CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40274 of 2017

(Arising out of Order-in-Appeal No.22/2017 (CXA-II) dated 24.01.2017 passed by Commissioner of Central Excise (Appeals-II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s.Addison & Co. Limited **.... Appellant**
F65B, SIPCOT Industrial Park,
Irrungattukottai 602 117,
Kancheepuram District.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 006.

APPEARANCE :

Shri M.N. Bharathi, Advocate for the Appellant
Shri Harendra Singh Pal, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40161/2025

DATE OF HEARING : 04.02.2025
DATE OF DECISION : 04.02.2025

Per: Shri P. Dinesha

Brief facts of the case are that the Appellant is a manufacturer of various types of HSS cutting tools/metal cutting tools falling under chapter sub heading 8207 of the Central Excise Tariff Act, 1985. The tools manufactured by the appellant are being sold to various dealers situated throughout India. The appellant were giving trade discounts/ turnover discounts to the dealers by way of raising credit notes based on the turnover achieved by them. Since the turnover discount depends on actual turnover achieved by the dealer for the year as a whole, which can be determined only at the end of the financial year, the appellant made a request to allow provisional assessment for the year 2014-15 and Order No.1/2014-15 dated 13.05.2014 was passed by the Deputy Commissioner of Central Excise, Poonamallee Division in this regard. The appellant had filed the required particulars for finalization of provisional assessment for the year 2014-15 on 25.09.2015. The Assistant Commissioner of Central Excise has finalized the provisional assessment under Rule 7(3) of Central Excise Rules,2002 and vide Order-in-Original No.01/2016 dated 29.01.2016 the Original Authority appropriated the amount of Rs.6,10,774/- paid by the Appellant-assessee towards the short payment of excise duty along with interest amount of Rs.94,557/- and sanctioned Rs.49,02,828/- in respect of excess paid duty amount and credited to the Consumer Welfare fund holding that the duty incidence has already been passed on to their buyers in accordance with Section

12C of the Central Excise Act,1944 and rejected the balance refund claim of Rs.2,16,025/- towards excess paid duty amount.

2. Aggrieved by the above order, the Appellant filed the subject appeal before Commissioner (Appeals) *inter alia* on the grounds that the ld. Original Authority has finalized the provisional assessment without giving an opportunity of personal hearing for the rejection of amount and followed the principles of natural justice; (ii) The Hon'ble Madras High Court Order in their own case in favour of them reported in **2001 (129) ELT 44 (Mad.)** which is pending before Apex Court on petition filed by Revenue but no stay has been obtained till the date of finalisation was not considered by the Respondent and prayed to set aside the Impugned Order. But, however the Commissioner (Appeals) after hearing the appellant rejected the appeal on merits and in the impugned order, the First Appellate Authority has followed the decision of the Hon'ble Apex Court in the appellant's own case as reported in **2016 (339) ELT 177 (SC).** Against the said order of First Appellate Authority, the present appeal has been filed by the appellant.

3. Heard Shri M.N. Bharathi, Ld. Advocate for the Appellant and Shri Harendra Singh Pal, Ld. Deputy Commissioner for the Respondent.

4. During the course of hearing, Ld. Advocate would contend that the issue in the present appeal stands squarely covered against them as decided by the First Appellate Authority following the decision of the Apex Court in their own case; in fact even the Review Petition filed by the

appellant against the decision (supra) of the Hon'ble Apex Court stood dismissed as reported in **2017 (353) ELT A64 (SC) [27-04-2017].**

5. Having perused the documents on record, we find that the issue in the present appeal does not survive in view of the categorical finding by the Hon'ble Apex Court in the appellant's own case which has been relied upon by the First Appellate Authority and accordingly we dismiss the appeal.

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

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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