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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 379 of 2001

(Arising out of Order-in-Original No. COMMR/BBSR-I/54(CE)/2000 dated 22.03.2001 passed by the Commissioner, Central Excise & Customs, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 004, Orissa)

M/s. Mangalam Timber Products Limited **: Appellant**
Kusumi, Nabrangpur – 764 059
Orissa

VERSUS

Commissioner, Central Excise and Customs, **: Respondent**
Bhubaneswar-I Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 004
Orissa

APPEARANCE:

Shri C.R. Das, Advocate for the Appellant

Shri Souvik Dutta, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77558 / 2025

DATE OF HEARING / DECISION: 15.10.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant is a manufacturer of Medium Density Fibre Board (MDF) falling under Chapter 44 of the Central Excise Tariff Act. The appellant is manufacturing the product in a remote area in the State of Orissa. They were clearing 4% to 5% of their finished goods ex-factory to the buyers of the finished goods and the balance quantity was being cleared to their depots located all over India. The appellants were filing Price List in terms of Rule 173C of the Central Excise Rules, 1944 before the jurisdictional Assistant Collector of Central Excise and Customs, Sambalpur Division.

2. On 22.09.1997, a Show Cause Notice was issued for the period from 01.01.1988 to 31.03.1992 demanding central excise duty of Rs.1,26,56,696/-, along with interest and penalty, by invoking the extended period provisions.

3. The appellant submitted their reply taking the plea that the Assistant Collector, Central Excise and Customs, Sambalpur, on 27.03.1991, has accepted the Price List filed by the appellant and has passed his Order No. 12/CH.44/VCP/90 dated 27.03.1991. No further appeal was filed against the order dated 27.03.1991 passed by the Assistant Collector. The appellant also submitted that the Show Cause Notice issued in September, 1997 is wholly time-barred since the period of dispute happens to be 01.01.1988 to 31.03.1992.

4. However, the ld. adjudicating authority has confirmed the demand vide his Order-in-Original No. COMMR/BBSR-I/54(CE)/2000 dated 22.03.2001.

4.1. Being aggrieved, the appellant is before the Tribunal.

5. The Ld. Counsel appearing on behalf of the appellant submits that vide Order dated 27.03.1991, the Assistant Collector of Central Excise and Customs, Sambalpur has clearly recorded that the appellant was clearing a minor portion of their goods to third parties and majority of the goods were being cleared to their depots; after this, he has given his considered finding that even if some portion of the finished goods are cleared to third parties, the prices adopted in respect of such parties can be accepted for all the clearances. He submits that this order passed by the Assistant Collector has reached finality since no further appeal

has been preferred by the Revenue before the Commissioner (Appeals) against the same. He thus contends that on this ground itself, the appeal is required to be allowed.

5.1. He further points out that the Show Cause Notice was issued on 22.09.1997 for the clearances effected between 01.01.1988 to 31.03.1992, which goes even beyond the five-year period. In this regard, he cites the case law *of Super Forgings & Steel Ltd. v. Commissioner of C.Ex., Kolkata-IV [(2024) 17 Centax 34 (Tri. – Cal.)].* Accordingly, he prays that the appeal be allowed on the ground of time bar also.

6. On the other hand, the Ld. Authorized Representative of the Revenue reiterates the findings of the lower authority. He submits that the appellant was clearing a miniscule percentage of their goods to third parties with a view to adopt the same price for the clearances to the depot from where they were clearing the goods at higher prices and realizing higher amounts from the ultimate customers. Accordingly, he justifies the confirmed demand.

6.1. The Ld. Authorized Representative of the Revenue also points out that there is no record of the appellant being granted any stay in respect of pre-deposit for the appeal filed before this Tribunal.

7. Heard both sides, perused the appeal papers and the submissions made by both the sides.

8. First of all, we address the query raised by the Revenue about the grant of stay. We find that this Bench vide Order No. S/319-320/KOL/2002 dated 03.04.2002 granted full waiver of pre-deposit in respect of the present appellant, namely, M/s. Mangalam Timber Products Ltd., while in respect of

the other appellant, viz. Shri R.N. Tibrewal, a pre-deposit of Rs.10,000/- was called for. However, the second appeal is not before us. Thus, we find that in the present case, the appellant is covered by the stay order passed by this Bench.

9. We find that the issue of the appellant clearing a small portion of their finished goods to third parties and the balance to their depots, was before the Assistant Collector, Central Excise and Customs, Sambalpur who took up the admission or otherwise of the Price List filed by the appellant. We find that vide his Order-in-Original No. 12/CH.44/VCP/90 dated 27.03.1991, he has given a detailed finding. The relevant portion of the said order dated 27.03.1991 is reproduced below: -

> *"In the case of M/s. Indian Oxygen Ltd. Vrs. Collector of Central Excise in the Civil appeal Nos. 2801-06 of 1987 dated 28.7.88 [1988(36) ELT 723 (SC)], which the party relied upon it is observed that*
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> *"there is a clear finding that there was an ex-factory price which is ascertainable. If once that is the position that should be the basis upon which the value is to be determined, the other expenses, cost or charges must be excluded".*
>
> *In the instant case there is ex-factory sale and the ex-factory prices in respect of all items of the impugned price lists ere available, though a small percentage of the product is sold at the factory gate. Hence, all the aforesaid price lists are to be approved on the basis of ex-factory prices. There is no need to workout the assessable value from the depot sale prices. Moreover, on scrutiny of the Calculation sheets of expenses in respect of some of the depots and the details of calculation of expenses in respect of sale depots, duly certified by firms' chartered Accountants M/s. Ladha & Co. it is found that the admissible expenses if deducted from the prices declared in Col.3 of the price lists approximately the value claimed for approval is arrived. Since actual evidence of cost of transportation, Octrai, duties etc. of the depots could not be furnished, it would be*

> *proper to approve the price lists basing on ex-factory sale price. Provided the ex-factory prices are genuine. There is no evidence to prove that the Ex-factory sales are ingenuine and the prices declared for sale at factory gate is artificially low. The depot sale prices are found to be approximately 1/2 times the Value claimed for approval. As per the Calculation sheet produced by the firm and Calculation of expenses certified chartered accountant, the expenses if deducted from depot sale prices, the assessable value is arrived at. Hence, the price claimed for approval in Col.11 of the price list are acceptable."*

9.1. We also find that the Revenue has not come up with any evidence to indicate that any appeal was preferred by the Revenue against this Order-in-Original dated 27.03.1991 passed by the Assistant Collector. Therefore, the issue as to whether the Price List filed by the appellant is correct or not had already reached finality. Hence, the Department had no case to take up for any investigation or demand the alleged differential excise duty for the period from 01.01.1988 to 31.03.1992.

10. In view of the above, we set aside the impugned order and allow the appeal on merits.

11. We also find that the Show Cause Notice has been issued on 22.09.1997 whereas the period of dispute is from 01.01.1988 to 31.03.1992. It is noticed that even the last date of the period of dispute is not covered within the five-year period. Therefore, we hold that the entire demand is time-barred. Consequently, we set aside the impugned order on account of time-bar also.

12. Thus, the appeal stands allowed, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd