IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75627 of 2018

(Arising out of Order-in-Original No. 17/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 29.11.2017 passed by Commissioner of Central Tax, (GST & C.Ex.) Howrah)

M/s. Kanchan Gaj
(Vidyasagar Pally, PO. Podrah-711109, Dist. Howrah)

Appellant

VERSUS

Commr. of Central Tax (GST & Central Excise), Howrah
(M.S. Building, 15/1, Strand Road, Kolkata-700001)

Respondent

With

(1) Excise Appeal No. 75628 of 2018 (Ashis Bhattacharya Vs. Commr. of Central Tax (GST & Central Excise), Howrah (2) Excise Appeal No. 75838 of 2018 (M/s. Sarbajit Sengupta Vs. Commr. of Central Tax (GST & Central Excise), Howrah (3) Excise Appeal No. 75839 of 2018 (Bappaditya Sarkar Vs. Commr. of CGST & Central Excise, Howrah)

(SI No. 1-3) (Arising out of Order-in-Original No. 17/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 29.11.2017 passed by Commissioner of Central Tax, (GST & C.Ex.) Howrah)

APPEARANCE:

Mr. S. P. Majumdar, Advocate for the Appellant
Mr. B. K. Singh & Mr. S. Dey, Authorized Representative for the Respondent

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

FINAL ORDER No.77045-77048/2025

Date of Hearing : 25th July 2025
Date of Decision : 25th July 2025

PER R. MURALIDHAR

The Learned Counsel submits that the main Noticee M/s. Ess Dee Aluminium Ltd. has undergone the IBC proceedings and NCLT has already passed the Order on 24th February 2023 appointing the Resolution Profession. Incidentally. the main noticee has not filed any appeal against the confirmed demand of Rs. 3,54,61,488/-. The other four appeals have been filed by the co-noticees being aggrieved by the penalties imposed on them.

2. The Learned Counsel appearing on behalf of the appellants submits that the issue pertains to valuation adopted by the main noticee when the goods were stopped to transfer to their own units. The Department alleged that cost of production of 10% valuation was not adopted and CAS-4 Certificate was also not produced because of which under valuation has taken place. He submits that the entire situation is revenue neutral. Whatever Excise Duty was paid by the main noticee was being taken as Cenvat Credit by their sister concern. He further submits that out of the four appellants, one appellant Sri Bappaditya Sarkar, Ex Manager expired and produces a copy of his Death Certificate. Sri Kanchan Gaj was working as Assistant Manager and Sri Ashis Bhattacharya was working as Director but was not looking after the day to day affairs. The other appellant Sri Sarbajit Sengupta was also Assistant Manager. Therefore, considering the factual details of the case, no penalty should be imposed on these co-noticees.

3. He cites the case law of **Z. U. Alvi Vs. Commr. of Central Excise, Bhopal-2000 (117) E.L.T. 69 (Tribunal),** wherein it is held that employees cannot be imposed with penalties when the decision is taken by the Management to follow the certain procedure. In view of these submissions, he prays that the appeal may be allowed.

4. The Learned AR reiterates the findings of the lower authorities.

5. Heard both sides and perused the appeal papers.

6. We find that against the main Noticee M/s Ess Dee Aluminium Ltd, the allegation is on account of under valuation when the goods were cleared to sister concern. This issue stands decided in many cases holding that when the issue is revenue neutral, the demand does not legally sustain. Therefore, prima facies the demand itself is not sustainable. Since the main noticee is not on appeal, we are not passing any order with reference to the demand.

7. We also find that the other co-noticees, either working as Assistant Manager or Director have no direct role in taking any decision to undervalue the goods when they are cleared their sister concern. We also find that the case law of Z. U. Alvi is squarely applicable.

8. Therefore, we set aside the penalty imposed on Sri Kanchan Gaj, Sri Ashis Bhattacharya and Sri Sarbajit Sengupta.

9. In case of Sri Bappaditya Sarkar, the same stands abated in view of his expiry.

10. The Appeals stand disposed off thus.

(Dictated and pronounced in the open court.)

Sd/-	**Sd/-**
(Rajeev Tandon)	**(R. Muralidhar)**
Member (Technical)	**Member (Judicial)**

Pooja