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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76596 of 2014

(Arising out of Order-in-Original No.29-59/Commissioner/CE/KOL-IV/2014 dated 10.09.2014 passed by the Commissionerate Kolkata-iv M.S. Building, 15/1, Strand Road, Kolkata-700001)

M/s. Kesoram Rayon **: Appellant**
Prop Kesoram Industries Limited
P.O.-Nayasari, Dist Hooghly-712513
West Bengal

VERSUS

Commissioner of Central Excise, Kolkata-IV **: Respondent**
M.S. Building, 15/1, Strand Road,
Kolkata-700001

APPEARANCE:

Shri Rahul Tangri, Advocate
Ms. Taniya Roy, Advocate for the Appellant

Shri P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75635/2025

DATE OF HEARING / DECISION: 05.03.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No.29-59/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 by the Commissioner of Kolkata, wherein the Ld. Commissioner has confirmed Central Excise duty of Rs. 4,01,36,880/- for the period July 2000 to March 2009.

2. The facts of the case are that M/s. Kesoram Rayon (herein after referred as the appellant) are engaged in the manufacture of excisable goods namely Viscose Rayon Filament Yarn and Cellophane falling under Chapter Headings 5403.32 and 3920.21 of the Central Excise Tariff Act, 1985. Substantial quantity of goods manufactured at the factory are cleared to the depots located at multiple places of the Appellant, after payment of excise duty. Further, the finished excisable goods are sold to the customers from the depots itself. The selling price at the depots keeps on fluctuating depending upon the demand and supply position and other market related factors. Thus, the market price after deducting the quantum of discount there from is the value at which goods are actually sold from the depots. Accordingly, this is the value adopted by the Appellant for payment of excise duty on goods cleared from its factory to its depots, as per the mandate of Rule 7 of the Valuation Rules.

2.1. The Appellant allowed the following types of discounts like Cash Discount, Quantity Discount and Turnover Discount.

- Cash discount- the rate of this discount in respect of Rayon Yarn was 2% during the period from 24.05.199 to 31.10.2001 and 1.5% with effect from 01.11.2001. In respect of Rayon Yarn, most of the buyers at the depots (more than 90%) availed such cash discount during the relevant period whereas only about 10% of the buyers of Cellophane availed the said cash discount. Therefore, to avoid any unnecessary complication, the Appellant did not claim any deduction on account of cash discount for determination of assessable value of Cellophane but claimed deduction on account of cash discount for determination of assessable value of Rayon Yarn. Further, this discount was reflected in the factory invoice as well as the invoice issued by depots while selling the goods to the customers.

- Quantity discount- this discount was allowed only in respect of Rayon Yarn and not Cellophane. This discount was allowed mainly at two depots viz. Bangalore and Kolkata and during some periods at depots situated in Delhi, Panipat, Mau, Varanasi, Belgaum, Pondicherry and Mumbai. These discounts were passed on as per the Circulars issued by the Appellant. Since the rates of the said discount were fully known to the buyers and were being allowed to them at the concerned depot, the deduction was being claimed by the Appellant in terms of the Circular, while dispatching the goods to the respective depots. The said discount was allowed by disclosing the same in the depot invoice or by issuing credit notes periodically.
- Turnover discount-this discount was allowed for Cellophane (only on Plain Transparent Reams) as well as Rayon Yarn (particular depots mentioned in the circular and at specific rates).This discount was passed on to the buyers periodically by issuance of credit notes to the buyers. Further, in respect of turnover discount applicable to PT

Reams, there were generally three different slabs and the rates varied depending on the quantity lifted by the concerned buyer within the specified period. In view thereof, while clearing goods from the depot, deduction was claimed on the basis of such circulars and at the rates mentioned in the last/lowest slab. In any case, if any particular buyer did not lift the required quantity of goods and was only eligible for the lowest slab rate, the Appellant quantified the differential duty and paid to the department.

2.2. The Appellant adopted this practice during the relevant period. However, due to the inherent difficulties in arriving at the correct normal transaction value under Rule 7 for goods cleared to the depots, the Appellant had opted for provisional assessment. The Jurisdictional Assistant Commissioner, upon consideration of the facts, factory invoices, depot invoices, certificates or declarations obtained from buyers duly certifying the fact they were aware of the discounts prior to the removal of goods, CA certificate certifying that the discounts were passed on to the buyers, issued the final assessment orders either indicating excess payment made or differential duty payable.

2.3. Pursuant to such finalization of assessment, without any challenge to such finalization orders, the department issued periodical Show Cause Notices. The first notice was issued on 29.10.2004 for the period July 2000 to March 2004 and the remaining 30 notices were issued for the subsequent months. The

Show Cause Notices were issued on the basis of the allegation that the discounts claimed for the goods stock transferred to the depot were not eligible for deduction and further proposed to demand duty amounting to Rs. 4,01,36,880/- on the discounts claimed as deduction.

2.4. The Ld. Commissioner, Kolkata vide a common Order-in-Original dated 10.09.2014, confirmed the entire demand along with interest and penalty, proposed in the 31 SCNs. The demand was confirmed on the following grounds:

- Denial of discounts claimed as deduction and passed on to the buyers on the ground that the Appellant at the time of assessment did not reckon to "normal transaction value" on the greatest quantity of goods sold from the depot for each removal of goods from the factory;
- No one-to-one co-relation established between who fulfilled the condition for discount and to whom the discount was actually passed on;
- Discounts claimed on the factory invoices were not actually passed on to the buyers by the Appellant.

2.5. Being aggrieved by the commonOrder-in-Original dated 10.09.2014, the Appellant has filed the instant appeal before this Tribunal.

3. The appellant submits that the issue is no longer res-integra as decided by this hon'ble tribunal in 2024 (4) tmi 167-cestat kolkata (m/s steel authority of india limited v. commissioner of central excise and service tax) wherein it has been held that discounts which were known to the

buyers at the time of clearnace of goods and passed on to the buyers would be eligible as deduction for the purpose of determination of the assessable value.

3.1. the appellant submits that in their own case of the appellant in **m/s kesoram rayon v. commissioner of central excise, kol-iv, 2018 (7) tmi 416-cestat kolkata,** the Tribunal for the period October 2008 to March 2009, under similar facts and circumstances, sanctioned refund claimed by the Appellant pursuant to the finalization of the provisional assessment. The relevant paragraph is extracted hereunder:

> *"4. On perusal of records, I find that the appellant had allowed performance based discounts to its buyers by way of cash discount, Turn over discount, special discount, etc. as per their sales policy. The appellant had extended such discounts vide cheques which established that the duty against which the refund applications had been filed had been paid by the appellant and had not been passed on to any other person under Rule 12B read with Section 11B of the Central Excise Act, 1944. It has also been recorded that the refund claim applications had been submitted within the stipulated time period. Further, I note that the concerned Range Officers had certified the discount amounts that had been passed to the buyers vide their verification reports.*
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> *…*

6. It is seen that the Adjudicating Authority had proceeded on the basis of the earlier Order-in-Appeal. The appellate authority had observed on the earlier occasion that the discount has been passed on to the dealers which were not challenged by the Revenue in the earlier occasion. So, the Adjudicating Authority had rightly sanctioned the refund on the basis of the findings of the Commissioner (Appeals) in earlier Order-in-Appeal. Hence, the impugned order cannot be sustained."

3.2. Therefore, the appellant submits that as the issue is no longer res-integra, on the same lines, the Appellant should be allowed the deduction of the discounts from the assessable value for payment of excise duty.

3.3. The appellant further submits that in the absence of any challenge to the final assessment orders passed for the self-same period by the proper officer by way of an appeal, the issuance of a show cause notice is pre-mature and thus liable to be set aside.

3.4. The Appellant submits that in the instant case, the assessments finalized for the relevant period were not challenged by the department by way of filing an appeal before Commissioner (Appeals) as provided under Section 35A of the Act.

3.5. The Appellant submits that they have cleared the goods provisionally upon payment of excise duty during the relevant period and all the provisional assessments have made final and the said final assessments have been accepted by the department. These assessments led to the appellant paying differential duties in some cases and claiming refunds in others. Therefore, the final assessment order had attained finality. In such circumstances, it is not open to the revenue to issue SCN to the Appellant for the same period for which assessments have been finalized. Accordingly, the appellant submitted that the demands confirmed in the impugned order is not sustainable and prayed for setting aside the same.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. We observe that the Appellant cleared the goods provisionally upon payment of excise duty during the relevant period and all the provisional assessments have been made final vide issuing of finalisation orders. The said final assessments have been accepted by the department. We observe that the assessments finalized for the relevant period were not challenged by the department by way of filing an appeal before Commissioner (Appeals) as provided under Section 35A of the Act. Therefore, we observe that the final assessment orders had attained finality. In such circumstances, it is not open to the revenue to issue SCN to the Appellant for the same period for which assessments have been finalized.

6.1. Thus, we hold that the demands confirmed in the impugned order without challenging the final assessment orders is not sustainable and accordingly, we aside the same. Since the demand of Central excise duty is not sustained, the question of demanding interest and imposing penalty does not arise.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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