department that the delivery of the goods was made at the place of the buyer at the contracted price; the Purchase Order shows that the amount of freight component will be charged extra; the gross price shown in the invoices was not altered even when the freight paid was less than the equalized freight; thus, the appellants have inflated the value of the excisable goods to avail excess refund, by way of self-credit, in terms of the Notification No.56/2002-CE dated 14.11.2002, as amended. Show cause notices dated 05.05.2014, 07.05.2014, 02.11.2015 & 16.04.2015, covering the period 2008-09 to 2012-13, 2013-14 &

2014-15, demanding excess refund of Rs.15,78,717/-, Rs.4,75,892/- & Rs.01,71,072/- respectively and were confirmed by the Original Authority. The Appellate Authority upheld such confirmation vide the orders impugned. Hence, these appeals.

2. Learned Counsel for the appellants submits that the issue is no longer res integra having been decided by the Principal Bench in the case of Ufluex Ltd. – 2015 (327) ELT 359 involving very same set of facts. He also submits that in the instant case, the refund orders were not reviewed and no competent authority has held the same to have been erroneously refunded; Hon'ble Jammu & Kashmir and Ladakh High Court in the case of Krishi Rasayan Pvt. Ltd. – 2023 (7) TMI 661 (J&K) held that in such cases the provisions of Section 11A are not attracted.

3. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

4. Heard both sides and perused the records of the case. We find that the issue is no longer res integra as it has been decided by the Principal Bench in the case cited above. The Bench held as follows:

> **4.** We have perused the representative sales order and invoices. We find that the sale is on FOR destination basis and the destination is the buyer's premises. The cost of transportation is included in the assessable value and the transit insurance has also been taken by the appellants in their name for safe transport of the goods. Thus, it is evident that the ownership of the goods remained with the appellants upto the place of delivery at the buyers premises. In other words, the point of sale is the buyer's premises. In these circumstances the place of removal, as per definition in Section 4 of the Central Excise Act, 1944 becomes the buyers premises, as that is the place or premises from where the excisable goods were sold after the

clearance from the factory from where such goods were removed. That being the case, the freight charges are clearly includible in the assessable value. Therefore, duty paid by them on the impugned goods on value inclusive of the freight charges has been correctly paid and consequently the impugned refund (self-credit) thereof under notification No. 56/2002-C.E. has also been correctly taken. We find that the High Court of Punjab & Haryana in the case of *Ambuja Cement* v. *Union of India* - 2009 (236) E.L.T. 431 (P & H) = 2009 (14) S.T.R. 3 (P&H) after a detailed discussion has come to a clear finding that in the circumstances like the ones obtaining in the present case the buyer's premises is the place of removal. As per Rule 5 (Explanation-2) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, it was clarified for removal of doubts that the cost of transportation from the factory to the place of removal where the factory is not the place of removal shall not be excluded for the purpose of determining the value of excisable goods. We are not consciously referring to the CBEC Circular No. 97/6/2007-ST, dated 23-8-2007 which also clearly supports the view that in these circumstances the place of removal is the buyer's premises. The decision of the Chattisgarh High Court in the case of *Ultratech Cement Ltd.* v. *CCE, Raipur* - 2014 (307) E.L.T. 3 (Chhattisgarh) = 2014 (35) S.T.R. 641 (Chattisgarh) is also in harmony with the view taken by Punjab & Haryana High Court (supra) in this regard. In the wake of the foregoing analysis and judicial precedents, the judgment of CESTAT in case of *Aditya Birla Insulators Ltd.* v. *Commissioner, Central Excise, Kolkata*-IV - 2008 (226) E.L.T. 377 (Tri.) holding a contrary view clearly stands over-ruled. Thus, the appellants rightly included the cost of transportation in the assessable value. This issue having thus been settled in the appellant's favour, the duty was correctly paid and hence the impugned refund correctly taken.

5. We also note that the extended period has also been invoked in respect of the Order-in-Original dated 31-12-2012. In this regard, we find that it has not been brought out as to what which was required to be brought to the notice of the Department as per any provision law was not brought to the department's notice. The appellants

> had been filing their ER-1 returns showing all the details required to be shown therein. It has been held by Supreme Court in the case of *Commr.* v*. Champhar Drugs Liniments* - 2002-TIOL-266-SC-CX = 1989 (40) E.L.T. 276 (S.C.) that something positive other than mere inaction or failure on the assessee's part or conscious withholding of information when assessee knew otherwise is required for invoking extended period. In case of *Gopal Zarda Udyog* v*. CCE, Delhi* - 2005 (188) E.L.T. 251 (S.C.) Supreme Court observed that mere failure or negligence on the part of the manufacturer does not attract the extended period. However, as the assessee succeeds on merits, we avoid dwelling on the issue of time bar any further.

5. We further find that Hon'ble Jammu & Kashmir and Ladakh High Court in the case of Krishi Rasayan Pvt. Ltd. (supra) held that unless the refund availed by way of self-credit is challenged, the refund cannot be termed to be "erroneous" and be demanded in terms of Section 11A of the Central Excise Act, 1944; this Bench has followed this judgment in the case of Ravi Crop Sciences – 2023 (1) TMI 1298 (CESTAT CHD). The facts of the impugned cases are identical to the case of Uflex Ltd. (supra) on merits and to the case of Krishi Rasayan Pvt. Ltd. (supra) on legal point, we do not find any reason to take a different opinion.

6. In view of the above, the appeals are allowed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK