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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75390 of 2017

(Arising out of Order-in-Appeal No. 120/KOL-V/2016 dated 13.12.2016 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. East India Laminates Private Limited : Appellant
Vill. & Post – Bowali, P.S.: Nodakhali,
District: 24 Pgns. (S), PIN – 700 137

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-VII Commissionerate

APPEARANCE:

Shri Sailen Kumar Naskar, Consultant for the Appellant

Shri S. Dey, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75798 / 2025

DATE OF HEARING / DECISION: 27.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. East India Laminates Private Limited, Vill. & Post – Bowali, P.S.: Nodakhali, District: 24 Pgns. (S), PIN – 700 137(hereinafter referred to as the "appellant")are engaged in the manufacture of Decorative Laminates and Industrial Laminates classifiable under Chapter Sub-Heading Nos. 48239019 and 39209490 of the Central Excise Tariff Act, 1985.Proceedings were initiated against the appellant by way of issuance of a Show Cause Notice dated 08.04.2014 wherein central excise duty amounting to Rs.4,67,305/- (inclusive of cesses)was demanded on the ground that the total value of clearances of the appellant during the Financial Year

2012-13 exceeds the monetary limit of SSI exemption of Rs.1.5 crores as provided under Notification No. 08/2003-C.E. dated 01.03.2003. Accordingly, central excise duty has been demanded vide the above notice on the amount of Rs.37,80,790/-over and above the exemption limit of Rs.1.5 crores in terms of Notification No. 08/2003-C.E. dated 01.03.2003.

1.1. The said Notice was adjudicated by the Ld. Assistant Commissioner, Central Excise, Budge Budge-II Division vide the Order-in-Original No. 02/AC/CE/BB-II/KOL-VII/2013-14 dated 28.08.2014 wherein the Ld. Assistant Commissioner has confirmed the duty demand of Rs.4,01,706/-, along with interest, and imposed an equal amount as penalty under Rule 25 of the Central Excise Rules, 2002. He also ordered confiscation of the impugned goods in terms of Rule 25 of the Rules and imposed redemption fine in lieu of such confiscation.

1.2. On appeal, the Ld. Commissioner of Central Excise (Appeals-I), Kolkata, vide the impugned Order-in-Appeal No. 120/KOL-V/2016 dated 13.12.2016, upheld the demands confirmed in the Order-in-Original dated 28.08.2014.

2. Aggrieved by the impugned order, the appellant has filed the present appeal before this Tribunal.

3. The Ld. Counsel appearing on behalf of the appellant submits that they were availing the benefit of Notification No. 08/2003-C.E. dated 01.03.2003; their total value of clearances during the period under dispute is below the threshold limit of Rs.1.5. crores as provided under the above said Notification. However, it is stated by the appellant that the Department has included the value of the goods

exported by them to Nepal in the value of clearances for the purpose of arriving at the taxable value to arrive at the exemption limit as provided under Notification No. 08/2003-C.E. dated 01.03.2003; accordingly, it was concluded by the Revenue that the appellant had exceeded the said monetary exemption limit of Rs.1.5 crores as provided under the said Notification. In this regard, the appellant has contended that as per Circular No. 958/1/2012-CX dated 13.01.2012, the Government of India has revised the treaty of trade between India and Nepal and exports to Nepal have been put at par with exports to other countries (except Bhutan) w.e.f. 01.03.2012. Therefore, the Ld. Counsel for the appellant contends that the value of exports made to Nepal are not includable while ascertaining the total value of clearances for the purpose of arriving at the value of clearances under Notification No. 08/2003 ibid.

3.1. He also points out that as per the said Circular, the Department ought to have amended the Notification No. 08/2003 ibid. and excluded the value of clearances made to Nepal for the purpose of computation of value of clearances under Notification No. 08/2003-C.E. dated 01.03.2003; however, as it was not done, the lower authorities have included the value of export clearances made to Nepal for the purposes of computation of exemption value limit under Notification No.08/2003-C.E. dated 01.03.2003.

3.2. In this regard, the appellant has cited the decision of the Hon'ble Gujarat High Court in the case of *M/s. Ketan Pottery Works v. Union of India [2016 (334) E.L.T. 206 (Guj.)]* wherein the Hon'ble High

Court has held that after issue of Circular No. 958/1/2012-CX dated 13.01.2012, the Department should have deleted "and Nepal" appearing in Explanation Clause (G) to SSI Notification No. 08/2003-C.E. dated 01.03.2003 and as it was not amended, this provision was held as unconstitutional vide the said judgement.

3.3. In view of the above, the Ld. Counsel for the appellant contends that the demand confirmed in the impugned order by including the value of export clearances made to Nepal is legally not sustainable. Accordingly, the appellant has also prayed for setting aside the demand of central excise duty confirmed in the impugned order. They also prayed for setting aside the confiscation and the redemption fine imposed in lieu of confiscation in the impugned order.

4. The Ld. Authorized Representative of the Revenue submits that as per Explanation Clause (G) of the Notification No. 08/2003-C.E. dated 01.03.2003, the value of clearances made to Nepal and Bhutan were includable for the purpose of computation of value of clearances to arrive at the exemption limit provided under the said Notification. Accordingly, he supported the impugned order confirming the demands against the appellant.

5. Heard both sides and perused the appeal records.

6. We find that the appellant has been availing the benefit of Notification No. 08/2003-C.E. dated 01.03.2003. As per this Notification, the goods cleared by the appellant are totally exempted up to the value of clearances of Rs.1.5 crores. As per the Notification No. 08/2003-C.E. dated 01.03.2003, the value of

exports made to Nepal and Bhutan were included for the purpose of computation of value of clearances as provided under Explanation Clause (G) of Notification No. 08/2003 ibid. We observe that Circular No. 958/1/2012-CX dated 13.01.2012 was issued wherein it was clarified that exports to Nepal have been placed at par with exports to other countries, excepting Bhutan. However, during the impugned period, Notification No. 08/2003 had not been amended so as to exclude 'Nepal' from Explanation Clause (G) of the aforesaid Notification.

6.1. We find that this issue has been examined by the Hon'ble Gujarat High Court in the case of *M/s. Ketan Pottery Works v. Union of India [2016 (334) E.L.T. 206 (Guj.)]* wherein the Hon'ble High Court has declared the portion "and Nepal" in Explanation Clause (G) of Notification No. 08/2003 as unconstitutional in view of non-deletion of the same by the Government from the said Notification. For the sake of ready reference, the relevant portion of the judgement of the Hon'ble High Court are reproduced below: -

> *"19. Reverting back to the facts of the case, we may recall, in view of change in the bilateral trade relations between the Government of India and the Government of Nepal, exports to Nepal are now placed at par with exports to other countries. If that be so, reference to clearances for export to Nepal in Explanation clause (G) to SSI Notification No. 8/2003 has been rendered wholly redundant. If such reference continues even after 1-3-2012, the situation that would arise is that, for all purposes, export to Nepal would be treated on par with export to any other country. For the purpose of SSI exemption under said Notification No. 8/2003, however, it would continue to be treated as clearances for home consumption. This will be plainly discriminatory vis-à-vis other SSI units who might be having exports to countries other than*

> *Nepal as compared to the SSI units like the petitioners whose substantial exports may be to Nepal. Under such circumstances, the former set of SSI units would claim total exclusion of all clearances made by them to all countries while computing exemption limit under Notification No. 8/2003, whereas the later would be subjected to inclusion of value of exports made to Nepal for computation of such limit. Since with effect from 1-3-2012 exports to Nepal are put at par with exports to other countries, the petitioners and other SSI units making exports to the countries other than Nepal form a homogeneous class. Both sets of manufacturers are SSI units. Both export their goods to various countries. There cannot be further sub-classification of SSI units exporting to Nepal and those SSI units exporting to the countries other than Nepal since after 1-3-2012 the distinction has been obliterated. This distinction which was prevalent till 1-3-2012 lost its relevance on account of change of the Government of India policy. Continued reference of exports to Nepal in SSI exemption Notification No. 7/2003 would render, to that extent, such notification discriminatory and, therefore, violative of Article 14 of the Constitution.*
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> *20. Under the circumstances, the portion "and Nepal" appearing in Explanation Clause (G) to SSI Notification No. 8 of 2003 is declared unconstitutional with effect from 1-3-2012."*

6.1.1. In this regard, we note that realising such incongruity and in the light of the decision of the Hon'ble Gujarat High Court (supra), the Central Government has taken corrective action by issuing an amending Notification No. 08/2016-C.E. dated 01.03.2016, whereby reference to "and Nepal" in clause (G) has been omitted. This shows the legislative intent not to include clearances made to Nepal for arriving at the value of clearances for computation of SSI exemption limit as per the Notification No. 08/2003-C.E.

6.2. In view of the above decision of the Hon'ble High Court, we find that the value of clearances to Nepal are to be considered at par with exports made to other countries and hence, such values are not includable for the purpose of computation of the value of exemption limit under Notification No.08/2003-C.E. dated 01.03.2003. Accordingly, we hold that the demand confirmed in the impugned order, by including the value of exports made to Nepal, is not sustainable and consequently, the same is set aside.

6.3. As the demand itself does not survive, the question of demanding interest thereon or imposing penalties does not arise.

6.4. Further, since there is no liability to central excise duty on the part of the appellant, we hold that the order of confiscation of the goods and imposition of redemption fine thereon are not sustainable. Accordingly, we set aside the same.

7. In the result, the impugned order is set aside and the appeal filed by the appellant stands allowed.

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

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

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Sdd