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

Cus.Appeal No.539/09

(Arising out of Order-in-Appeal No.78/CE/B-I/2009 dated 07.08.2009 passed by the Commissioner of Customs (Appeals), Central Excise & S.Tax, BBSR.

M/s Mid East Integrated Steels Ltd.

Applicant (s)/Appellant (s)

Vs.

CCEx, Cus. & S.Tax, BBSR I

Respondent (s)

Appearance:

Shri K. K. Acharya, Adv. for the Appellant (s)
Shri G. Guha, Asstt. Commr. (AR) for the Revenue

Cus.Appeal No.582/09

(Arising out of Order-in-Appeal No.78/CE/B-I/2009 dated 07.08.2009 passed by the Commissioner of Customs (Appeals), Central Excise & S.Tax, BBSR.

CCEx, Cus. & S.Tax, BBSR I

Applicant (s)/Appellant (s)

Vs.

M/s Mid East Integrated Steels Ltd.

Respondent (s)

Appearance:

Shri G. Guha, Asstt. Commr. (AR) for the Revenue
Shri K. K. Acharya, Adv. for the Appellant (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 27.09.2018
Date of Decision : 27.09.2018

ORDER NO…FO/A/76690-76691/2018

Per Bench :

The present two appeals are filed against the Order-in-Appeal No.78/CE/B-I/2009 dated 07.08.2009. These appeals are cross appeals filed by the Revenue as well as assessee.

2. Brief facts of the case are that the assessee is a 100% EOU, who is a manufacturer of pig iron and scrap thereof. These goods are removed in part for sale in Domestic Tariff Area (DTA) on payment of duty in terms of Proviso to Section 3 (1) of the Central Excise Act, 1944. The goods are sold as per the contract with the buyers in which the goods are to be delivered at nearby railway siding and the assessee charges certain additional amount towards shifting of the goods upto railway siding and loading the same into the railways wagons. Revenue was of the view that in such cases the place of removal of the goods is to be considered as the railway siding and loading charges recovered from the buyers are to be included in the value of the goods for the purpose of charging duty. On the above lines, the show-cause notice was issued proposing demand of differential duty for the period August, 2006 to June, 2007. The original adjudicating authority vide his order dated 31.03.2009 confirmed the demand of differential duty along with interest and penalty. When the issue was challenged before the Commissioner (Appeals), the impugned order was passed in which he upheld the demand for differential duty on merit. However, he allowed certain relief in the calculation of Education Cess made by the adjudicating authority. The assessee has challenged the demand of

differential duty vide their appeal and the Revenue is in appeal challenging the relief given in terms of calculation of Education Cess. Both the appeals are taken up together for disposal.

3. The assessee's case is represented by Shri K. K. Acharya, ld. Counsel and Revenue is represented by Shri S.Guha, ld.D.R.

4. The ld.Counsel for the assessee submitted that the identical issue for an earlier period came up before the Tribunal , which stands decided against the appellant vide Final Order No.FO/77097/2017 dated 31.08.2017. However, he submits that all the arguments advanced were not duly noted in the order and hence, he reiterated the same. He relied on the decision of the Hon'ble Supreme Court in the case of Garden Silk Mills Ltd. Vs. Union of India reported in 1999 (113) ELT 358 (S.C.), in which the Apex Court held that the value of goods is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade. Further, he relied on the decision of the Tribunal in the case of Sarla Performance Fibers Ltd. Vs. CCEx., Vapi reported in 2010 (253) ELT 203 (Tribunal), wherein the view taken is that the Customs duty payable on imported goods is the measure of Excise duty payable on goods cleared by EOU to DTA and therefore they cannot be treated as goods actually manufactured in India. Finally, he submits that the value of the goods cleared shall be determined in accordance with the provisions of Customs Law and not in terms of Central Excise Law. In this regard, he has relied on the decision of the Tribunal in the case of Sesa Goa Ltd. Vs. CCEx., Goa : 2012 (277) ELT 105 (Tri.-Mum.).

5. The ld.D.R. for the Revenue has justified the impugned order. However, he reiterated the Revenue's view that the calculation for Education Cess has not been correctly made in the impugned order.

6. After hearing both sides and on perusal of records, it is seen that an identical issue for an earlier period has came up before the Tribunal, which was decided vide Final Order No.FO/77097/2017 dated 31.08.2017. It is seen that similar arguments were advanced on behalf of the assessee, but the Tribunal's findings are reproduced below :

> *"6. The short point involved in the present case is : Whether loading charges recovered by the Appellants from the buyers of the goods is required to be added to the assessable value for the purposes of levy of Central Excise duty payable by the EOU in terms of Section 3 of the Central Excise Act, 1944 ? Section 3(1)(b)(ii) deals with the duties payable by 100% EOU at the time of clearing goods to DTA. The same is reproduced below for ready reference :*
>
> ***SECTION 3.*** *Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied –*
>
> ***(1)*** *There shall be levied and collected in such manner as may be prescribed, -*
>
> *(a)……………………………………………………………………*
>
> *(b)…………………………………………………………………..*
>
> *(ii) by a hundred per cent. export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding*

anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975)."

7. It may be noted that the EOU is required to pay Central Excise duty, but the quantum of such duty is to be determined in terms of the above provisions. It is seen that the value for the purposes of charging ad valorem, duty is to be determined in accordance with the provisions of Customs Act, 1962. Section 14 (1) of the Customs Act, 1962 deals with "Valuation of Goods" for the purposes of levy of Customs duty which is reproduced below for ready reference :

> "14. *Valuation of goods for the purposes of assessment — (1) For the purposes of Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :*
>
> ***Provided** that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf :*

> ***Provided*** *further that the rules made in this behalf may provide for,-*
>
> *(i) the circumstances in which the buyer and the seller shall be deemed to be related;*
>
> *(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
>
> *(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :*
>
> ***Provided*** *also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50".*

It may be seen that the value for the purposes of charging Customs duty is a transaction value for delivery at the time and place of clearance of importation. A conjoint reading of Section 14 of the Customs Act and Section 3 of the Central Excise Act lead us to the conclusion that the duty payable by 100% EOU, DTA clearance is to be assessed on transportation value applicable at the place where the sale takes place. As per the terms of the contract entered between appellants and the buyers, the appellants are required to deliver the goods at the railway wagon. Since the transaction value is for delivery at the railway wagon, the duty is to be charged on the said transaction value at this point.

> *8. In view of the above discussion, we find no infirmity in the impugned order and the same is hereby sustained along with the reasons mentioned therein.*
>
> *9. In the result, the appeal filed by the appellants is dismissed."*

7. By following the above decision of the Tribunal, we take a view that the transaction value is applicable at the place where sale takes place, but it is seen from the impugned order that the ld.Commissioner (Appeals) has taken a view that the calculation for Education Cess has not been correctly made by the original authority, He has granted relief for the mode of calculation of Education Cess by following the Ministry of Finance's Clarification No.D.O.F.34/3/2004-TRU dated 08.07.2004. Revenue has challenged such findings of the ld.Commissioner (Appeals). But we find after going through the calculation that the finding of the ld.Commissioner (Appeals) granting relief in the said calculation on the Education Cess, has been rightly made. Consequently, we find no merit in the appeal filed by the Revenue. Accordingly, the same is rejected.

8. By following the earlier decision of the Tribunal, we reject the appeal filed by the assessee.

9. In the result, the impugned order is sustained.

10. Both the appeals are disposed off.

(Dictated and pronounced in the open court.)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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