

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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.77927 of 2018

(Arising out of Order-in-Appeal No.46/Kol-V/2018 dated 22.03.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Tega Industries Ltd.

(IPD, Thakurpukur Raipur Road, Samali, Dist. South 24 Parganas, Pin-700104.)

...Appellant

VERSUS

Commissioner, CGST & CX, Kolkata-South Commissionerate

.....Respondent

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

APPEARANCE

Shri Rakesh B. Chhatbar, C.A. for the Appellant (s)

Shri B.K.Singh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)

HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER(TECHNICAL)

FINAL ORDER NO. 77411/2025

DATE OF HEARING : 29.08.2025

DATE OF DECISION : 29.08.2025

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. The facts of the case are as under :-

2.1 The appellant states that in the course of its business, the Joka unit clears certain intermediate goods viz. vulcanized rubber sheets and unvulcanised rubber sheets to Kalyani unit for use in further production at the said unit. Central excise duty on the said goods is discharged on the assessable value determined on the basis of cost of production prepared by the cost accountant. The assessable value for payment of excise duty is arrived at by

considering the previous financial year's cost. At the end of the financial year, when the actual cost figures are available, a certificate from Cost Accountant is obtained and the differential excise duty, if any, is paid along with applicable interest under intimation to the jurisdictional authority.

2.2 The records of Joka unit were scrutinized by the Central Excise Audit (CERA) team and a show cause notice for the period FY 2005-06 was served on the appellant wherein it was alleged that goods were removed by Joka unit to its sister unit in Kalyani without valuing goods as per Rule 8 and 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The Ld. Assistant Commissioner of Central Excise, Bishnupur Division, Kolkata vide Order-in-Original dated 17.03.2009 adjudicated the above-mentioned show cause notice and appropriated the duty amount of Rs.60,643/- already paid by the appellant for the FY 2005-06 in respect to the alleged undervaluation of goods.

2.3 Thereafter, show cause notice dated 23.03.2011 was issued by the Joint Commissioner of Central Excise, Kolkata-VII Commissionerate for the period 2006-07 and 2008-09 wherein the differential duty for the FY 2006-07 and FY 2008-09 were arrived at Rs.18,49,149/-and Rs.7,10,856/- (incl.cess) respectively.

2.4 The aforesaid SCN was thereafter adjudicated by Ld.Additional Commissioner of Central Excise, Kolkata-VII Commissionerate vide Order-in-Original dated 22.03.2013.

2.5 Being aggrieved by the said Order-in-Original, the appellant had filed an appeal before Commissioner of Central Excise (Appeals-I), Kolkata.

2.6 The Ld.Commissioner(Appeals) thereafter passed the Order-in-Appeal dated 22.03.2018, received on 27.04.2018 upholding the demand in the impugned Order-in-Original and observed the following:

- That the entire plea of the appellant is on account of revenue neutrality which cannot be used to justify demand of differential duty arising by operation of Rule 8 of the Valuation Rules;
- That non-payment of differential duty on plea of revenue neutrality if allowed would lead to the appellant being vested with the discretion to choose to pay duty on goods or services in cases where such credit is available to itself or to pay duty only on the final product. Such discretion is not vested in the taxpayer and is against the concept of value-added taxation.
- That the situation cannot be considered as revenue neutral since the appellant has avoided payment of interest as the duty had not been discharged in time.
- That the case laws cited by the appellant do not lay any general law to support contention of the appellant.

2.7 Being aggrieved vide the impugned Order-in-Appeal passed by the Ld.Commissioner(Appeals), the appellant has preferred an appeal before the Tribunal.

3. The Ld.Counsel for the appellant submits that for the subsequent period in their own case on the same issue this Tribunal has held the entire exercise revenue neutral, therefore, demand of duty is not sustainable against the appellant. Consequently, the impugned order is to be set aside.

4. Heard the parties.

5. Considering that on the same issue in appellant's own case, this Tribunal observed as under:-

"11. We observe that the demand has been confirmed in the impugned order on various grounds.

Our findings in respect of each of the demands tabulated in para 3 supra is furnished below:

11.1 Regarding short payment of duty amounting to Rs. 53,55,205/- on stock transfer of goods to their sister concern, we observe that initially, the assessable value was arrived at by the appellant on the basis the previous year's cost. At the end of the financial year, when the actual figures were available, CAS certificate was obtained and the differential duty was paid along with interest and the same was also intimated to the Department. However, demand has been raised on the appellant holding that certain elements of cost have not been added while ascertaining the assessable value. We observe that the department has not adduced any evidence to the effect that which cost was not included and why such cost is to be included. In the absence of any specific cost not added in the assessable value by the appellant, we observe that the allegation of the department is not substantiated.

11.2. Further, we observe that the entire exercise is revenue neutral and thus the demand is liable to be set aside on this ground alone. In this regard, we rely on the decision of this Tribunal in the case of Hindalco Industries Ltd. v. CCE Bhubaneshwar-II (2023) 8 Centax 302 (Tri.- Cal) wherein on similar facts, this Tribunal has held that when the entire exercise is revenue neutral, the demand is not sustainable as the duty paid will be available as credit for their sister unit and there is no loss of revenue to the exchequer. The relevant part of the said decision is reproduced below:

11.3. We also agree with the submission of the appellant that with respect to transfer of goods to sister unit, there can be no suppression, misstatement, or fraud since there is no profit motive in such situations. We observe that this view has been held by the Tribunal in the case of Commissioner of C. Ex., Vadodara vs. Sicgil Industrial Gases Ltd. 2009 (245) E.L.T. 693 (Tri.-Ahmd).

11.4. Following the ratio of the decisions cited above we hold that the demand confirmed in the impugned order on this count is not sustainable and accordingly, we set aside the same."

6. As the issue has already been settled in appellant's own case for the subsequent period, therefore, we hold that the entire exercise is revenue neutral. Therefore, the appellant is not liable to pay duty.

7. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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