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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76686 of 2014

(Arising out of Order-in-Appeal No. 862/Pat/CEx/Appeal/2014 dated 29.09.2014 passed by the Commissioner (Appeals), Customs, Central Excise & S.Tax, 2nd Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

M/s. Natraj Engineers Private Limited **: Appellant**
PSC Sleeper Factory, Sarai,
District: Vaishali, Bihar

VERSUS

Commissioner of Central Excise **: Respondent**
Central Revenue Building, Birchand Patel Path,
Patna – 800 001, Bihar

APPEARANCE:

Shri Radha Raman, Advocate for the Appellant

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

CORAM:

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

FINAL ORDER NO. 76256 / 2024

DATE OF HEARING: 26.06.2024

DATE OF DECISION: 10.07.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by the appellant, M/s. Natraj Engineers Private Limited, PSC Sleeper Factory, Sarai, District: Vaishali, Bihar, who are the manufacturers of "P.C.S. Sleeper" falling under Chapter Heading No. 6807.00 of the Central Excise Tariff Act, 1985 for the Indian Railways. The appellant filed a refund claim of Rs.54,96,223/-.

1.2. This refund contains three parts: -

(i) The first part of the refund claim pertains to Rs.35,12,486/- which was claimed by the appellant on account of non-payment of enhancement of rate of duty by the Railways. The manufacturer-assessee had entered into a contract with the Railways containing a denial clause for any enhancement of rate of duty. Since there was an enhancement in the rate of duty during the relevant period, the Railways denied to pay the enhanced rate of duty as per the agreement. Since the appellant has already paid the duty at the enhanced rate, they have filed the refund claim. The Department contended that Central Excise Duty was liable to be paid by the appellant at the enhanced rate irrespective of whether the enhanced rate of duty is paid back by the Railways or not. Accordingly, the adjudicating authority rejected the refund to the extent of Rs.35,12,486/- and the rejection has been upheld by the Appellate authority in the impugned order.

(ii) The second part of the refund claim pertains to Rs.10,93,900/- which has arisen on account of claim of liquidated damages by the Railways. The appellant has cleared the goods to the Railways on the basis of a contract. As per the terms and conditions of the contract, a penalty was due to be imposed by the Railways in case there is a delay in supply of sleepers to the Railways. A penalty of Rs.1,36,23,253/- was imposed by the Railways on the manufacturer due to delay in supply of the sleepers. In view of the payment of liquidated damages, the appellant contended that there is a reduction in the transaction value and accordingly, they are eligible for the refund of Rs.10,93,900/-. The Ld. adjudicating authority has rejected the claim, which has been upheld by the Appellate Authority. In the impugned order, it has been held that the Department is not responsible for the delay in supply by the sleepers by the manufacturer and hence, the appellant will not be entitled to claim the refund of Central Excise Duty already paid, by deducting the liquidated damages paid by them to the railways from the assessable value.

(iii) The third part of the refund claim pertains to Rs.8,89,837/- which has already been allowed to the appellant in the impugned order and hence this part of the refund is not disputed in the present appeal.

2. Regarding the refund of Rs.35,12,486/-, the appellant submits that if there is any increase in the rate of duty, the Railways are required to pay the enhanced rate of duty to them. They submit that in the present case, they have already paid the duty at the enhanced rate, but the Railways have not paid them the enhanced duty; therefore, they are entitled for the refund of the excess duty paid by them to the tune of Rs.35,12,486/- which was not reimbursed by the Railways.

2.1. Regarding the refund of Rs.10,93,900/- arising on account of payment of liquidated damages to the Railways, the appellant submits that the adjustment of liquidated damages by the Railways amounts to reduction in the transaction value and hence, they are liable to pay only lesser amount of duty to the extent of Rs.10,93,900/-. Since they have already paid the duty, they are entitled to refund of Rs.10,93,900/-.

3. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the appellant has filed the refund claim of Rs.54,96,223/-, out of which the refund of Rs.8,89,837/- has already been allowed to them. Refund on account of the two issues mentioned in paragraphs 2 and 2.1 *supra* is the subject matter of the present appeal.

5.1. Regarding the rejection of refund of Rs.35,12,486/-, we observe that the appellant has claimed this refund on account of increase in the rate of duty of the goods manufactured by them to the Railways. It is observed that the agreement entered into by the appellant with the Railways has a denial clause for enhancement of rate of duty. Therefore, the Railways have not paid the differential duty on account of the enhancement. The appellant is therefore liable to pay duty at the enhanced rate and if the Railways refuse to pay the enhanced duty, then the duty at the enhanced rate has to be borne by the appellant. In this case, the appellant has rightly paid the duty at the enhanced rate and claimed it as refund from the Department since the Railways have not paid the enhanced rate of duty to them. We find that the Ld. Appellate Authority has rightly rejected the refund claim of the appellant on this count since the appellant has rightly paid duty at the enhanced rate. Accordingly, we hold that the rejection of the refund claim by the Ld. Appellate Authority in the impugned order on this count is proper and sustainable.

5.2. Regarding the rejection of refund claim of Rs.10,93,900/-, we observe that the Railways have imposed a penalty of Rs.1,36,23,253/- on the appellant on account of delay in supply of sleepers. The Department is no way connected with the delay in supply of the goods by the manufacturer and if there is any penalty imposed on account of such delay, it is to be borne by the appellant themselves. The appellant cannot consider that the penalty would effectively reduce the assessable value and that they are liable to pay only lesser duty to the extent of Rs.10,93,900/- on account of the deduction of liquidated damages from them by the Railways. Thus, we find that the Ld. Appellate Authority has rightly rejected the refund of Rs.10,93,900/- claimed by the appellant on this count.

6. In view of the above, we find that the refunds of Rs.35,12,486/- and Rs.10,93,900/- claimed by the appellant have been rightly rejected by the Ld. Appellate Authority in the impugned order.

7. In view of the above, we do not find any infirmity in the impugned order and therefore, we uphold the same.

8. Accordingly, we uphold the impugned order and reject the appeal filed by the appellant.

(Order pronounced in the open court on **10.07.2024**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd