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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76884 of 2016

(Arising out of Order-in-Original No. 06/Commissioner/CE/Adjn/Kol-V/2016 dated 05.09.2016 passed by the Commissioner of Central Excise Commissionerate Kolkata-V, Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road Shantipally Kolkata-700107)

M/s. Electroteknica (Now M/s. Electroteknica Engineering Pvt. Ltd.), **: Appellant**
1/5B, Raja Basanta Roy Road(H.O), Kolkata-700 026

VERSUS

Commissioner of Central Excise, Kolkata **: Respondent**
V Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road
Shantipally Kolkata-700107

APPEARANCE:

Shri S. P. Siddhanta, Consultant for the Appellant
Shri S. Dey, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76038/ 2025

DATE OF HEARING: 25.04.2025
DATE OF PRONOUNCEMENT: 30.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Brief facts of the case are that M/s. Electroteknica Engineering Pvt. Ltd. (hereinafter referred to as the 'Appellant') is a manufacturer of Vacuum Circuit Breakers and Control Panels at their factory located at 9, Prantik Pally, Bose Pukur, Kolkata – 42. The Appellant has purchased control panels from M/s. MCG Electrocontrols Pvt. Ltd. located at 76A, Swinhoe Lane, Kolkata -42, for trading purpose. M/s. MCG Electrocontrols Pvt. Ltd., has been functioning at Behala Industrial Estate. The Department alleged that M/s. MCG Electrocontrols Pvt. Ltd. is a dummy unit of the Appellant and accordingly clubbed the value of clearances of the appellant company with the value of clearance of M/s. MCG Electrocontrols Pvt . As the total value of clearance of both the units exceeded the value of clearances fixed for availing SSI exemption, the said benefit of SSI exemption was denied to the appellant.

1.1. Accordingly, a SCN was issued to the appellant demanding central excise duty of Rs.52,27,694/- along with interest and penalty. On adjudication, the Ld. adjudicating authority has confirmed the demand of central excise duty along with interest and imposed equal amount of duty as penalty.

1.2. Aggrieved against the confirmation of the demands of duty, interest and penalty, the appellant has filed this appeal.

2. The appellant submits that their value of clearance of the excisable goods for the Financial Year 2009-10 was less than Rs. 4 crores, but the Ld. adjudicating authority has added freight amount of Rs. 6,68,870/- and arrived at their value of clearance for the Finanacial Year 2009-10 as Rs. 4,04,98,846/-. Accordingly, the benefit of exemption on the first clearance value of rupees one hundred and fifty lakhs available to the appellant for the next financial year 2010-11 was denied and duty has been demanded without allowing the exemption up to Rs.1.50 crores for the Financial Year 2010-11. The appellant submits that addition of freight with clearance value to deny the benefit of exemption on

the first clearance value of rupees one hundred and fifty lakhs in 2010-11 and 2011-12 is contrary to the decision given under OIO No.08/Adjn/Electroteknica/RB/South CGST & CX/Kol/17-18 dated 08.11.2017 in case of the appellant, wherein the demand of Central Excise duty on freight proposed in the demand notice was dropped for the F.Y. 2011-12 and 2012-13. Therefore, they submit that the issue of demand of duty on the freight has already been decided in favour of the appellant and accordingly, contended that addition of freight with clearance value to show the aggregate clearance value more than that of rupees four crores is legally not sustainable.

2.1. The appellant submits that in the impugned OIO No. 06/Commissiner/CE/ ADJN/ Kol-V/2016 dated 05.09.2016, the Ld. adjudicating authority has demanded of Central Excise duty goods traded by them their own manufactured goods. Accordingly, the value of Rs. 31,62,250/, has been added for the F.Y. 2010-11, Rs. 32,33,638/, has been added for the F.Y. 2011-12 and Rs. 47,41,048/, has been added for the F.Y. 2012-13 and central excise duty has been confirmed by including this amount in the assessable value of the appellant in the respective years. The appellant submits that in the Profit and Loss Account, the trading value for the respective financial years have been shown much higher, which is extracted as under:

(i) Rs. 1,06,87,554.30 for the F.Y. 2009-10,

(ii) Rs. 1,26,33,518.76 for the F.Y. 2010-11,

(iii) Rs. 1,59,62,083.93 for the F.Y. 2011-12 and

(iv) Rs. 2,09,74,548.61 for the F.Y. 2012-13 (up to Dec.,2012).

2.2. Therefore, the appellant submits that it is evident that Central Excise duty has not been demanded on the entire trading value; the Department has considered the goods purchased from MCG Electrocontrols Pvt. Ltd. for trading purpose as their own manufactured goods by alleging that the said unit is a dummy unit of the appellant. The appellant further submits that to bring the fact on record, they have obtained the Balance Sheet with Profit and Loss Account and VAT/CST return of MCG Electrocontrols Pvt. Ltd for the F.Y.2009-10 to 2012-13. From the documents, it can be seen that the department has not disputed manufacture and sales of goods by MCG Electrocontrols Pvt. Ltd. on their own for all the years except the sales made to the appellant; in the Profit and Loss Account of MCG Electrocontrols Pvt. Ltd. the value of sale of their manufactured goods has been shown as under:

(i) Rs.44,69,739/ - for the Financial Year 2009-10

(ii) Rs. 52,15,832/ for the Financial Year 2010-11

(iii) Rs. 59,28,620/ - for the Financial Year 2011-12 and

(iv) Rs.1,04,30,233/ for the Financial Year 2012-13.

2.3. Hence, it is their submission that it is evident that entire value of clearance of M/s MCG Electrocontrols Pvt. Ltd.has not been added to the assessable value of the appellant. Only the sale value of clearance made to the appellant company has been added to the assessable value of the appellant company. Thus, the appellant submits that the department has considered M/s MCG Electrocontrols Pvt. Ltd as a separate unit manufacturing control panels and recognised the value of clearances made by them to all their customers except the appellant company, as genuine and only the value of clearances made to the appellant has been segregated and added to the assessable value of the appellant company for denying the benefit of exemption which is otherwise available to the appellant.

2.4. Accordingly, the appellant contends that the demand of central excise duty confirmed in the impugned order is not sustainable and prayed for setting aside the same.

3. The Ld. Authorized Representative of the Revenue submitted M/s MCG Electrocontrols has no separate machinery available in their unit for manufacture of control panels; they were having common Directors and financial interests. Accordingly, he contended that the demand has been rightly confirmed in the impugned order.

4. Heard both sides and perused the appeal records.

5. We observe that the appellant is a manufacturer of Vacuum Circuit Breakers and control panels at their factory located at 9, Prantik Pally, Bose Pukur, Kolkata – 42. The Appellant has purchased control panels from M/s. MCG ElectrocontrolsPvt. Ltd. As both companies have one common Director, the Department considered M/s. MCG Electrocontrols Pvt. Ltd as a dummy unit of the

appellant and included the value of goods purchased by the appellant from M/s. MCG Electrocontrols Pvt. Ltd. As the total value of clearance of both the units exceeded the value of clearances fixed for availing SSI exemption, the said benefit of SSI exemption was denied to the appellant. Accordingly, the demand of central excise duty raised in the notice has been confirmed along with interest and penalty.

5.1. The Ld. adjudicating authority, in the impugned order, has added freight amount of Rs. 6,68,870/ - and arrived at their value of clearance for the Financial Year 2009-10 as Rs. 4,04,98,846/ -. Accordingly, the benefit of exemption on the first clearance value of rupees one hundred and fifty lakhs available to the appellant for the next financial year 2010-11 was denied and duty has been demanded without allowing the exemption upto Rs.1.50 crores for the Financial Year 2010-11. However, we find that the adjudicating authority has not taken into account the OIO No.08/Adjn/Electroteknica/RB/South CGST & CX/Kol/17-18 dated 08.11.2017, wherein the demand of Central Excise duty on freight proposed in the demand notice was dropped for the F.Y. 2011-12 and 2012-13. Therefore, we find that the freight value is not includable to arrive at the value of clearance of the appellant for the Financial Year 2009-10 and the denial the benefit of exemption on the first clearance value of rupees one hundred and fifty lakhs available to the appellant for the next financial year 2010-11 is not sustainable. Accordingly, we hold that the demand confirmed in the impugned order on account of denial of the exemption up to the value of clearances of 1.50

crores for the Financial Year 2010-11 is not sustainable and accordingly we set aside the same.

5.2. Regarding clubbing of the value of purchases made by the appellant from M/s MCG Electrocontrols Pvt. Ltd. It has been alleged that M/s MCG Electrocontrols Pvt. Ltd has no separate machinery available in their unit for manufacture of control panels. They were having one common Director and financial interests. Accordingly, the Ld. adjudicating authority has justified the clubbing of the value of clearances of both the units to deny the benefit of exemption to the appellant company. However, we observe that the Department has not brought in any evidence to substantiate the allegation that M/s. MCG Electrocontrols Pvt Ltd is a dummy unit of the appellant except claiming that they are functioning in the same premises and one of the Directors is common in both the companies.

5.3. It is observed that M/s. MCG Electrocontrols Pvt. Ltd is a separate unit having independent existence. This is evident from the Profit and Loss Account of M/s. MCG Electrocontrols Pvt Ltd. If the department has considered. M/s. MCG Electrocontrols Pvt. as a dummy unit, then its entire value of clearance should have been added with the value of clearance of the appellant company. However, we observe that only the value of clearances made by the appellant from MCG Electrocontrols Pvt. Ltd. has been added along with the value of clearance. This would mean that the Department has accepted the independent existence of M/s. MCG Electrocontrols and the clearances made by them to other customers have been accepted as genuine transactions. Thus, it is seen that the department has accepted M/s. MCG

Electrocontrols Pvt as a separate manufacturing unit and not included the entire value of clearance with the appellant's company in the respective financial years.

5.4. We further find that the Department has not brought in any evidence to arrive at the conclusion that M/s. MCG Electrocontrols Pvt is a dummy company of the appellant except that both were functioning in the same premises of the appellant company for some time. The allegation that M/s MCG Electrocontrols Pvt. Ltd has no separate machinery available in their unit for manufacture of control panels and they were having common directors is not sufficient to conclude that M/s. MCG Electrocontrols Pvt is a dummy unit of the appellant. This view has been held by the Tribunal in the case of *Tapsya Steels(P) Ltd Vs. Commissioner of Central Excise , Meerut reported in 2004 (174) ELT 108 (Tri-Del).* The relevant paragraphs of the said decision is reproduced below:

> ***"4.*** *We have considered the submissions of both the sides. It has been clarified by the Central Board of Excise & Customs by a Circular in 1992 that limited companies, whether public or private, are separate entities, distinct from the shareholders composing it and each limited company is manufacturer by itself and will be entitled to separate exemption limit. The Appellate Tribunal in the case of L.D. Industries (supra) has considered the said Circular and its predecessor Circular dated 1-3-56. The Tribunal by applying the said Circular has held that the clearance of private limited company cannot be clubbed with clearances of other companies. Following the ratio of the said*

decision the clearances of both the units in the present matters cannot be clubbed together as both of them are private limited companies. Further, the financial flow back has not been brought on record. It has been held by the Rajasthan High Court in Renu Tandon that value of clearances of three units cannot be clubbed together and two units cannot be treated as one unit merely because of proximity of relationship or the situation of two factories or because there are some common employees, unless there is clear and specific finding that there is mutuality of business interest between two units and both have interest in business of each other and they have common funding and financial flow back. We therefore, set aside the impugned order and allow both the appeals."

5.5. From the decision cited above, we observe that unless there is mutual financial interest, the value of clearances of two units cannot be clubbed. In the present case, we observe that the investigation has not brought in any evidence to show that both units have mutual financial interest.

5.6. From the Profit and Loss Account of the appellant company, we observe that the appellant has been involved in trading of the control panel purchased from MCG Electrocontrols Pvt, in addition to their own manufacturing of the control panels. The value of traded goods by the appellant company for the respective financial years is as under:

(i) Rs. 1,06,87,554.30 for the F.Y. 2009-10,

(ii) Rs. 1,26,33,518.76 for the F.Y. 2010-11,

(iii) Rs. 1,59,62,083.93 for the F.Y. 2011-12 and

(iv) Rs. 2,09,74,548.61 for the F.Y. 2012-13 (up to Dec.,2012).

However, only the following value of the goods purchases by the appellant has been added to the assessable value of the appellant company to demand central excise duty from the appellant.

(i) Rs.44,69,739/ - for the Financial Year 2009-10

(ii) Rs. 52,15,832/ for the Financial Year 2010-11

(iii) Rs. 59,28,620/ - for the Financial Year 2011-12 and

(iv) Rs.1,04,30,233/ for the Financial Year 2012-13.

5.7. Thus, it is clear that the Department has accepted the trading activity of the appellant company. However, the trading value pertains to the purchases made by the appellant company from MCG Electrocontrols Pvt. Ltd. has not been considered as trading activity of the appellant company. We observe that there is no evidence brought on record to include the trading value along with their own manufactured goods.

5.8. In view of the above discussions, we hold that the Department has not brought in any evidence to establish that MCG Electrocontrols Pvt Ltd. is a dummy unit of the appellant. Accordingly, we hold that the demand of central excise duty confirmed in the impugned order by including the value of purchase made by the appellant from MCG Electrocontrols, is not sustainable and hence we set aside the same.

5.9. Since the demand of duty is not sustainable, the question of demanding interest and imposing penalty does not arise.

6. 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.

(Order Pronounced in Open court on 30.04.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP