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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.99 of 2011

(Arising out of Order-in-Appeal No.175/PAT/CEx/Appeal/2010 dated 16.12.2010 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Patna..)

M/s. Natraj Engineers Private Limited
(At & post: Sarai, Distt.Vaishali, Bihar.)

...Appellant

VERSUS

Commissioner of Central Exise, Patna

.....Respondent

(C.R. Building, B.C. Patel Path, Patna.)

APPEARANCE

Shri Radha Raman, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77308/2023

DATE OF HEARING : 9 October 2023
DATE OF DECISION : 9 October 2023

Per : R. MURALIDHAR :

The appellant has cleared 100 pcs. of Sleepers to Indian Railways at lower value since they were not meeting the quality requirements. The Department issued demand which was confirmed by the lower authorities. Being aggrieved the Appellant is before the Tribunal.

2. The Ld.Advocate, appearing on behalf of the Appellant submits that the Appellant is regularly supplying P.C.S. Sleeper falling under heading No.6807.90 of C.E.T. Act to Indian Railways. In one of the consignments during March 2003, they found that there was some small quality defect. They persuaded the Indian Railways to accept this lot by charging them lesser price. Accordingly, they have cleared the

goods at lower value. He submits that since they had no alternative, but to scrap the same if the lower value insisted on by the Indian Railways was not accepted. Hence the appellant had sold the goods at a lower value to them. The transaction is one that of direct sale to third party and hence he justifies the lower rate adopted by them.

3. The Ld.AR for the department reiterates the findings of the lower authorities.

4. Heard both sides and perused the documents.

5. It is seen from the records that the appellant has supplied all materials to Indian Railways at a lower price only in view of small defect noticed in the consignment. There is nothing to suggest that the appellant realized any higher price from the Indian Railways. Therefore, the transaction value adopted by them can be accepted.

6. Accordingly, we allow the appeal by setting aside the impugned order.

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

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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