

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. II

Excise Misc. Application No. 50647 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 2224 of 2012 (DB)

(Arising out of Order-in- Original No. 14/Commissioner/2011-12 dated 28.03.2012
passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

M/s Parvatiya Plywood Private Limited

Appellant

Village- Shivilpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner, Customs Central Excise &
Service Tax-Meerut-II**

Respondent

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

WITH

Excise Misc. Application No. 50654 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 2225 of 2012 (DB)

(Arising out of Order-in-Original No. 14/Commissioner/2011-12 dated 28.03.2012
passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

Akhilesh Pratap MD

Appellant

M/s Parvatiya Plywood Private Limited
Village- Shivilpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner of Central Excise &
Service Tax-Meerut-II**

Respondent

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

WITH

Excise Misc. Application No. 50652 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 51753 of 2014 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-06-09-13-14 dated 26.12.2013 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

M/s Parvatiya Plywood Private Limited

Appellant

Village- Shivalpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner, Customs Central Excise &
Service Tax-Meerut-II**

Respondent

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

WITH

Excise Misc. Application No. 50651 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 51754 of 2014 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-06-09-13-14 dated 26.12.2013 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

Akhilesh Pratap MD

Appellant

M/s Parvatiya Plywood Private Limited
Village- Shivalpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner of Central Excise &
Service Tax-Meerut-II**

Respondent

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

WITH

Excise Misc. Application No. 50653 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 55100 of 2014 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-16-17-13-14 dated 26.06.2014 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

Akhilesh Pratap
Managing Director

M/s Parvatiya Plywood Private Limited
Village- Shivilpur, Ram Nagar,
District: Nainital, Uttarakhand

Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax-Meerut-II**

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

Respondent

WITH

Excise Misc. Application No. 50645 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 55158 of 2014 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-16-17-14-15 dated 26.06.2014 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

M/s Parvatiya Plywood Private Limited

Village- Shivilpur, Ram Nagar,
District: Nainital, Uttarakhand

Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax-Meerut-II**

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

Respondent

WITH

Excise Misc. Application No. 50648 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 51187 of 2017 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-13-Hapur-15-16 dated 22.12.2015 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

M/s Parvatiya Plywood Private Limited

Appellant

Village- Shivalpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner of Central Excise &
Service Tax-Meerut-II**

Respondent

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

WITH

Excise Misc. Application No. 50649 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 51188 of 2017 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-13-Hapur-15-16 dated 22.12.2015 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

Akhilesh Pratap MD

Appellant

M/s Parvatiya Plywood Private Limited
Village- Shivalpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner of Central Excise &
Service Tax-Meerut-II**

Respondent

Opposite Shaheed Smarak,
Delhi Road... Bhansali Ground,
Meerut, Uttar Pradesh

WITH

Excise Misc. Application No. 50655 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 52536 of 2018 (DB)

(Arising out of Order-in-Appeal No. MRT-EXCUS-002-COM-13-Hapur-15-16 dated 22.12.2015 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut-II.)

M/s Parvatiya Plywood Private Limited

Appellant

Village- Shivalpur, Ram Nagar,
District: Nainital, Uttarakhand

VERSUS

**Commissioner of Central Goods And
Service Tax, Customs And Central
Excise-Dehradun**

Nehru Colony,
Haridwar Road,
Dehradun Uttarakhand

Respondent

WITH

Excise Misc. Application No. 50650 of 2021

(on behalf of the appellant)

in

Excise Appeal No. 53042 of 2018 (DB)

(Arising out of Order-in-Original No. 74-75/2018 dated 27.03.2018 passed by the
Commissioner (Appeal), Central Excise, Customs & Service Tax, Dehradun.)

M/s Parvatiya Plywood Private Limited

Village- Shivilpur, Ram Nagar,
District: Nainital, Uttarakhand

Appellant

VERSUS

**Commissioner of Central Goods And
Service Tax, Customs And Central
Excise-Dehradun**

Nehru Colony, Haridwar Road,
Dehradun
Uttarakhand

Respondent

APPEARANCE:

Mr. Alok Arora, Advocate for the Appellant

Mr. O.P. Bisht, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51158-51167 / 2022

Date of Hearing: 09.06.2022

Date of Decision: 08.12.2022

ANIL CHOUDHARY:

These appeals were restored for hearing vide Miscellaneous Order No. 50245-50254/2022 dated 19/05/2022.

2. The issue involved in these appeals was whether the appellant is entitled to 'Area based exemption' under exemption Notification No. 49/2003-CE dated 10.06.2003 r/w subsequent Notification No. 50/2003-CE (as amended). In the miscellaneous order dated 19/05/2022, this Tribunal recorded the submission of the appellant, that the main issue of exemption has been decided against the appellant by Hon'ble Supreme Court in similar matter for the other period. Learned Counsel for the appellant urges the other connected issues as follows:

3. It is urged that the appellant was under bona fide belief that they will be entitled to the Area based exemption, as other units and /or similar units in the same locality were enjoying the Area based exemption. Accordingly, this appellant had also claimed the exemption and did not charge excise duty from their customers at the time of clearing the goods. The learned Counsel demonstrates this fact from sample invoices which have been annexed to appeal paper book. Under the circumstances, as the appellant has to pay the excise duty out of their own pocket and admittedly they did not collect the excise duty, it is urged that the demand of duty may be directed to re-quantified by extending benefit of 'cum-duty value' and also the benefit of Cenvat credit on inputs/ input service, as may be available to the appellant. The appellant relies on the amended provision of Section 4 of the Act (w.e.f.) 14.05.2003, wherein explanation was added in Section 4(1) after Clause (b) as follows:

" For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods."

4. The explanation clarifies that where excise duty have not been collected separately by the manufacturer-seller, the price charged shall be treated as cum-duty, excluding sales tax and other taxes, if any, actually paid.

5. In support of this contention, the learned Counsel also relies on the ruling of this Tribunal in **Hi-Line Pens Ltd. Vs. CCE & S.T. Delhi 2017-5-GSTL-423** reliance is particularly placed on para 8 of the judgment which reads as follows:

"8. Revenue has contended that the element of excise duty is not a permissible deduction since in cases where the exemption from duty is claimed, no duty becomes payable. Such a stand by the Revenue does not appear to be in line of the concept of transaction value enshrined in Section 4 with effect from 1-7-2000 as amplified by the explanation inserted with effect from 14-5-2003. As can be seen from the definition of transaction value as well as explanation reproduced earlier, while the transaction value exclude of taxes, if any actually paid or payable, the explanation inserted has created the concept of price-cud-duty. This is a deemed concept in which deduction is allowed only to the extent of sales tax and other taxes actually paid. It follows that, to arrive at the transaction value from price-cum-duty, the excise duty element is deductible. In fact, the calculation of the appellant proceeds exactly as per the concept of transaction value and price-cum-duty, as above. Ld. Commissioner in the impugned order has disallowed deduction of excise duty to arrive at the assessable value by following the decision of the Hon'ble Supreme Court in Bata India 1996 case as well as Amrit Agro case 2007. We have gone through the above decisions. It is evident that

these decisions have been rendered by the Apex Court by considering the provisions of Section 4 prior to insertion of explanation with effect from 14-5-2003 by Section 136 of Finance Act, 2003. Since these decisions were in the context of erstwhile provisions, when no such concept of price-cum-duty was enshrined in Section 4, the same are not applicable to the facts of the present case”.

Reliance is also placed on the judgments of the Apex Court as follows:

- (a) CCE, Delhi Vs Maruti Udyog Ltd. 2002(141) E.L.T. A102(S.C.)
- (b) Commisisoner Vs Maruti Udyog 2005 (179) E.L.T. A102 (S.C.)
- (c) Srichakra Tyers Ltd. Vs CCE Madras 1999 (108) E.L.T. 361 (Tri. LB)

6. The learned Counsel further urges that since the appellant has used duty paid inputs in manufacture of final products, therefore the duty payable needs to be re-quantified after allowing and/or adjusting the Cenvat credit of inputs. Under the scheme of the Central Excise Act, r/w the Cenvat Credit Rules, a manufacturer is entitled to Cenvat credit on the inputs and capital goods as well as input service under Rule 3 of CCR r/w Rule 2(a),(k) & (l). Learned Counsel relies on the ruling of the Hon’ble Supreme Court in the case of:

- (a) CCE Jaipur Vs Mahavir Aluminium Ltd 2007 (212) E.L.T. 3 (S.C.)
- (b) Siddhartha Tubes Ltd. Vs CCE Indore (M.P.) 2006 (193) E.L.T. 3 (S.C.)

7. Learned Counsel further urges that during the financial year 2014-15, the total clearance value of the goods was below Rs. 4 crores. Accordingly, the appellant-assessee claimed SSI benefit under Notification No. 8/2003-CE for the period April 2015 to December 2015, which needs to be considered.

8. It is further urged that under the facts and circumstances, as the appellant was under bona fide belief, for claiming Area based

exemption and admittedly have not charged any duty from the customers, thus there is no case of suppression and/or misstatement with intent to evade duty. Under such circumstance, penalty for short payment, non-payment of duty under Section 11AC is not attracted. Accordingly, he prays for setting aside the penalty under Section 11AC in the impugned order(s). Learned Counsel relies on the rulings as follows:

- (a) CCE, Chandigarh Vs Pepsi Foods Ltd. 2010 (260) E.L.T. 481 (S.C.)
- (b) CCE, Delhi-III Vs Vee Gee Faucets Pvt Ltd 2015 (329) E.L.T. 76 (P&H)
- (c) Jaiswal Steel Processing Vs CCE 2014 (306) E.L.T. 159 (Chhattisgarh)

9. Learned Counsel further urges that under the facts and circumstances, there has been no contumacious conduct or deliberate attempt to evade duty by the Appellant-M. Director, Mr. Akhilesh Pratap, the penalty imposed on him is also prayed to be set aside.

10. Learned AR for revenue, Mr. O.P. Bisht urges that the appellant is not entitled to the benefit of cum-duty sale price. He relies on the ruling of Hon'ble Supreme Court in **Bata Shoe Company Pvt Ltd 1985-21-ELT-9**. He further urges that the ruling of Hon'ble Supreme Court in Maruti Udyog supra and Shrichakra Tyers Ltd supra have been distinguished in **Amrit Agro Industries Ltd vs. CCE-2007-210-ELT-83 (S.C.)**. Learned AR further urges that the appellant has mentioned in their invoice- "Excise duty charged nil", thus the sale price realised does not include the element of duty of excise and as such sale price cannot be considered as cum-duty price. As regards penalty, the learned AR relies on the findings of the court below in the impugned order.

11. Having considered the rival contentions, we hold that the appellant is entitled to the benefit of recalculation of demand on cum-duty basis in accordance with explanation to Section 4(1)(b) of the Central Excise Act. We find that admittedly appellant have not collected Central Excise duty in addition to the sale price, in view of their claim of Area based exemption. Thus, the appellant shall be entitled to benefit of calculation of duty on cum-duty-price.

12. We further hold in the facts and circumstances that the appellant shall be entitled to the benefit of Cenvat credit on inputs and input services and the demand payable shall be re-calculated accordingly, in view of the clear mandate of the Central Excise Act r/w Cenvat Credit Rules.

13. We further hold that the appellant shall be entitled to SSI benefit for the period April, 2015 to December 2015, subject to compliance of other conditions under the said notification, if any.

14. So far, penalty under Section 11AC is concerned, we hold that there is no case of mis-representation, misstatement, suppression or fraud on the part of the appellant. The appellant were under bona fide belief in claiming the Area based exemption from Central Excise duty, as several other manufacturers located in the same locality, where also extended the benefit of Area based exemption. Under such undisputed facts, we set aside the penalty under Section 11AC both on the appellant-company and its Managing Director Mr. Akhilesh Pratap Singh.

15. In view of our aforementioned findings and observations, the appeals are partly allowed and the impugned orders are modified to the extent of allowing cum-duty benefit and exemption available to Small Scale Industries to the extent admissible. CENVAT Credit will be admissible subject to verification by the officers. Penalties imposed on the appellant manufacturer and personal penalty imposed on Shri Akhilesh Pratap, Managing Director are set aside. Miscellaneous applications are also disposed of.

(Order pronounced in open Court on 08.12.2022)

(Anil Choudhary)
Member(Judicial)

(P.V. SUBBA RAO)
Member(Technical)

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