# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHENNAI

REGIONAL BENCH – COURT NO. III

## Excise Appeal Nos. 41492 to 41496 of 2015

(Arising out of Order-in-Appeal No. 78/2015 (CXA-II) dated 13.04.2015 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

**M/s. Tulsyan NEC Ltd.** **...Appellant**
No. 39, Dr. Hari Krishna Road,
Ambattur,
Chennai – 600 053.

***Versus***

**Commissioner of GST and Central Excise** **...Respondent**
Chennai II Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

**APPEARANCE:**

For the Appellant : Mr. G. Natarajan, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

**CORAM:**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER Nos. 41168-41172 / 2024**

DATE OF HEARING/ DECISION: 02.09.2024

**Order :- Per Ms. Sulekha Beevi C.S.**

The issue involved in all these appeals being the same they are heard together and are disposed of by this common order.

2.1 Brief facts are that the appellant is engaged in the manufacture of hot re-rolled products of alloy steel falling under Chapter 72 of the First Schedule of Central Excise Tariff Act, 1985. The appellant was selling their goods through their consignment agents located outside Tamil Nadu on stock transfer basis. It was noticed by the Department that they had not adopted the sale value of such goods sold at the consignment agents point at or about the same or the time nearest to the time of removal of goods for the clearances made from their factory gate as envisaged under Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The appellant had excluded the transportation charges pertaining to the transportation of such goods from the factory to the premises of the consignment agents from the assessable value for payment of Central Excise duty.

2.2 Show Cause Notices for the different period from July 2010 to September 2011 were issued to the appellant proposing to demand Central Excise duty of Rs.39,94,697/- along with interest and for imposing penalty under Rule 25 of Central Excise Rules, 2002. After due process of law, the Original Authority confirmed the demand along with interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the demand of duty, though reduced the penalty. Aggrieved by such order, the appellant is now before the Tribunal.

3. The Ld. Counsel Shri G. Natarajan appeared and argued for the appellant. It is submitted that the appellant had to transport the goods upto the buyers' premises as per the Agreement entered into between the appellant and the customer. However, the goods were transported by arranging agents by the customer. The consignment agent so arranged by customer had collected the freight charges from the customer. For this reason, the appellant is not liable to include the freight charges in the assessable value. The appellant has not collected any freight charges from the customer. The Ld. Counsel referred to the decision in the appellant's own case for the previous period rendered by the Tribunal *vide Final Order No. 41150-41152/2017 dated 06.07.2017*. It is submitted that on the very same issue after analysing the facts, the Tribunal has set aside the demand, following the decision in the appellant's own case for a differed period rendered *vide Final Order No. 40111 & 40112/2017 dated 24.01.2017*. The Ld. Counsel prayed that the appeals may be allowed.

4. The Ld. Authorised Representative Ms. O.M. Reena appeared and argued for the Department. It is submitted that the appellant had cleared the finished goods from their factory to the consignment agents which is not on sale but only on stock transfer basis. They have not included the freight charges in the assessable value while paying the Central Excise duty on removal of goods from the factory gate. The assessable value is arrived after excluding the transportation charges upto the premises of the consignment agent. Rule 7 of Central Excise Rules, 2000 provides that when excisable goods are not sold by the appellant at the factory gate, but are

stock transferred to the premises of consignment agent from where the goods are sold, the value shall be the normal transaction value of such goods sold from such premises of the consignment agent at or about the same time of removal of goods under assessment. In other words, Rule 7 clearly says that for the purpose of discharging duty liability at the time of removal of goods from the factory, the price prevalent at the same time or at the nearest time at the premises of consignment agent should be ascertained and the appellant has to pay duty on such assessable value. The appellant having not included the freight charges for the transportation of goods upto to consignment agent, there is short payment of duty. It is submitted that the confirmation of demand and penalties imposed are legal and proper. The Ld. Authorised Representative prayed that the appeals may be dismissed.

5. Heard both sides.

6. The demands have been raised invoking Rule 7 of Central Excise Valuation Rules, 2000. The allegation raised in the Show Cause Notice is that the appellant has to include the freight charges in the assessable value. The facts bring out that the transportation is arranged by the customer and the freight charges are also paid by the customer to the consignment agent. The very same issue was decided by the Tribunal in the appellant's own case for a different period *vide Final Order No. 40111-40112/2017 dated 24.01.2017*, the Tribunal has set aside the demand. Following the said decision, the Tribunal subsequently in the appellant's own case *vide* Final

Order No. 41150-41152/2017 dated 06.07.2017 had set aside the demand for the period December 2007 to December 2013 for other units of the appellant. The decision of the Tribunal is as under: -

> *"9. It is seen that in the appellant's own case the Tribunal vide Final Order No. 40111-40112/2015 dated 24.01.2017 has analysed 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."*
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> *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."*

7. We find no grounds to take a different view. Following the decision in the appellant's own case, we find that the demand cannot sustain. The impugned orders are set aside. The appeals are allowed with consequential relief, if any.

(Order dictated and pronounced in open court)

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| Sd/- | Sd/- |
| **(VASA SESHAGIRI RAO)** | **(SULEKHA BEEVI C.S.)** |
| MEMBER (TECHNICAL) | MEMBER (JUDICIAL) |

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Sd/- Sd/-