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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.638 of 2012

(Arising out of Order-in-Original No.3/COMMR/CE/KOL-III/2012-13 dated 05.07.2012 passed by Commissioner of Central Excise, Kolkata-III.)

M/s. Alchrome Chemical Industries

(Factory : P1, Block D, Kalyani Industrial Estate, P.O. Kalyani, Dist: Nadia, West Bengal AND
Regd.Office : 3, Wood Street, Kolkata-700016..)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

WITH

Excise Appeal No.639 of 2012

(Arising out of Order-in-Original No.3/COMMR/CE/KOL-III/2012-13 dated 05.07.2012 passed by Commissioner of Central Excise, Kolkata-III.)

Sri Shree Ram Mundhra, Director
M/s. B & M Chemicals Limited

(Factory-Tatultolla Badu Road, P.O. Badu, 24 Parganas North, West Bengal, Pin-700128.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

AND

Excise Appeal No.640 of 2012

(Arising out of Order-in-Original No.3/COMMR/CE/KOL-III/2012-13 dated 05.07.2012 passed by Commissioner of Central Excise, Kolkata-III.)

Shri Sudhir Mundhra, Partner
M/s. Alchrome Chemical Industries

(Factory : P1, Block D, Kalyani Industrial Estate, P.O. Kalyani, Dist: Nadia, West Bengal AND
Regd.Office : 3, Wood Street, Kolkata-700016..)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77178-77180/2023

DATE OF HEARING : 22 September 2023
DATE OF DECISION : 22 September 2023

Per : ASHOK JINDAL :

The appellants are in appeals against the impugned order, wherein it has been held that appellants are related persons, therefore, they are required to pay duty on 110% of the cost of production in terms of rule 8 of the Valuation Rules.

2. The facts of the case are that the main appellant is a partnership firm, engaged in manufacturing and clearing of excisable goods to M/s. B & M Chemicals Ltd.. During the said period on the basis of value and price agreed between the parties and price was the sole consideration of sale of goods. In M/s. B & M Chemicals Ltd., one partner namely Shri Sudhir Mundhra, who is partner of the appellant firm and also one of the Directors of M/s. B & M Chemicals Ltd. and having 7% share. Another Director, Sri Shree Ram Mundhra is the father of Shri Sudhir Mundhra. The appellant was clearing goods and M/s. B & M Chemicals was receiving the goods, availing credit of duty paid by the appellant and paying duty on their finished goods. On the basis of audit observation, it was the view of the respondent that the appellant M/s.B & M Chemicals Ltd. having transaction between the related persons and appellant was liable to pay duty @ 110% of the cost of production in terms of rule 8 of Valuation Rules. Therefore, it is a case of under-valuation and the appellants are liable to pay differential duty. The value arrived at on the basis of balance sheet figures and not followed the procedures for arriving at the cost of production. A show cause notice was issued to the appellants demanding differential duty along with interest and to impose penalties on the appellants. The matter was

adjudicated, the demand of duty along with interest was confirmed and penalties on both the appellants were also imposed. Against the said order, the appellants are before us.

3. The Ld.Counsel for the appellants submits that the two firms are two dintinct and two independent entities. Two are assessed separately by all the Government authorities. Only on the basis that a common person is a partner in one firm and Director in another firm does not make the said firms as related one. Therefore, rule 8 of the Valuation Rules, 2000 is not invocable in the facts of the present case. He further submitted that if the revenue's point of view is taken as correct, without admitting the same, it is his contention that it is a situation of revenue neutrality in as much as if the appellant is required to pay the duty on the higher value, the buyer will get higher amount of cenvat credit in their own firm, which is a sister unit of the appellant. In that circumstances, it is a revenue neutral situation, therefore, the demand is not sustainable as held by this Tribunal in the case of Anglo French Textiles v. Commissioner of C.Ex., Puducherry [2018 (360) E.L.T. 1016 (Tri.-Chennai)], which was affirmed by the Hon'ble Apex Court reported in 2018 (360) E.L.T. A301 (S.C.). Further, he relied on the decision of this Tribunal in the case of M/s. Shyam Ferro Alloys Ltd. & Anr. V. Commissioner of Central Excise, Bolpur vide Final Order No.FO/A/76847-76848/2018 dated 24.10.2018.

4. He also submitted that the demands are barred by limitation as the issue pertains to 2006-07 to 2010-11 and the show cause notice has been issued on 29.09.2011 by invoking the extended period of limitation as there is no allegation of suppression of facts. In that circumstances, the impugned order is to be set aside.

5. On the other hand, the Ld.AR for the department supported the impugned order.

6. Heard the parties, considered the submissions.

7. On going through the facts and circumstances of the case, on merits one firm is a private limited company and another is a

partnership firm. One partner of that firm is a Director of another firm does not make that they are related person.

8. If the contention is of the revenue is taken as correct, in that circumstances also M/s. B & M Chemicals Ltd. is entitled to cenvat credit of duty paid by the appellant, therefore, it is situation of revenue neutrality as held by this Tribunal in the case of Anglo French Textiles (supra), wherein this Tribunal has observed as under:-

> ***"5.*** *On considering the fact that the goods are cleared to the sister unit and also the fact that the appellant is eligible for credit on the duty paid, the entire exercise is a revenue neutral situation as contended by the Learned Counsel for the appellant. This being the case, even if the appellant is directed to pay duty, other sister unit would be eligible for the credit. In the case of Jay Yuhshin Ltd. (supra), in a similar situation, the Larger Bench of the Tribunal has held that when there is revenue neutrality, the demand of duty is unsustainable."*

the said order has been affirmed by the Hon'ble Apex Court.

9. In that circumstances, we hold that if the revenue's contention is taken to be correct, the appellant is not liable to pay differential duty as it is revenue neutral situation. Therefore, we set aside the impugned demand and also hold that no penalty is imposable on the appellant.

10. Accordingly, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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