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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76199 of 2014

(Arising out of Order-in-Original No.03/Commr(DENOVO)/CE/KOL-V/Adjn/2014 dated 16.05.2014 passed by Commissioner of Central Excise, Kolkata-V.)

M/s. ABC Electricals Pvt.Ltd.
(Jalkal, Maheshtala, BBT Road, 24 Pgs (South).)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-V

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

WITH

Excise Appeal No.76200 of 2014

(Arising out of Order-in-Original No.03/Commr(DENOVO)/CE/KOL-V/Adjn/2014 dated 16.05.2014 passed by Commissioner of Central Excise, Kolkata-V.)

Shri Ashok Kumar Chokhani, Director
M/s. ABC Electricals Pvt.Ltd.
(Jalkal, Maheshtala, BBT Road, 24 Pgs (South).)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-V

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri B.K.Singh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76941-76942/2025

DATE OF HEARING : 14.07.2025
DATE OF DECISION : 14.07.2025

Per : R. MURALIDHAR :

The Appellant is engaged in manufacture of electrical equipments. During the period under dispute the Appellant was purchasing various items and in some cases they were assembling the same and clearing to the buyers. In some cases they were simply trading the goods by way of buying and selling. The Department took the view that all the sales being shown by the Appellant is on account of clearance of manufactured goods only. Accordingly Show Cause Notice was issued for the period 2000-01, 2004-05 on 19.01.2007 by invoking the extended period provisions. After due process, the Adjudicating authority confirmed the demand.

2. The Ld.Counsel appearing on behalf of the Appellants submits that the VAT authorities had visited the unit of the Appellant and had carried away all the records for their verification. Subsequently the present Show Cause Notice was prepared and issued by the Revenue based on the documents carried away by the state VAT authorities. The Appellant with great difficulty could get copies of the documents carried away by the VAT and with that they had prepared a detailed invoices-wise list of goods which are to be treated as manufactured goods and the goods which have been treated by them as traded goods. He submits that they were trading and manufacturing goods for all these years.

3. During the last Hearing, this Bench had directed the Appellant to get these documents verified by the Chartered Accountant and to get a Certificate from him towards their clearance on account of manufactured goods and trading goods. Today, the Ld.Advocate has submitted the Certified issued by Agarwal & Associates. Therein, they have certified that they have verified the financial records for the year 2000-01 to 2004-05. The same is reproduced below:-

AGARWAL N. & ASSOCIATES
14-July
CHARTERED ACCOUNTANTS

3, Bentinck Street, 3rd Floor,
Room No. F(3) EM, Kolkata - 700 001,
Phone : (033) 2242 0207
E-mail : nmanma123@hotmail.com

Independent Practitioner's Certificate

To

Board of Directors
ABC Electricals Private Limited
23A Netaji Subhash Road
10th Floor, Room 44
Kolkata – 700001

This is to certify that M/s ABC Electricals Private Limited, having its registered office at 23A Netaji Subhash Road, 10th Floor, Room No, 44, Kolkata – 700 001 was engaged in both manufacturing and trading activities during the financial years from 2000-2001 to 2004-2005.

We have been requested by the company to certify the value of clearance for the said period and its segregation into manufacturing and trading turnover based on the records available with the company and the statement prepared by the department, including supporting documents such as sales invoices and related documentation.

AGARWAL N. & ASSOCIATES * KOLKATA *

We hereby certify that:

1. We have verified the statement of clearances for the period from 01.04.2000 to 31.03.2005 prepared by the department in connection with the proceedings before the Hon'ble CESTAT.

2. The verification has been carried out with reference to the invoices and other relevant records maintained by the company.

3. Based on our examination, we certify that the value of clearance for the above period has been correctly segregated into:

All Amount in Rs

Sl No.	Financial Year	Total Clearance Value	Value pertaining to Clearance of Manufactured Goods	Value pertaining to clearance of Traded Goods (in Rs.)	Value of clearances on account of other charges like freight etc
1	2000-2001	89,71,930	38,75,659	49,67,665	1,28,606
2	2001-2002	1,27,69,922	62,80,621	64,64,971	24,330
3	2002-2003	2,32,52,928	89,32,823	1,43,20,105	0
4	2003-2004	2,52,56,437	1,55,29,012	97,22,240	5,185
5	2004-2005	3,13,90,298	1,12,15,830	1,94,54,418	7,20,050

4. The above values have been arrived at after due consideration of the nature of goods sold and the activities undertaken by the company during the respective financial years.

5. This certificate is being issued at the request of M/s ABC Electricals Private Limited for submission before the Hon'ble CESTAT in connection with appellate proceedings.

This certificate is issued solely for the purpose stated above and should not be used for any other purpose without our prior written consent.

For Agarwal N And Associates
Chartered Accountants

12/07/2025

N.M. Agarwal, FCA
Partner
Membership No.: 053580
FRN: 323100E
UDIN - 25053580BMLBGN2274

AGARWAL N. & ASSOCIATES KOLKATA

Place: Kolkata
Date: 12.07.2025

4. We also find that the Appellant has annexed the year-wise data for these transactions. Considering the same, we find that for the year 2000-01 to 2002-03, the Appellants have cleared the manufactured goods whose value is less than Rs.1.00 Crore. With effect from 01.03.2003, the threshold limit has been increased to Rs.1.5 Crore. In the year 2003-04, the total turnover certified by the Auditor is Rs.1,55,29,012/-. The Ld.Advocate submits that since they were treating this as SSI Unit, they have not taken any Cenvat credit nor have they charged the Excise duty on the buyers. Therefore, this total turnover is required to be taken as inclusive of Excise duty i.e. the cum-duty benefit should be granted to them. He submits that in case the turnover of 1,55,29,012/- is treated as 116% (16% being the Excise duty component) the turnover would be around Rs.1.3 Crore only which would be still less than the threshold limit of Rs.1.5 Crores.

5. The Ld.AR appearing on behalf of the Revenue reiterates the findings of the lower authorities. He submits that the Appellant was branding the goods with their logo even for the traded goods because

of which the same is required to be treated as manufactured goods. Therefore, he justifies the confirmed demand.

6. We find that there is no evidence coming to the effect that the Appellant was branding the goods with their Logo. Even otherwise there is no evidence brought in to the effect that the Appellant had manufacturing facility for such goods. Therefore, we do not subscribe to the view of the Revenue.

7. We find from the records that the Appellant has not charged any Excise duty on their buyers. Therefore, they are required to be given the cum-duty benefit. If this is considered, we find that in all the years the Appellant was having turnover which is less than the threshold limit for the respective years.

8. Therefore, considering this factual details, we set aside the impugned order and allow the Appeals.

(Dictated and pronounced in the open Court.)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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