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

**Customs Appeal No. 151 of 2011**

(Arising out of the Order-in-Original No. 18/SR/COMMR/GHY/2010-11 dated 20.01.2011 passed by Commissioner of Central Excise, Guwahati.)

**M/s Shandar Paints Industry,**
Unit- I and Unit-II, Industrial Area, Rani, Guwahati-781131. (Assam)

**…Appellant (s)**

*VERSUS*

**Commissioner of Central Excise, Guwahati.**
Sethi Trust uilding, 5th Floor, G.S. Road, Bhangagarh, Guwahati-781005.
. ...**Respondent(s)**

**APPERANCE :**
Shri R. N. Bandyopadhyay, Advocate for the Appellant
Shri Manish Mohan, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)**
**HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

**FINAL ORDER No……76325/2023**

DATE OF HEARING : 02.08.2023
DATE OF DECISION : 02.08.2023

**PER K. ANPAZHAKAN :**

The Appellant is an SSI unit engaged in the manufacture of different goods fallen under Chapter 32, 38, and also the item "DPMC' under Chapter 39 in their unit situated within specified area at North East. As an unit within North East area, they are entitled to avail the benefit of the Notification No. 32/99-CE dated 08.07.1999 as amended, for the year 2009-10 in respect of the products manufactured and cleared by them from their unit.

2. Accordingly, the Appellant had applied for fixation of special rate for different items representing the actual value addition in terms of Para 2.1 of the Notification No. 32/99-C.E. dated 08.07.1999 as

amended for the year 2009-10, in respect of the products manufactured and cleared by them vide application dated 30.09.2009. In the said Notification percentage of value addition for the item 'DPMC' has been specified as 26%. In case the value addition made is more than 115% (i.e. 29.90%), the Appellant would be entitled to apply for fixation of actual value addition. In the appellants' case, actual value addition was 85.86% and the department has accepted this after verifying their documents furnished by them. However, in the impugned order dated 20.01.2011, the Ld. Commissioner has rejected the special rate for the product 'DPMC' on the ground that the production of the item 'DPMC' is only 4.5% of the total production, as comparison to other products. Calculation based on such limited production and clearance is unlikely to give a true picture of value addition in respect of DPMC for granting special rate of refund for the next financial year. Accordingly, their application for special rate was rejected for the product 'DPMC' while granting the same for other products. The Appellant has filed the present appeal against this impugned order rejecting the special rate of value addition for the product 'DPMC'.

3. In their grounds of appeal, the Appellant submitted that the Ld. Commissioner while accepting all the facts and figures in respect of actual value addition to the extent of 85.86% for the item 'DPMC' as against the required addition of 29.90% (i.e. 115% of fixed rate 26% as per Para 2(a) of 32/99-C.E), wrongly rejected the application for fixation of special rate based on his personal opinion without any legal basis. His findings regarding production of only 4.5% quantity for the item DPMC in comparison to other products and thereby rejection of the

claim for special rate, is beyond the scope of the conditions mentioned in the Notification. The said Notification 32/99-CE dated 08.07.1999, as amended by Notification 17/2008-CE dated 27.03.2008, did not contain any such parameter for disallowing the actual value addition.

4. The findings of the Ld. Commissioner that as the item 'DPMC' is an input to the item 'Wall Putty' and the sale prices of 'DPMC' and 'Wall Putty' are Rs.300/- and Rs.18- per KG respectively, the same are contradictory and unexplainable. The Appellant submits that the Ld. Commissioner failed to consider the fact that though the item 'DPMC' is an input to 'Wall Putty' but the composition of 'DPMC' is only 1.95% in the 'Wall Putty' and therefore the same are logically explainable and bears no contradiction. Also, the Ld. Commissioner did not consider the fact that they had sold the DPMC at Rs. 300/- Per Kg and had disclosed all the names and addresses of the buyers. Without any enquiry report and without any adverse comments and in the absence of any evidence against the Appellants on the actual transaction price, his presumption of not giving true picture of value addition is not acceptable and warranted in this case.

5. The Appellant further submits that the Learned Commissioner failed to understand that fixation of special rate representing actual value addition in terms of Para 2.1 of Notification No. 32/99-C.E dated 08.07.1999 as amended by Notification 17/2008-CE dated 27.03.2008, is not having any impact on revenue because as per Notification No. 32/99-C.E. "the refund shall not exceed the amount of duty paid on such goods, other than by utilization of CENVAT Credit".

He has wrongly considered the sale value of 'DPMC' as very high which is contradictory and unexplainable but failed to consider that Central Excise duty was paid on that high sale value. Hence, rejection of special rate representing actual value addition shall restrain the appellant from getting genuine claim of excise duty refund on duty paid amount which shall be great financial injury to a SSI unit.

6. Accordingly, they prayed for allowing the actual value addition of 85.86% as determined and accepted by Commissioner.

7. The ld. A.R. reiterated the findings of the adjudicating authority in the impugned order.

8. Heard both sides and perused appeal records.

9. We observe that the Appellant had applied for fixation of special rate for different items representing the actual value addition in terms of Para 2.1 of the Notification No. 32/99-C.E. dated 08.07.1999 as amended by Notification 17/2008-CE dated 27.03.2008, for the year 2009-10, in respect of the products manufactured and cleared by them vide application dated 30.09.2009. For the sake of ready reference the relevant part 2.1 of the said Notification 17/2008-CE dated 27.03.2008 is reproduced below:

> 2.1 (1) Notwithstanding anything contained in paragraph 2A, the manufacturer shall have the option not to avail the rates specified in the said Table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, if the manufacturer finds that four-fifths of the ratio of actual value addition in the

production or manufacture of the said goods to the value of the said goods, is more than the rate specified in the said Table expressed as a percentage. For the said purpose, the manufacturer may, within sixty days from the beginning of a financial year, make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, for determination of such special rate, stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods: Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days: Provided further that the manufacturer supports his claim for a special rate with a certificate from his statutory auditor containing an estimate of value addition in the case of goods for which a claim is made, based on the audited balance sheet of the unit, for the preceding financial year; (2) On receipt of the application referred to in sub-paragraph (1), the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be, after making or causing to be made such inquiry as he deems fit, shall fix the special rate within a period of six months of such application; (3) Where the manufacturer desires that he may be granted refund provisionally till the time the special rate is fixed, he may, while making the application, apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, in writing for grant of provisional refund at the rate specified in column (4) of the said Table for the goods of description specified in column (3) of the said Table and falling in Chapter of the First Schedule of the Central Excise Tariff Act, 1985 (5 of 1986) as in corresponding entry in column (2) of the said Table, and on finalization of the special rate, necessary adjustments be made in the subsequent refunds admissible to the manufacturer in the month following the fixation of such special rate. (4) Where the Central Government considers it necessary so to do, it may- (a) revoke the special rate or amount of refund as determined under sub-paragraph (2) by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, or (b) direct the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to withdraw the rate so fixed. Explanation: For the purpose of this paragraph, the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account the following: (i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods; (ii)Less: Cost of raw materials and packing material consumed in the said goods; (iii) Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004; (iv) Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year; (v) Less: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration. Special rate would be the ratio of actual value addition in the production or manufacture of the said goods to the sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods. (5) The manufacturer shall be entitled to refund at the special rate fixed under sub-paragraph (2) in respect of all clearances of excisable goods manufactured and cleared under this notification with effect from the date on which the application referred to at sub-paragraph (1) was filed with the Commissioner of Central Excise or Commissioner of Central Excise and Customs, as the case may be. (6) Where a special rate is fixed under sub-paragraph (2), the refund payable in a month shall be equivalent to the amount calculated as a percentage of the total duty payable on such excisable goods, at the rate so fixed: Provided that the refund shall not exceed the amount of duty paid on such goods, other than by utilization of CENVAT credit.ô

10. A perusal of the conditions mentioned in the said Notification reveals that a manufacturer claiming 'special rate' has to produce a certificate from the statutory auditor containing an estimate of value addition based on the audited balance sheet of the preceding financial year. The Appellant has submitted all the relevant documents required for arriving at the actual value addition based on the balance sheet of the previous financial year. After verifying all the documents the Ld. Commissioner arrived at the actual value addition in respect of all the commodities including 'DPMC'. While the Ld. Commissioner fixed the special rate of value addition arrived at by him in respect of the other commodities manufactured by the Appellant, he rejected the value addition of 85.86% arrived at him for the product 'DPMC' on the ground that its production was 4.5% of the total production. Calculation based on such limited production and clearance is unlikely to give true picture of value addition in respect of DPMC for granting special rate of refund for the next financial year. The Ld. Commissioner also observed that DPMC is said to be an input for manufacture of Wall Putty and the average sale value of DPMC is found to be abnormally high ( Rs 300/- per Kg.) in comparison to that Wall Putty ( Rs. 18 per Kg.). Therefore, such high value of DPMC is contradictory and unexplainable. Accordingly, he has not granted special rate for such contradictory and unexplainable sale value for its limited clearance in 2008-09.

11. We observe that in the said Notification percentage of value addition for the item 'DPMC' has been specified as 26%. In case the value

addition made is more than 115% (i.e. 29.90%) the appellant was entitled to apply for fixation of actual value addition. In the appellants case, the actual value addition was 85.86% and the department has accepted this after verifying the documents furnished by them. However, in the impugned order dated 20.01.2011, the Ld. Commissioner has rejected the special rate for the product 'DPMC' on the ground that the production of the item 'DPMC' is only 4.5% of the total, as compared to other products. We observe that there is no provision in the Notification to reject the special rate on this ground. The Ld. Commissioner has invoked a condition which is not there in the Notification to reject the special rate, which is not permissible in law.

12. The Appellant submits that the findings of the Ld. Commissioner that as the item 'DPMC' is an input to the item 'Wall Putty' and the sale prices of 'DPMC' and 'Wall Putty' are Rs.300/- and Rs.18- per KG respectively, is totally unwarranted and not necessary for the fixation of special rate. The Appellant submits that the Ld. Commissioner failed to consider the fact that though the item 'DPMC' is an input to 'Wall Putty' but the composition of 'DPMC' is only 1.95% in the 'Wall Putty' and therefore the same are logically explainable and bears no contradiction. We observe that the Ld. Commissioner did not consider the fact that they had sold the DPMC at Rs. 300/- Per Kg on payment of duty to various buyers and disclosed all the names and addresses of the buyers. In case the department had any doubt about the actual value of DPMC, they could have verified the same with the buyers. Without any enquiry report and without any adverse comments and in the absence of any evidence against appellants on the actual transaction price, his

presumption of not giving true picture of value addition is not acceptable and warranted in this case. We observe that there is no finding in the impugned order that the Appellant's production and sale were bogus. Under such circumstances his findings that based on the limited production and clearances the true picture of value addition cannot be determined, is totally irrelevant and unwarranted. Accordingly, we hold that the Appellant is entitled for the special rate of value addition of 85.86% for the goods "DPMC' as arrived at by the Commissioner.

13. 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)**

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