

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

REGIONAL BENCH – COURT NO.2

**Excise Appeal No.475 of 2011**

(Arising out of Order-in-Appeal No.34/Kol-V/2011 dated 15.03.2011 passed by Commissioner (Appeals) of Central Excise, Kolkata)

**M/s Flury's Confectionary's Pvt. Ltd.**

15, Park Street, Kolkata-700016

**Appellant**

*VERSUS*

**Commissioner of Central Excise, Kolkata V**

180, Shantipally, Rajdanga Main Road, Kolkata - 700107

**Respondent**

**APPEARANCE :**

None for the Appellant

Shri A.Roy, Authorised Representative for the Respondent

**CORAM:**

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

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

**FINAL ORDER NO.75890/2023**

DATE OF HEARING : 16 .06.2023

DATE OF DECISION : 16 .06.2023

**Per Ashok Jindal :**

By way of this appeal, the appellant is challenging the demand of duty along with interest and imposing penalty on them.

2. The facts of the case are that the appellant is manufacturing chocolates, cookies, cakes and pastries etc. The allegation of the Revenue is that the appellant did not consider the price of goods sold to independent buyers at their restaurant at 18, Park Street, Kolkata-700016 for valuation of the goods at the place of removal at 15, Park Street, Kolkata-700016. Therefore, the same have under-valued goods. The appellant replied to the allegation stating that they are collecting service charges w.e.f. 22.12.2004 from their customers at the

restaurant . They also clarified that the collections of service charge are introduced as their restaurant is a Grade I Air Conditioned restaurant at Kolkata with luxury facility and served with best quality of crockery and cutlery like star hotels and the service was carried out by trained and qualified staff at the restaurant. It was also claimed that their restaurant bore a heritage tag, but they stopped collection of service tax on excisable goods sold in the restaurant w.e.f. 24.09.2007 onwards. Therefore, on verification, it was revealed that the appellant sold the said above mentioned goods at the restaurant at higher prices indicating price inclusive of service charge than the prices shown as assessable value at the place of removal at their factory. Therefore, it was alleged that the appellant has not paid duty on the price on which they are selling the above mentioned goods from the restaurant including service charges.

2.1 Hence, a show-cause notice was issued for demand of differential duty and imposition of penalty on the appellant.

2.2 The matter was adjudicated. The demand of duty was confirmed along with interest and equal amount of penalty was also imposed on the appellant.

2.3 Against the said order, the appellant is before us.

3. From the records, we find that it is clear that 50% of the goods were sold to their independent customers at the price, on which the goods were sold with their restaurant and on the basis of that assessable value was determined in terms of Section 4 of the Central Excise Act, 1944.

**Excise Appeal No.475 of 2011**

4. When the matter was called, none appeared on behalf of the appellant. Nor any request for adjournment has been received. We find that the appeal itself can be disposed off at this stage. Therefore, the matter was taken up for disposal.
5. On going through the records, it is clear that the appellant is selling goods to independent buyers and also to the customers, to whom, the goods were sold in the restaurant at higher prices. The goods were sold to independent buyers and the said price is available.
6. In that terms, we hold that the duty is to be paid by the appellant in accordance with Section 4 of the Central Excise Act, 1944, i.e. the price at which the goods were sold to independent buyers. Admittedly, the appellant is paying duty at the rate of their clearance from their restaurant, on which, they are selling the goods to independent buyers.
7. In that circumstances, the differential duty cannot be demanded from the appellant.
8. Therefore, we do not find any merit in the impugned order and the same is set aside.
9. In the result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

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

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