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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.794 of 2011

(Arising out of Order-in-Appeal No.54,55,56/Kol-IV/2011 dated 02.06.2011 passed by Commissioner of Central Excise (Appeals), Kolkata-IV.)

Commissioner of Central Excise, Kolkata-IV
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)
...Appellant

VERSUS

M/s. Kesoram Rayon
.....Respondent
(PO-Nayasarai-712513, Dist.-Hooghly, West Bengal.)

WITH

Excise Appeal No.795 of 2011

(Arising out of Order-in-Appeal No.54,55,56/Kol-IV/2011 dated 02.06.2011 passed by Commissioner of Central Excise (Appeals), Kolkata-IV.)

Commissioner of Central Excise, Kolkata-IV
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)
...Appellant

VERSUS

M/s. Kesoram Rayon
.....Respondent
(PO-Nayasarai-712513, Dist.-Hooghly, West Bengal.)

AND

Excise Appeal No.796 of 2011

(Arising out of Order-in-Appeal No.54,55,56/Kol-IV/2011 dated 02.06.2011 passed by Commissioner of Central Excise (Appeals), Kolkata-IV.)

Commissioner of Central Excise, Kolkata-IV
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)
...Appellant

VERSUS

M/s. Kesoram Rayon
.....Respondent
(PO-Nayasarai-712513, Dist.-Hooghly, West Bengal.)

APPEARANCE

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

Adjournment Request for the Respondent (s)

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77448-77450/2023

DATE OF HEARING : 31 October 2023
DATE OF DECISION : 31 October 2023

Per : R. MURALIDHAR :

The respondent has sought adjournment. However, as the appeal has been filed in the year 2011, we deem it fit to take up the appeal for disposal with the help of the Ld.AR for the department.

2. The Ld.AR for the department submits that in these appeals, the issue is as to whether the respondent is eligible to follow the provisional assessment procedure as specified under Rule 7 of the Central Excise Rules, 2002 or not? He submits that the respondent company has many depots. They were clearing their goods to their depots from where the final sale was taking place. The respondent company opted for provisional assessment on the ground that they would not be knowing the price at which the goods would be cleared from their depots. Their request for provisional assessment was rejected by the jurisdictional Assistant Commissioner. Being aggrieved, the Appellants have filed appeal before the Commissioner(Appeals). The Ld.

Commissioner(Appeals) has allowed their request for adopting provisional assessment procedure under Rule 7 of Central Excise Rules, 2002. Being aggrieved, the revenue is before the Tribunal.

3. After going through the appeal papers and all the documents, we find that the present litigation is not on account of any demand being set aside by the Commissioner(Appeals). The orders passed by the adjudicating authority as well as by the Commissioner(Appeals) are purely administrative orders in nature. Based on the facts available, these authorities have taken the decision. On going through the impugned order, we find that the Ld.Commissioner(Appeals) has gone through the factual details and has given the following findings:-

> *"3. In the grounds of appeal, the appellant <u>have stated that they have been allowed provisional payment of duty on these very grounds in the past as well as for the future. Since the value of the goods is not determinable at the time of removal of goods from the factory, hence the permission should be granted</u>. These submissions were also made during the course of hearing when Shri N.R. Maity, consultant appeared for hearing. For the Department Shri M.Roy Choudhury appeared to state that the reasons given by the lower authority for rejected are valid.*
>
> *4. I have gone through the grounds of appeals, submissions made during the course of hearing and all other evidence on records. <u>From the facts that have been narrated above, I find that the value of the goods cannot be determined at the time when the goods are removed from the factory. This being for the reasons that the normal transaction value is not available for such removals at that time. Further, the appellant at that stage cannot determine the quantity and turnover discounts being extended to the buyers. I find that there are sufficient reasons for extending the facility of provisional payment of duty under rule 7. I, therefore, set aside the impugned orders of the lower authority and allow payment of duty in terms of the procedure under rule 7 of the Central Excise Rules, 2002</u>. The appeals are allowed in the above term."*
>
> *[Emphasis supplied]*

4. We do not find any reason to interfere with order of the Commissioner(Appeals). Accordingly, we dismiss the Appeals filed by the Revenue.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm