IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/575/2011

(Arising out of Order-in-Appeal No.37/Kol-V/2011 dated 24.03.2011 passed by the Commissioner (Appeal-I) of Central Excise, Kolkata)

M/s. Bata India Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kol-V

Respondent (s)

Appearance:

Shri J.P.Khaitan, Sr. Advocate & Shri Sanjay Bhowmik, Advocate for the Appellant (s)
Shri S.S.Chattopadhayay, Suptd. (AR) for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C. J. MATHEW, TECHNICAL MEMBER

Date of Hearing/Decision:-19.03.2018

ORDER NO.FO/76650/2018

Per C.J.Mathew,

1. The present appeal is filed against order-in-appeal No.37/Kol-V/2011 dated 24th March 2011 of Commissioner of Central Excise (Appeal-I), Kolkata and dispute pertains to the value to be adopted for the discharge of liability under rule 6(3)(i) of CENVAT Credit Rules, 2004 on clearance of 'seconds' that, being valued below the threshold for duty liability, are exempted goods within the meaning of rule 2(d) therein. The claim of the appellant is that they have been discharging the liability on the value after excluding the abatement provided for in section 4(A)(2) of the Central Excise Act 1944 by appropriate notification. Proceedings were initiated for not discharging the liability on the marked 'retail selling price' with differential amount on the abatement sought to be recovered.

2. Learned Authorised Representatives submits that the lower authorities have computed liability in the correct manner.

3. Heard both sides and ascertained the *explanation* in rule 6(3A) of Cenvat Credit Rules, 2004 as well as provision of section 4 (A) (2) of Central Excise Act, 1944 which is as under :

> " *4-A. Valuation of excisable goods with reference to retail sale price.-*
> *Xxxxxxx*
> *(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette."*

4. It is clear that value to be adopted is 'maximum retail price' less the abatement and the appellant has been discharging the appropriate liability. Consequently the impugned order is set aside and the appeal is allowed.

(Dictated and Pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(C. J. MATHEW)
MEMBER (Technical)

ss