

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76248 of 2014

(Arising out of Order-in-Original No.04-Commr-CE-Kol-V-Adjn-2014 dated 04.06.2014 passed by Commissioner of Central Excise,Kolkata)

M/s. Chandramukhi Impex Pvt.Ltd., : **Appellant**
Minerva Dairy Farm, 1st and 2nd Floor, Diamond Harbour
Road, Joka, Kolkata-700 104.

VERSUS

The Commissioner of Central Excise, Kolkata, : **Respondent**
118, Shantipally, Rajdanga Main Road, Kendriya Utpad
Shulk Bhawan, Kolkata-700 107.

With

Excise Appeal No. 76249 of 2014

(Arising out of Order-in-Original No.04-Commr-CE-Kol-V-Adjn-2014 dated 04.06.2014 passed by Commissioner of Central Excise,Kolkata)

Shri Sunil Kumar Poddar, : **Appellant**
Minerva Dairy Farm, 1st and 2nd Floor, Diamond Harbour
Road, Joka, Kolkata-700 104.

VERSUS

The Commissioner of Central Excise, Kolkata, :
118, Shantipally, Rajdanga Main Road, Kendriya Utpad
Shulk Bhawan, Kolkata-700 107. **Respondent**

With

Excise Appeal No. 76250 of 2014

(Arising out of Order-in-Original No.04-Commr-CE-Kol-V-Adjn-2014 dated 04.06.2014 passed by Commissioner of Central Excise,Kolkata)

Shri Vikash Marda, : **Appellant**
Minerva Dairy Farm, 1st and 2nd Floor, Diamond Harbour
Road, Joka, Kolkata-700 104.

VERSUS

The Commissioner of Central Excise, Kolkata, : **Respondent**
118, Shantipally, Rajdanga Main Road, Kendriya Utpad
Shulk Bhawan, Kolkata-700 107.

With

Excise Appeal No. 76251 of 2014

(Arising out of Order-in-Original No.04-Commr-CE-Kol-V-Adjn-2014 dated 04.06.2014 passed by Commissioner of Central Excise,Kolkata)

Shri Saharsh Poddar, : **Appellant**

Minerva Dairy Farm, 1st and 2nd Floor, Diamond Harbour Road, Joka, Kolkata-700 104.

VERSUS

The Commissioner of Central Excise, Kolkata, : **Respondent**
118, Shantipally, Rajdanga Main Road, Kendriya Utpad Shulk Bhawan, Kolkata-700 107.

APPEARANCE:

Shri Aditya Dutta, Advocate for the Appellants

Shri P.Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 75376-75379/ 2025

DATE OF HEARING :13.12.2024

DATE OF DECISION: 11.02.2025

Order : [Per Shri Ashok Jindal]

Appellants are in appeal against the impugned order where demand of duty of Rs. 82,30,379/- has been confirmed against the appellant no. 1 along with interest and penalties on all the appellants have been imposed.

2. The facts of the case are that the appellant no. 1 was manufacturer of readymade garments which became excisable with effect from 01.03.2011. The appellant applied for registration on 28.03.2011 and thereafter certain documents were asked from the appellant for submission thereof. But in terms of para 3.3 of Government of India letter No. DOF No. B-1/3/2011-TRU, New Delhi dated 25.03.2011, the appellant filed a letter on 13.06.2011 for clarification as to whether they are required for registration in

view of the fact that estimated domestic sale in the Financial Year 2011-12 would be Rs. 50,00,000/- and export turnover would be around Rs. 20 crores.

3. In reply to the said letter, the Deputy Commissioner (Technical) vide his letter dated 12.07.2011 exempted the appellant from taking registration upon fulfilling certain conditions. Thereafter, the appellant applied for surrender of registration certificates on 12.08.2011 and thereafter certain documents were asked from the appellant for submission thereof for the period 01.04.2011 to 23.09.2011.

4. The appellant submits the reply stating that the export clearance was Rs. 7,56,87,183/- and goods cleared for home consumption was Rs. 42,19,405/-. Thereafter, the appellant was asked to observe all the CE formalities as the clearance value for both the export and home consumption taken together exceeds Rs. 4 crores. The appellant is having the factory premises at Minerva Dairy and Farm Compled, Joka, Diamond Harbour Road, Kolkata-700 104 and their office at 33A, Jawaharlal Nehru Road, 12th Floor, Room No. -7, Kolkata.

5. In view of the above facts, a Show Cause Notice was issued to the appellant on 09.10.2012 proposing CE duty of Rs. 1,40,11,120/- pertaining to the period April, 2011 to February, 2011 along with consequential interest and to impose penalty under Rule 25 of the CE Rules and Section 11 (A) of CE Act upon the appellant as well as upon the co-appellant under Rule 27 of the CE Rules, 2002 alleging that the appellants had manufactured and cleared ready-made garments under the brand-name of foreign companies without payment of CE duty for export

and such clearance were not made under cover of invoices under Rule 11 of the CE Rules, 2002 and by mis-declaring that the impugned goods were cleared under LUT No. 23/UT-1/Joka/2011-12 valid upto 03.11.2012 in which the date of issue of the LUT was not willfully mentioned, however, the same was actually issued only on 04.11.2011. Further, the letters, invoices, packing lists were signed by the co-appellants that being a Star Export House the appellant ought to have been completely aware of the CE law and procedure. But they did not complete the formalities. Therefore, a Show Cause Notice was issued.

6. The matter was adjudicated and the demand for April, 2011 to October, 2011 was confirmed amounting to Rs. 82,30,379/- alongwith interest and a penalty of Rs. 10,00,000/- was imposed upon the appellant and a penalty of Rs, 5000/- each was imposed upon the co-appellants. The rest of the demand pertaining to the period November, 2011 to February, 2012 was dropped.

7. Against the said order appellant is before us.

8. The Ld. Counsel for the appellant submits that as clarified by letter dated 12.07.2011 the appellant were exempted from payment of Excise duty in terms of Notification No. 8/2003 CE dated 01.03.2003 as their domestic turnover was less than Rs. 50,00,000/- and their exports are more than Rs. 7 crores. Therefore, the appellant was not required to follow the CE procedure for exports of the goods and impugned order alleges that the goods were removed for export under cover of commercial invoices issued from the head office but as appellant has already applied surrender of Registration

Certificate which was not accepted by the Department. In that circumstances, the procedure under CE Act was not required to be followed by the appellant. He also submitted that the domestic manufacture/clearance the appellant did not use any brand and in case of export the appellants were using brand name desired by the foreign buyers.

9. It is his submission that it was observed in the impugned order that the Range Superintendent could not verify that the impugned goods cleared for the exports as appellant has not submitted the Returns in due time. From such observations inference has been made that the goods manufactured by the appellant in their factory were cleared during the period April, 2011 to October, 2011 without payment of duty of excise for export were diverted for home consumption and submitted the documents as proof of export in respect of goods procured from other sources. On the basis of these observations, the demand has been confirmed. It is his contention that all the allegations against the appellant on the basis of conjecture and surmises only and void of any material proof.

10. He also submitted that the average Drawback benefit in respect of goods procured from market and subsequently exported comes to around 3% to 4% whereas in case of goods manufactured in our own factory and then exported the drawback benefit comes to around 7% to 8%. Thus, the allegation that the goods manufactured in our factory were sold in the market and goods procured from market have been exported to get undue export benefit does not make any business sense on the one hand and on

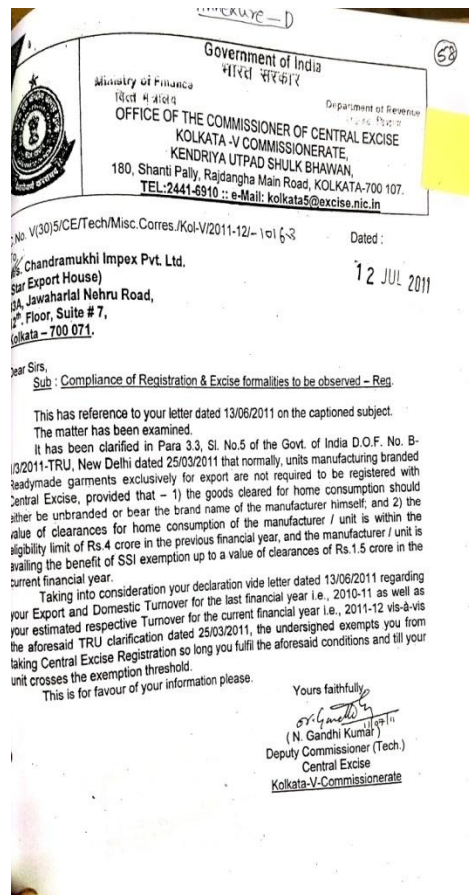
the other no iota of evidence has brought by the Department to that effect.

11. Therefore, the demand is to be set aside and no penalty is to be imposable on the appellants.

12. On the other hand Ld. Authorized Representative reiterated the findings of the impugned order.

13. Heard the parties. Considered the submissions.

14. We find that it is a fact of record that the total domestic turn over of the appellant was less than Rs. 50,00,000/- and the appellant was entitled for benefit of SSI exemption notification no. 8/2003 CE dated 01.03.2003 and vide letter dated 12th July, 2011 the appellant was exempt from taking CE registration. For better appreciation of the fact the said letter is excerpted here below:



15. The main allegation against the appellant is that they have cleared goods under the commercial invoices and the clearances were not made under cover of invoices under Rule 11 of CE Rule, 2002. Therefore, the impugned demand has been confirmed against the appellant alleging that the goods manufactured in their factory have been diverted in domestic market and goods procured from outside have been exported by the appellant. The said allegations are not supported by any iota of evidence to show that the appellant has cleared goods manufactured in their factory in domestic market and procured goods for export from other sources. Neither any enquiry was made to that effect from the domestic market where the goods have been allegedly sold and from where the goods have been procured for export.

16. Moreover, if manufactured goods were sold by the appellant they are entitled for drawback claim at the rate of 7% to 8% and if goods are procured from outside market they are entitled for draw back claim of 3-4%. As appellant is a manufacturer of goods, there is no sense that the manufactured goods will be cleared in domestic market and from the domestic market appellant will procure goods for export. The allegation made against the appellant by the authorities is without any supportive evidence. In that circumstances, the allegation against the appellant is not sustainable.

18. Moreover, as appellant was not required to take CE Registration and the appellant was exempted for taking Registration vide letter dated 12th July, 2011 therefore, the appellant was not

required to issue invoices under Rule 11 of the CE Rules, 2002. In that circumstances, the whole of the demand confirmed against the appellant are not sustainable. Consequently, no penalty is imposable on the appellants.

19. In view of this, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Pronounced in the open court on 11.02.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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