

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76383 of 2014

(Arising out of Order-in-Appeal No. 35/KOL-II/2014 dated 24.07.2014 passed by the Commissioner of Central Excise (Appeals), Kolkata-III, Kendriya Utpad Shulk Bhawan, R.B. Connector, Rajdanga Main Road, 180, Shantipally, 6th Floor, Kolkata – 700 107)

M/s. Alom Extrusions Limited

: Appellant

184, J.N. Mukherjee Road, Bandhaghat,
Howrah (West Bengal)

VERSUS

Commissioner of Central Excise

: Respondent

Kolkata-II Commissionerate
15/1, Strand Road, Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri Debasish Gupta, Consultant for the Appellant

Shri B.K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 76431 / 2024

DATE OF HEARING / DECISION: 24.07.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Alom Extrusions Ltd., 184, J.N. Mukherjee Road, Bandhaghat, Howrah (the 'Appellant') are engaged in the manufacture of Aluminium extruded shapes and sections. The appellant was issued two Show Cause Notices dated 29.03.2011 and 11.04.2011 by the Anti-Evasion Wing of the Central Excise Commissionerate, alleging that they had undervalued the goods sold from their depot and consignment agents resulting in evasion of Central Excise Duty to the tune of Rs.28,20,514/- (both the Notices together). The demand raised covers the period from 2006-07 to 2010-11. During the material

period, the appellant manufactured 2865 types of Aluminium extruded shapes and sections and transferred the same to one depot located at Delhi and to six consignment agents located at various places of the country, from where the excisable goods were sold to unrelated buyers. For the purpose of payment of duty in respect of the goods cleared to their depot and consignment agents, the appellant were following Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. As per the said Rule, Central Excise Duty was assessed and paid at the factory gate at a price prevailing at the end of the depot/consignment agents at the same time or the time nearest to time of removal from their factory.

2. The Id. adjudicating authority, after verifying the invoices raised at the factory at the time of removal and bills raised by the depot/consignment agents, concluded that the invoices failed to establish the difference in price in the excisable goods removed from the factory vis-à-vis the price at the depot and consignment agents and dismissed the allegations of undervaluation of the impugned goods. The Id. adjudicating authority vide the Order-in-Original No. 43-44/ADC/CE/Kol-II/ADJN/2011-12 dated 09.12.2011 confirmed the demand of Central Excise Duty of Rs.4,69,377.91/- in respect of sales from six consignment agents, where in some cases the goods were sold at a price higher than the price at which the goods were removed from the factory and by inclusion of 'insurance charges' in the assessable value. However, the Id. adjudicating authority has not taken into account the cases where the goods were sold at a price lower than the price at which the goods were removed from the factory. He has dropped the remaining demands raised in the Notices.

3. The appellant filed an appeal before the Ld. Commissioner (Appeals) and contended that when they paid the duty of Central Excise by following Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the assessment is deemed to be considered as provisional. Hence, the adjudicating authority should have adjusted the excess receipt and short payment and arrived at the demand, if any, payable by the appellant. The Id. appellate authority has not accepted the contention of the appellant and rejected the appeal filed by them vide the impugned order.

4. Aggrieved against the rejection of their appeal, the appellant filed the present appeal.

5. The appellant submits that they have calculated the price of goods actually sold in a year by taking the price of opening stock plus goods sent and subtracting the value of closing stock to arrive at the price of goods sold in that year; this amount was cross-verified with the assessable price of entire goods removed to consignment agents in the respective year on which central excise duty was paid. It is submitted that this exercise resulted in sale of goods at higher prices in respect of some consignment agents and sale of goods at lower price in respect of some consignment agents in the respective years as calculated from their accounts. Accordingly, the appellant submits that they paid the differential central excise duty of Rs. 1,00,593.00/- collectively for all the consignment agents where such differences occurred.

5.1. It is the contention of the appellant that in respect of removal of goods from their factory following the procedure laid down under Rule 7 of the

Central Excise Valuation Rules, 2000, the assessment is required to be made at the time of removal from the factory at the prevalent price at which the excisable goods were sold from the consignment agents' premises; the Id. adjudicating authority has held that the Revenue has failed to establish that the goods were sold at a higher price from the consignment agents' premises vis-à-vis the price at which the goods were assessed at the factory gate and thus dropped the allegations made in the Show Cause Notices. Accordingly, the appellant submits that the Id. adjudicating authority has erred in confirming the demand of Central Excise Duty of Rs.4,69,377.91/- on the ground that some of the goods were sold at the consignment agents' end at a higher price, calculated on yearly basis.

5.2. The appellant has relied upon the Board Circular No. 251/85/96-CX. Dated 14.10.1996 wherein it has been clarified that in case of inter-depot transfer of goods, duty may be initially charged with reference to the place of removal from where goods are actually removed / intended to be sold and by charging differential duty, if any, on the basis of the assessable value prevalent at the actual place of removal i.e., the storage depot, etc., from where the goods are finally sold; they have followed the procedure prescribed in the Circular and therefore the question of demanding any differential duty at a later point of time does not arise.

5.3. Accordingly, the appellant prayed for setting aside the impugned order and to allow their appeal.

6. The Id. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal documents.

8. We observe that the appellant has transferred their goods to their depot at Delhi and six consignment agents located at various places from where the goods were sold to unrelated buyers. The appellant were following Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and discharged duty at the time of clearance from their factory. As per Rule 7 of the Rules, Central Excise Duty was paid at the factory gate at a price prevailing at the depot / consignment agents' end at the same time or the time nearest to the time of removal of goods from their factory. For the sake of ready reference, Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is reproduced below: -

"Rule 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

8.1. We observe that the appellant has adopted the method of payment of duty as mentioned above in Rule 7 of the Central Excise Valuation Rules, for the clearances effected to their depot and consignment agents. Once duty has been paid at the time of clearance from their factory as provided under Rule 7 supra, the appellant is not liable to pay any differential

duty based on subsequent sale of the same goods from the depot or consignment agents, at a higher price to independent buyers. In this case, we also find that the Id. adjudicating authority has given a finding stating that the appellant has adopted Rule 7 of the Central Excise Valuation Rules and there is no evidence available on record to establish that the goods were sold at a different price from the depot or consignment agents' end at the same time. Accordingly, we observe that the original adjudicating authority has dismissed the allegation of undervaluation of excisable goods.

9. We observe that the Id. adjudicating authority has confirmed Central Excise Duty amounting to Rs.23,052/- on account of non-inclusion of insurance charges in the assessable value for sales of goods from their depots / consignment agents. The appellant has accepted their error and agreed to pay the differential amount of Rs.23,052/- liable to be paid on account of non-inclusion of insurance charges in the assessable value. Hence, we hold that the appellant is liable to pay the differential duty of Rs.23,052/- along with interest.

10. We observe that there is no other evidence available on record to establish that the appellant has not adopted the price prevalent at the depot / consignment agents at the same time or at the nearest time when they paid the duty at the time of clearance from their factory. Accordingly, we hold that the appellant has rightly paid duty as per Rule 7 of the Central Excise Valuation Rules, 2000 and there is no liability to pay any differential duty on account of difference in the value of clearance of the same goods from the depot / consignment agents

subsequently to independent buyers. In view of the above, we hold that the appellant is liable to the differential duty only to the extent of Rs.23,052/- confirmed in the impugned order along with interest.

11. We observe that the issue involved in this case related to valuation of clearances effected through the depot and consignment agents of the appellant. There is no suppression of fact with intention to evade payment of tax established in this case and hence, we hold that no penalty is imposable on account of confirmation of the above said demand.

12. In view of the above discussion, we pass the following order: -

- (1) We uphold the confirmation of demand to the extent of Rs.23,052/- along with interest on account of non-inclusion of insurance charges in the assessable value for sale of goods from their depot/consignment agents;
- (2) The remaining demand confirmed in the impugned order is set aside.
- (3) The penalties imposed on the appellant are set aside.

13. The appeal filed by the appellant is disposed of on the above terms.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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