

**Customs, Excise & Service Tax Appellate Tribunal**  
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/50736/2015, E/53870,50849/2014

| Sr. No | Case No         | Impugned Order Detail's               | Date of Impugned Order | Passed By                                                    | Appellant                          | Respondent                    |
|--------|-----------------|---------------------------------------|------------------------|--------------------------------------------------------------|------------------------------------|-------------------------------|
| 1      | E/50736/2015-DB | OIA-JNK-EXCUS-000-APP-842-14-15       | 05/12/2014             | Commissioner of Central Excise-CHANDIGARH-II( Appeal)        | Alu Bond Enterprises               | C.C.E. & S.T.-Jammu & Kashmir |
| 2      | E/53870/2014-DB | OIA-JNK-EXCUS-000-1034-1035-13-14     | 19/03/2014             | Commissioner of Central Excise and Service Tax-CHANDIGARH-II | Alu Bond Enterprises               | C.C.E. & S.T.-Jammu & Kashmir |
| 3      | E/54849/2014-DB | OIA-JNK-EXCUS-000-APP-1009-1022-13-14 | 12/03/2014             | Commissioner of Central Excise and Service Tax-CHANDIGARH-II | Alstrong Enterprises India Pvt Ltd | C.C.E. & S.T.-Jammu & Kashmir |

**Represented by:**

For Appellant (s) : Shri S. K. Mahlotra, CA

For Respondent (s): Shri Tarun Kumar, AR

**CORAM :**

**Mr. Ashok Jindal, Hon'ble Member (Judicial)**

**Mr. Bijay Kumar,, Hon'ble Member (Technical)**

Date of Hearing/Decision: 04.12.2018

**ORDER No. A/63543-63545 / 2018**

**Per : Mr. Ashok Jindal**

As issue involved in all the appeals is common, therefore, all are taken up together for disposal by a common order.

2. The facts of the case are that the appeals are located in the state of Jammu & Kashmir and availing benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. As per the said notification, any duty paid by the assessee in cash is entitled for refund/self credit. In all these cases, the appellants paid duty in cash and took cenvat credit/self credit of duty paid in cash and refund claim thereof were sanctioned to them. Later on, the appellants compensated to their buyers on account of defect/discounts given to them. The Revenue is of the view that as the

discount/compensation given to the buyers is not the part of assessable value, therefore, they were not required to pay duty. Consequently, the refund claim of duty on the amount of discount/compensation is not refundable. In these set of facts, proceedings were initiated against the appellant and by way of the impugned orders, demand was confirmed on account of erroneously refunded amount. Against the said orders, the appellants are before us.

3. The Ld. Consultant appearing on behalf of the appellant submits that it is not a case of discount which was known in advance by the buyers. In fact, the appellants have compensated for defected goods found, later on, instead of bringing the same into their factory. Moreover, it is his contention that the appellants have neither opted for provisional assessment and as per the CBEC Circular, if the selling price is not known, in that circumstances, the assessee is required to opt for provisional assessment and if provisional assessment is not opted, in that case, the price at which the goods have been cleared is the selling price on which duty is payable. Admittedly, the quantum of discount was not known at the time of clearance of goods. Moreover, it is not a case of provisional assessment, therefore, the appellant have paid duty correctly and claimed refund thereof correctly paid. In that circumstances, the impugned orders are to be set-aside.

4. On the other hand, the Ld. AR for the Revenue reiterated the findings of the impugned orders and submits that as the appellants have

given discount later on and reduce the price of the goods, therefore, they are not entitled to refund claim as claimed by them.

4. Heard the parties and considered the submissions.

5. We find that in these cases, it is very much clear from the facts of the case that the amount of discount was not known in advance. Moreover, it is not a case of provisional assessment, in that circumstances, whatever duty has been paid by the appellants at the time of clearance is duty paid correctly and in terms of Notification No. 56/2002 dated 14.11.2002 they have rightly claimed the refund of duty paid in cash, therefore, no amount has been refunded erroneously to the appellants. In that circumstances, we hold that the demand on account of erroneously refunded is not sustainable against the appellants. Therefore, we set-aside the impugned orders and allow the appeals with consequential relief, if any.

*(Dictated & pronounced in the Court)*

**(Bijay Kumar)**  
Member (Technical)

**(Ashok Jindal)**  
Member (Judicial)

G.Y.