IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

**E/41576/2013, E/42535/2014 &**
**E/MISC/40309/2017 & E/40007/2014**

(Arising out of Order-in-Original No. 8/2013 dated 31.03.2013, No. 14/2013 dated 26.09.2013 and No. 24/2014 dated 22.08.2014 passed by the Commissioner of Central Excise, Chennai II Commissionerate, Chennai).

M/s. Tulsyan NEC Ltd. Appellant

CCE, Chennai-II Respondent

Appearance

Shri P.C. Anand, Consultant,
for the appellants

Shri S. Govindarajan, AC (AR)
for the Respondent.

**CORAM :**

**Hon'ble Ms. Sulekha Beevi, Member (Judicial)**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**

Date of Hearing/Decision: 06.07.2017

FINAL ORDER Nos. 41150-41152/**2017**

**Per Bench**

The above miscellaneous application No. E/MISC/40309/2017 in appeal E/40007/2014 has been filed by the department seeking amendment of the cause title on the ground that the department is shown in the above appeal with jurisdiction of Chennai-II Commissionerate whereas now the same has been changed as "The Principal Commissioner of Central Excise, Chennai I Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034".

2. The assessee is represented by Shri P.C. Anand, C.A. He submitted that the issue involved in this appeal is covered and requests to hear the appeal along with appeals No. E/40285/2017 and E/42535/2014 listed for hearing today. Ld. AR, Shri S. Govindarajna, AC, represented on behalf of Revenue.

3. We find that the prayer for amendment of the cause title as also the address for communication of the department needs to be amended in accordance with the change of address/jurisdiction of the department. Registry is directed to list the appeals namely Nos. E/40007/2014, E/40285/2017 and E/42535/2014 with present appeal for regular hearing on 06.07.2017.

4. Miscellaneous application for change of cause title as well as change of address is therefore allowed in the above terms. The amended address shall be noted in the EA-3 Form.

5. Since the issue in dispute in all the above mentioned appeals is common and also is covered by the appellant's own case, after allowing the miscellaneous application all the three appeals are taken up together for common disposal.

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6. The brief facts of the case are that the appellants are manufacturers of MS Billets and TMT Bars falling under Chapter sub-heading 72071920 and 72142090 of the Central Excise Tariff Act, 1985. They are clearing the goods mostly to their consignment agents on stock transfer basis. A show cause notice dated 03.12.2012 was issued proposing demand of duty on the freight incurred for removal of goods from the factory gate to the consignment agent during the period December 2007 to December 2013. After due process of law, the adjudicating authority confirmed the following demand in all the three appeals which were upheld by the Commissioner (Appeals). Hence these appeals.

| Sl.No | O-in-O | Period | Duty & Penalty |
|---|---|---|---|
| 1 | 8/2013 dated 31.03.2013 | December 2007 to March 2012 | Rs. 27,96,24,824 Penalty u/s. 11AC |
| 2 | 14/2013 dated 26.09.2013 | April 2012 to February 2013 | Rs. 1,39,72,635/- Penalty Rs. 35,00,000/- |
| 3 | 24/2014 dated 22.08.2014 | March 2013 to December 2013 | Rs. 1,11,16,266/- Penalty Rs. 30,00,000/- |

7. Ld. Consultant, Shri P.C. Anand appeared on behalf of the appellants and takes reliance on the decision of the Tribunal in the appellant's own case vide Final Order No. 40111 – 40112/2017 dated 24.01.2017, which is in favour of the appellants.

8. Ld. AR, Shri S. Govindarajan, AC, reiterated the findings of the adjudicating authority in the impugned orders.

Excise & Service Tax Appellate Tribunal

9. It is seen that in the appellant's own case the Tribunal vide Final Order No./ 41763 – 41766/2015 dated 6.7.2015 has analyzed the very same issue and the relevant portion of the said decision is reproduced as under:-

> "4. Revenue has not brought to record whether by any means, freight paid by the buyer to the transporter and benefited the manufacturer. The law relating to excise being revenue-elastic in its character, elasticity of Revenue has not been jeopardized. There is no flow back of the freight aspect proved by Revenue showing that the same has come to the manufacturer in disguise. That not being the case, assessable value declared by the appellant remains untouched. Accordingly, both the appeals are allowed."

Following the said decision of the Tribunal in the appellant's own case we hold that the demands are not sustainable. The impugned orders are set aside and the appeals are allowed with consequential relief if any.

(Operative part of the Order pronounced in the open Court)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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Customs, Excise & Service Tax Appellate Tribunal

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अपील अधिकरण / (CESTAT)
चेन्नै / Chennai