

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75285 of 2017

(Arising out of Order-in-Appeal No. 100/KOL-V/2016 dated 26.10.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

M/s. GTZ (India) Private Limited
Khariberia, Diamond Harbour Road,
24 Parganas (South), PIN – 743 503

: Appellant

VERSUS

Commissioner of Central Excise
Kolkata-VII Commissionerate

: Respondent

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant

Shri S.K. Dikshit, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75796 / 2025

DATE OF HEARING: 27.03.2025

DATE OF DECISION: 28.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. GTZ (India) Private Limited, Khariberia, Diamond Harbour Road, 24 Parganas (South), PIN – 743 503 (hereinafter referred to as the “appellant”) is engaged in the manufacture of chemicals falling under Chapters 38 and 28 of the First Schedule to the Central Excise Tariff Act, 1985.

1.1. Officers of the Headquarters Anti-Evasion Unit, Kolkata-VII Commissionerate visited the factory premises of the appellant on 10.02.2011. During the course of joint physical stock verification, it was noticed that there was a shortage of inputs / raw

materials on which the appellant had availed CEVNAT Credit amounting to Rs.40,445/- (inclusive of cesses). A shortage of finished goods was also noticed involving duty liability of Rs.18,031/- (inclusive of cesses).

1.2. The appellant has accepted the duty involved in respect of the shortages of raw materials and finished goods and paid the same.

2. It was also found that in some cases, the appellant were collecting transportation insurance from the customers and deducted 1% of the value to arrive at the assessable value for the purpose of payment of duty. However, it was found that the actual premium paid by the appellant to the insurance companies was much lower than the amount of 1% deducted from the assessable value. The Department was of the view that the amount collected in excess of the actual premia paid to the insurance companies should also be taken into consideration to arrive at the taxable value. Since the appellant had collected transportation insurance @1% of the value from their customers, which is more than the actual premium paid, differential duty amounting to Rs.1,21,936/- (inclusive of cesses) was therefore considered as payable by the appellant.

2.1. The appellant has paid this amount as well.

3. On completion of the investigation, a Show Cause Notice dated 12.04.2011 was issued to the appellant demanding payment of central excise duty, including cess, of Rs.40,445/- in respect of shortage of inputs, Rs.18,031/- in respect of shortage of finished goods and Rs.1,21,936/- in respect of transit

insurance. The Notice also proposed recovery of interest and imposition of penalty.

4. On adjudication, the Id. adjudicating authority, vide the Order-in-Original No. 19/DC/CE/BPD/2011-12 dated 14.03.2012 has confirmed the demands, along with interest, and imposed equal amounts of duty as penalty under Section 11AC of the Central Excise Act, 1944.

4.1. On appeal, the Ld. Commissioner (Appeals) vide the impugned Order-in-Appeal No. 100/KOL-V/2016 dated 26.10.2016 has upheld the demands of duty, along with interest and penalty, as confirmed in the Order-in-Original dated 14.03.2012.

4.2. Aggrieved by the impugned order, the appellant has filed this appeal.

5. The Ld. Counsel appearing on behalf of the appellant submits that there were shortages of raw materials and finished goods noticed during the course of stock verification. Even though they were disputing the method of stock verification, they accepted their liability and paid the duty involved in the shortages of raw materials and finished goods, with a view end the litigation. In this regard, he states that the Department has issued the Show Cause Notice on the amounts which had already been paid before issuance of the said Notice and also imposed equal amount of tax as penalty. In this regard, it is the appellant's contention that as per Section 11A(2B) of the Central Excise Act, 1944, if the central excise duty along with interest is paid before issuance of the Show Cause Notice, Show Notice need not be issued in such cases; further, all the facts were within the knowledge of the Department before issuance of the

notice. Accordingly, the Ld. Counsel for the appellant contends that the penalties imposed in the instant case are not warranted.

5.1. Regarding the duty demanded on transit insurance deducted from the value, the appellant submits that even though they paid the duty involved arising on account of transport insurance, they are contesting the issue as they are not liable to pay duty on this issue. It is the appellant's contention in this regard that the profit earned on account of transit / transport insurance is not includable in the transaction value for the purpose of computation of central excise duty. In this regard, reliance is placed by the appellant on the decision of the Tribunal at Chennai in the case of *TCP Ltd. v. Commissioner of C.Ex., Madurai* [2008 (230) E.L.T. 181 (Tri. - Chennai)] wherein the Tribunal has held that any amount collected by the assessee in excess of insurance charges relating to freight incurred in relation to supply of goods to customers' premises is not includable in the assessable value of goods in terms of Section 4 of the Central Excise Act, 1944. In view of the above submissions, the appellant has submitted that the demand confirmed against them on this count is liable to be set aside.

6. The Ld. Authorized Representative of the Revenue submitted that the appellant has admitted to the shortage of raw materials and finished goods, which was detected by the Officers during physical stock verification, and paid duty thereon. Accepting that there is shortage in raw materials and finished goods the appellant paid the duty and hence they are liable to pay penalty as suppression has been established in this case.

6.1. Regarding the duty demanded on account of transport insurance, the Ld. Departmental Representative has submitted that the appellant had accepted their liability and paid the duty and hence, the Id. adjudicating authority has rightly confirmed the demand, along with interest and penalty in this regard.

6.2. Accordingly, the Ld. Authorized Representative of the Revenue supported the impugned order confirming the demands.

7. Heard both sides and perused the appeal records.

8. We observe that during the course of physical stock verification, there were shortages of inputs / raw materials as well as finished goods noticed by the Officers of the Headquarters Anti-Evasion Wing, Kolkata VII Commissionerate. The appellant had availed CEVNAT Credit on inputs / raw materials amounting to Rs.40,445/-, which they accepted and paid. Similarly, it is observed that the duty involved amounting to Rs.18,031/- on the finished goods found short has also been paid by the appellant.

8.1. In this regard, we take note of the appellant's submission that they were unable to fully explain the shortage of raw materials and finished goods at the time of stock verification and, in order to put an end to the litigation, they paid the duty and hence, penalty should not have been imposed in respect of these demands. We agree with the submission of the appellant that since the appellant had paid the central excise duty along with interest before issuance of the Show Cause Notice, as per Section 11A(2B) of the Act, there was no necessity to issue the Show Cause Notice

for these demands. as the duty involved has already been paid. Accordingly, we observe that the Show Cause Notice for these issues need not have been issued. In these facts and circumstances, we are of the view that the penalties imposed on the appellant on these issues are not warranted and hence, we set aside the penalties imposed on the appellant on these demands.

9. Regarding the liability to central excise duty amounting to Rs.1,21,936/- on transport insurance, we find that the appellant has collected transport insurance charges @ 1% on the value from the customers and deducted the same from the assessable value. However, the actual premium paid by them was found to be less than the 1% collected. In this regard, we observe that the profit earned by the appellant on the transport insurance is not liable to be included in the assessable value, as has been held by the Tribunal in the case of *TCP Ltd. v. Commissioner of C.Ex., Madurai* [2008 (230) E.L.T. 181 (Tri. - Chennai)]. In the said decision, the Tribunal has observed that: -

"2. The dispute in these appeals is with regard to valuation of the goods removed from the appellants' factory to their buyer's premises during the period of dispute. The appellants had collected excess amount towards insurance charges in relation to the freight incurred in the supply of the goods at the buyer's premises, but included only the correct amount of insurance premium in the assessable value of the goods and excluded the amounts so collected, from the assessable value of the goods. The department found that the amount collected by the assessee from their buyers towards insurance charges was in excess of the insurance premium payable and, accordingly, took the view that the excess amount collected was includible in the assessable value of the goods. This view was taken with reference to the definition of "transaction value" which was in force. The show-cause notices issued by the department on this basis came to be adjudicated upon in favour of the Revenue and,

accordingly, differential duty was demanded with interest thereon by the original authority. The appeals preferred by the assessee against the orders of the original authority were rejected by the Commissioner (Appeals). The present appeals before us are against the appellate Commissioner's orders.

3. After considering the submissions of Id. counsel for the assessee and Id. SDR for the Revenue, we find that the issue arising for consideration in these cases is already covered by decisions of this Tribunal. Id. counsel has cited the following decisions :-

(1) Kothari Sugar & Chemicals Ltd. v. CCE, Chennai - [2005 \(192\) E.L.T. 447](#) (Tri.-Chennai)

(2) Transformers & Electricals Kerala Ltd. v. CCE, Cochin - [2007 \(213\) E.L.T. 398](#) (Tri.-Bang.)

In both the above cases, the amounts collected by the assessee in excess of insurance charges relating to the transportation of the goods from their factories to customers' premises were held to be a profit not includible in the assessable value of the goods as held by the Apex Court in the case of Baroda Electric Meters Ltd. v. Commissioner - [1997 \(94\) E.L.T. 13](#) (S.C.). Id. SDR has made an endeavour to distinguish the present case from the cases cited by Id. counsel. He has also sought to rely on the apex court's judgment in Prabhat Zarda Factory Ltd. v. CCE - [2002 \(146\) E.L.T. 497](#) (S.C.). We have perused this judgment of the Apex Court. We find that, in that case, it was admitted by the assessee that freight and insurance charges up to depot would be includible in the assessable value of the goods removed to such depot from the factory. Any dispute of the kind which is under consideration by us in the present case did not arise before the Apex Court in that case.

4. Id. SDR has also referred to the Board's Circular No. 354/81/2000-TRU dated 30-6-2000. This circular did not specifically deal with the question whether insurance charges were includible in assessable value or not, let alone the question whether any amount collected by an assessee in excess of insurance charges was so includible.

5. The issue stands settled in favour of the appellants by the decisions cited by Id. counsel. Therefore, the impugned orders are set aside and these appeals are allowed."

9.1. In view of the above judicial precedent on the issue, we hold that the demand of Rs.1,21,936/- confirmed on this count is not sustainable. Consequently, we set aside the same. Since the demand on this count itself is unsustainable, the question of demanding interest thereon or imposing penalty on this issue does not arise.

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

- (i) The demands of Rs.40,445/- and Rs.18,031/- (inclusive of cesses), along with interest, confirmed on account of shortage of inputs and shortage of finished goods respectively, already paid by the appellant, are upheld. No penalty is imposable in respect of these demands.
- (ii) The demand of Rs.1,21,936/- confirmed on account of inclusion of transit insurance in the assessable value is set aside. No penalty is imposable on the appellant in respect of this issue.

11. In these terms, the appeal is disposed of, with consequential relief, if any, as per law.

(Order pronounced in the open court on **28.03.2025**)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sd/-

(ANGAD PRASAD)
MEMBER (JUDICIAL)