

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

**Excise Appeal No. 899 of 2011**

(Arising out of Order-in-Appeal No.227/Kol-III/2011 dated: 18.07.2011 passed by the  
Commissioner of Central Excise, (Appeals), Appeal-I, Kolkata)

**M/s Kolmak Chemicals Limited**

(Kulia-Kanchrapara Road, Kalyani, P.O. Gayespur Dist: Nadia,  
Pin-741234, West Bengal)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise, Kolkata-III**

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**...Respondent**

**APPEARANCE :**

None for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO...75720/2023**

Date of Hearing : 15.06.2023

Date of Decision :15.06.2023

**PER K. ANPAZHAKAN**

Briefly stated facts of the case are that the Appellants are manufacturers of excisable goods namely Titanium-Dioxide and Ferrous Sulphate. The said goods were either sold directly to customers or cleared to their Depot(s) at Delhi and Mumbai on payment of duty, for subsequent sale at negotiated price to customers. A Show Cause Notice dated 02.01.2008 was issued to the Appellant demanding differential duty of Rs.4,04,524/- for the period 2002-03 to 2006-07, on the ground that they have not followed the method of valuation prescribed for clearance of excisable goods to depot. The Appellant conceded that they have not followed the method of valuation in terms of Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 7 of the Valuation Rules 2000.

2. The Notice was adjudicated and the demand of Rs 4,04,525/- was confirmed along with interest and penalty equivalent to the duty under section 11 AC of the Central Excise Act,1944. Aggrieved against the order, the Appellant filed appeal before the Commissioner (Appeals), who vide Order-in-

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Appeal dated 18.07.2011, upheld the demands. Appellant filed the present appeal before this Tribunal against the impugned order.

3. In their written submissions, the Appellant stated that the goods were initially cleared to the depot(s) on payment of duty at a price prevailing in the market. Later, more than 90% of the goods were cleared at the same price on which duty was paid. Only a small percentage of goods were sold at a higher price from the depot(s). They stated that the practice followed by them was duly intimated to the Department in the monthly ER-1 returns filed and the department never raised any objection. The EA-2000 Audit party previously visited the factory also not pointed out any discrepancy in the method of valuation adopted by them for depot clearances. Accordingly, they contended that the demand raised by invoking extended period under proviso to Section 11A(1) is not sustainable. The Appellant stated they have paid differential duty of Rs 2,28,137/- under price variation clause for the clearances made to the Delhi and Mumbai Depot(s). They have paid differential duty for the normal period from December 2006 to November 2007. Accordingly, they stated that the demands made by invoking extended period is not sustainable and requested to set aside the demands.

4. The Ld DR reiterated the findings in the impugned order.

5. The Appellant has not appeared for the hearing. Accordingly, the appeal is taken up for hearing based on the submissions of the Appellant available in the record.

6. We observe that the issue involved in this case is whether the duty paid by the appellant in respect of the goods cleared from the factory to their Depot(s) at Mumbai and Delhi were correctly assessed in terms of Section 4(1)(b) of Central Excise Act read with Rule 7 of the Valuation Rules. The Appellant stated that the goods were initially cleared to the depot on payment of duty at a price prevailing in the market. Thus, they have conceded that they have not followed the method of valuation prescribed for clearance of excisable goods from factory to Depot. However, they stated that more than 90% of the goods were subsequently cleared from the Depot(s) at the same price on which duty was paid. Only a small percentage of goods were cleared at a higher price from the Depot(s).

7. The Appellant mainly contested the demands on the ground of limitation. They stated that the practice followed by them was duly intimated to the Department in the monthly ER-1 returns filed by them and the department never raised any objection. The EA-2000 Audit party previously visited the factory also not pointed out any discrepancy in the method of valuation

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adopted by them for depot clearances. Accordingly, they contended that the demands raised by invoking extended period under proviso to Section 11A(1) is not sustainable.

8. We find merit in the contention of the Appellant. The Appellant has not suppressed any information from the department. They have filed ER-1 returns regularly intimating the duty paid by them for clearances made to their depot(s). They have also paid differential duty of Rs 2,28,137/- under price variation clause for the clearances made to the Delhi and Mumbai Depot(s). These details furnished by them in the ER-1 returns indicate that there is no suppression of fact involved in this case.

9. The Appellant cited the receipt of a letter dated 17.09.2007 from the Range Superintendent on 'alleged short payment of duty due to under valuation' wherein he had asked them to pay an amount of Rs.3,59,269/- as duty on account of short payment of duty. This indicates that the Range Officer has verified the Returns submitted by them and demanded differential duty vide letter dated 17.09.2017. Therefore, we hold that demands raised by invoking extended period is not sustainable.

10. We observe that the Appellant have paid differential duty for the normal period from December 2006 to November 2007. Since the Appellant have already paid the differential duty for the normal period from December 2006 to November 2007, no other demand in the impugned order survives.

11. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Dictated and Pronounced in the open Court)

**Sd/-**  
**(Ashok Jindal)**  
**Member (Judicial)**

**Sd/-**  
**(K. Anpazhakan)**  
**Member (Technical)**

Pinaki