

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
EASTERN ZONAL BENCH : KOLKATA  
REGIONAL BENCH – COURT NO. 1  
Excise Appeal No. 77214 of 2018**

(Arising out of Order-in-Appeal No.193-194/DGP-C.Ex/2018 dated 13.03.2018  
passed by Commissioner of CGST & CX, Bolpur)

**M/s. Shyam Steel Industries Ltd.** : **Appellant**  
Bamunara Industrial Estate, P.O.-Bamunara,  
District-Burdwan, Durgapur-713212.

**VERSUS**

**Commissioner of CGST & CX, Bolpur** : **Respondent**  
Satyajit Ray Sarani, City Centre, Durgapur.  
**With**

**Excise Appeal No. 77215 of 2018**

(Arising out of Order-in-Appeal No.193-194/DGP-C.Ex/2018 dated 13.03.2018  
passed by Commissioner of CGST & CX, Bolpur)

**M/s. Shyam Steel Industries Ltd.** : **Appellant**  
Bamunara Industrial Estate, P.O.-Bamunara,  
District-Burdwan, Durgapur-713212.

**VERSUS**

**Commissioner of CGST & CX, Bolpur** : **Respondent**  
Satyajit Ray Sarani, City Centre, Durgapur.

**APPEARANCE:**

Shri Arvind Bahety, Consultant for the Appellant

Shri S.Dutto, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO.77907-77908/ 2025**

DATE OF HEARING :08.12.2025

DATE OF DECISION: 16.12.2025

**Order : [Per Shri Ashok Jindal]**

Both the appeals are having the common issue  
therefore, both are disposed by a common order.

2. The facts of the case are that appellant is  
engaged in manufacture of MS Ingots, MS Billets,  
TMT bars etc from its factory situated at Durgapur.

Such goods were sold by the Appellant in the market through its dealer network.

3. As per the industry practice, the appellant offered various promotional schemes in the form of turnover discount, cash discount etc. to its dealers to boost the sale of goods and to encourage prompt payment through dealer network. The said schemes/discounts were made known to the dealers prior to the clearance of the TMT bars through an annual discount policy at the beginning of each financial year. Further, each financial year was divided into three blocks ("discount period") of four months each. The rate of discount varied from dealer-to-dealer based on their market area, past sales, etc. and were communicated to the dealers vide customized letters at the beginning of each discount period. During the relevant period also, the Appellant offered following types of discounts:

- i. Turnover/Quantity discount at different slab rates based on lifting of a particular quantity of goods within a particular period;
- ii. Cash discount for prompt payment of the invoices raised upon dealers;
- iii. Compensatory discount for reduction in market prices subsequent to the sale of goods.

3.3. Since the quantum of discount was contingent upon conditions such as quantity of upliftment of goods by the dealers, the quantification thereof could be done only after the clearance of the goods at the end of each discount period. The said discounts were processed on expiry of four months by the Appellant way of issuance of cum duty credit notes, thereby neutralizing the duty incidence. These dealers were

unregistered with the Excise authorities, therefore, the question of these dealers passing the duty burden to anyone else did not arise.

3.4. The Appellant applied for provisional assessment for block periods, which was rejected by the Revenue much later, but eventually came to be allowed by this Hon'ble Tribunal vide Final order dated 19.11.2015 for the period August, 2023 to November, 2023. In the meanwhile, to save on limitation, the Appellant independently filed refund claims for the entire period, as the entitlement to refund was not contingent upon the grant of provisional assessment or otherwise. Subsequently, the refund for the period August 2023 to November, 2023 amounting to Rs. 12,97,713/- was sanctioned to the Appellant by the refund sanctioning authority vide Order dated 25.08.2016 in compliance with this Hon'ble Tribunal's Final order dated 25.08.2021 [2021 (9) TMI 24].

3.5. In the given backdrop, against the refund claims filed by the Appellant, the Appellant was served with show cause notices (SCN) which came to be adjudicated by the Ld. Assistant Commissioner, CX, Durgapur-I Division (hereinafter referred to as "**the Ld. Adjudicating Authority**") vide Order-in-Originals dated 28.04.2016 and 30.09.2016 ("said OIOs"). The Ld. Adjudicating Authority denied the refund claim of the Appellant on the sole ground that the Appellant did not have any authority to issue "cum-duty credit notes".

3.6. Being aggrieved by the said OIOs, the Appellant filed appeals before the Ld. Appellate

Authority, who, vide Order-in-Appeal No. 193-194/DGP-C.Ex/2018 dated 13.03.2018 (hereinafter referred to as "**the impugned Order**") rejected the Appellant's appeal on the ground that the Appellant had failed to establish that the benefit of duty refund has been passed by the dealers to the ultimate consumers and hence the refund claims filed by the Appellant were hit by unjust enrichment in terms of Section 11B(2)(d) read with Section 12B of the Central Excise Act, 1944. Further, without even appreciating and/or considering the documents and certificates furnished by the Appellant, the Ld. Appellate Authority held that refund, if any, would be admissible to the ultimate consumer by solely relying upon the decision of Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Madras vs. Addison & Co. Ltd.* [2016 (339) E.L.T. 177 (S.C.)].

4. Hence this appeal.

5.1. The Ld. Consultant appearing on behalf of the appellant submits that this refund claims are not hit by unjust enrichment as CA Certificate and Dealer's certificate conclusively proves that duty incidence on discounts was borne by the Appellant alone and the unregistered dealers were incapable of passing it on to the ultimate consumers.

5.2. The Ld. Appellate Authority has erred in denying the refund claim of the Appellant by solely relying upon the case of Addison & Co. Ltd. (supra). On the contrary, the said decision supports the case of the Appellant in so far as it endorses the fact that credit notes are valid instruments for the purpose of passing post-clearance discounts and affirms that an assessee is entitled to seek refund of the duty

burden borne by them on the basis of such credit notes.

5.3. The issue involved in the instant case is no more res integra and stands decided by this Hon'ble Tribunal including in Appellant's own case.

5.4. It is a well settled principle that discount of any type, cash, quantity or turnover, known at the time of or prior to the clearance of the goods and actually passed on is an admissible deduction even if the same is quantified later.

5.5. It has been consistently held by the judicial fora the presumption under Section 12B of passing of duty to ultimate buyer stands rebutted on the issuance of credit notes subsequent to clearance of goods.

6. On the other hand Ld. Authorized Representative reiterated findings of the impugned order.

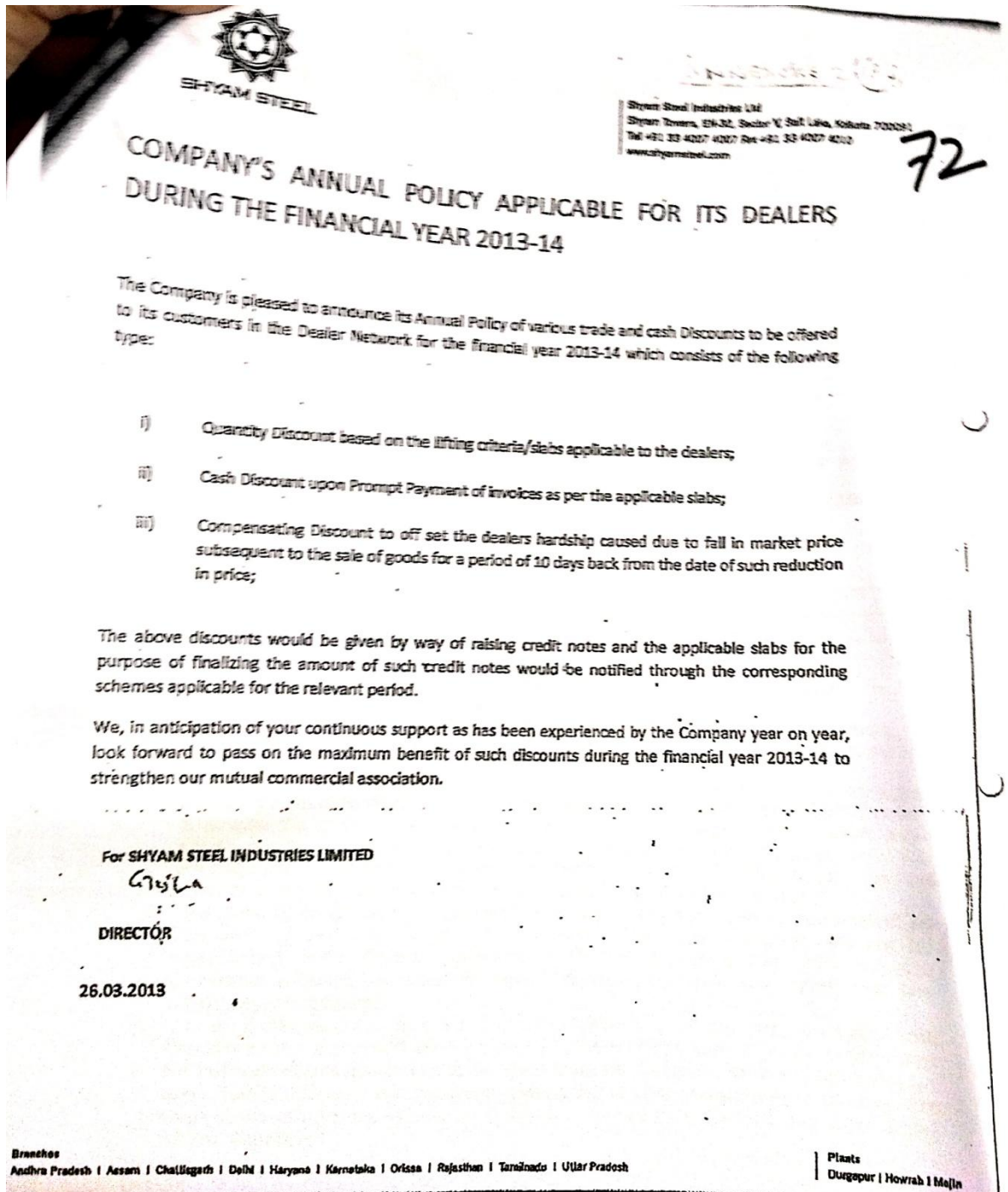
7. Heard the parties. Considered the submissions.

8. It is a case that appellant is selling the goods on payment of duty and through dealers network and it is also the fact on record that appellant offer various promotional schemes in form of turn over discount, cash discount etc to its dealers to boost the sale of goods and to increase prompt payment from dealers network. These schemes were well known in advance before clearance of goods by the appellant and appellant applied for provisional assessment in terms of Rule 7 of the Central Excise Rules 2002. But the request for the appellant for provisional assessment was denied. On appeal, this Tribunal was pleased to allow for provisional assessment. The Revenue preferred appeal against the order of this

Tribunal before the Hon'ble High Court of Calcutta. The Hon'ble High Court of Calcutta, Single Member Bench affirm the order of the Tribunal. The said order was challenged by the Revenue before Division Bench of the Hon'ble Calcutta High Court who also held that Rule 7 is also applicable to the facts of the case and they are entitled for provisional assessment. Despite that the Revenue has not granted provisional assessment to the appellant. Therefore, the appellant was compelled to file refund claims of excess duty paid during the impugned period on account of cash discount/turnover discount which were well-known in advance.

9. The Adjudicating Authority admitted the fact that appellant has issued credit notes to the buyers or dealers who has avail the provisional scheme by way of turnover discount and cash discount. The Adjudicating Authority in its order has recorded that the appellant was not required to issue credit note for duty paid on these discounts which means the Adjudicating Authority in its order has recorded the findings that appellant has refunded the excess duty received by them on account of various discount offered by the appellant to its dealers.

10. For better appreciation of the fact the Annual Discount Policy is incorporated here as under:



11. Certificate issued by one of the dealer to certify that the duty incidence has not passed on the buyers is also incorporated as under:

S.T.D.- 03244      252132 (S), 252248 (R)

**S. S. Trading**

All kinds of Hardware Seller & General Order Suppliers.

**Prop.- Surajit Singha**

RASIKGANJ \* BISHNUPUR \* BANKURA

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Ref No.-      Date.-

Date:-15.04.16

**Certificate towards receipt of Discounts given in respect of the sales during April'2015 to November'2015.**


We, M/s. S. S. TRADING(300487) the authorized dealer of TMT Bars produced by M/s Shyam Steel Industries Limited having our office at P.O. - BISHNUPUR P.O. - BISHNUPURDIST. - BANKURA 722122 do hereby certify that we have received the following discounts from the Company in respect of the sales made to us from April,2015 to November, 2015

1. Volume Discount	: Rs. 0/-
2. Turnover Discount	: Rs. 58626/-
3. Price Reduction Discount	: Rs. 20014/-
4. Cash Discount	: Rs. 1479/-

The above discounts are in accordance with the Company's Annual discount policy dated 27.03.2015 and its offers made known to us at the beginning of the financial year and/or the offer.


We hereby certify that we have not passed on the incidence of duty on such discounts to our buyers.

Further, we certify that we were not registered with the Central Excise Department during the relevant period covering April,2015 to November, 2015 and continue to remain unregistered even thereafter thus have not raised any cenvatable Invoices from our end.

**S.S. TRADING**  
  
Proprietor

And the CA Certificate below also certify the same:

63



**NITU PATAWARI,**  
CHARTERED ACCOUNTANTS

33, Brabourne Road,  
3<sup>rd</sup> Floor, Room No.3, Kolkata - 700 001  
Ph: 033-22422939, Fax:22434175

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**CERTIFICATE**


I have verified the books of accounts including the excise invoices, credit notes, customers ledger and the declared price list of the TMT Bars meant for the dealer customers of M/s Shyam Steel Industries Limited, Raturia Industrial Area, Angadpur, Durgapur - 713215 pertaining to the period of sales from April 2014 to November 2014 against the Annual Discount Policy adopted by it for its dealer customers which was made known to them well in advance, before lifting of the TMT Bars.

I certify that the credit notes issued to the dealer customers towards various trade discounts reflect the basic discount and the central excise duty attributable thereto, separately. The ledger-accounts of the dealer customers, entitled to and receiving such trade discounts have been reduced by the entire amount of such credit notes which is inclusive of corresponding amount of central excise duty originally paid by the Company at the time of clearance of goods.

Consequently, the Company has not recovered the portion of central excise duty attributable on the amount of discounts offered by it to its dealer customers through the credit notes and therefore, the incidence of central excise duty on such trade discounts has been borne by the Company only.

This certificate has been issued at the request of the Company for submission to and for reliance by the Central Excise Department against the query raised by them in relation to the excise duty reflected on the credit notes issued by the company to its dealer customers.

For, Nitu Patawari  
Chartered Accountant



*Nitu Patawari*  
(Nitu Patawari)  
Proprietor  
Mem No.: 064944

Date: 07.04.2015  
Place: Kolkata

12. In that circumstances the buyers/dealers of the appellant has not borne the duty component and got the refund of duty paid by them to the appellant. Therefore, we hold that appellant has passed the bar of unjust enrichment and the finding of the Adjudicating Authority that the appellant has issued credit notes to its buyers/dealers of duty paid by dealers/buyers on account of discount also certify the same.

13. In view of that as held by this Tribunal in appellant's own case vide Final Order No. 75331/2024 dated 23<sup>rd</sup> February, 2024 as under:

*"6. I find that in this case, the refund claim filed by the appellant pertains to the Central Excise duty paid by them at the time of clearance of goods and also filed ER-I Returns and the component of discount was known to everybody before clearance of goods. In that circumstances, the decision of the Hon'ble Delhi High Court in the case of BT (India) Private Limited (supra) is not applicable to the facts and circumstances of the case. Further, as the dealer of the appellants were neither registered with the Central Excise Department nor has taken any cenvat credit of duty paid by the appellant, in that circumstances, the appellant has been able to pass the bar of unjust enrichment. Therefore, the appellant is entitled to claim the refund of excess duty paid by them on the discounts given to the dealers, which was known prior to the clearance of goods. "*

14. Further in their own case vide Final Order No. 75528/2021 dated 25.08.2021 this Tribunal again examine the issue and held as under:

*" 8. It is not in dispute that the Appellant had processed the discounts (turn-over discount/cash discount etc.) in favour of its dealers through Credit Notes It is also not the case of the revenue that such post clearance discounts are not an admissible deduction from the transaction value. Only issue that arise for my consideration is whether the grant of refund of excess excise duty paid on the transaction value without seeking an adjustment for discounts to the Appellant shall be hit by the principle of unjust enrichment. The law in this regard is well settled by the Hon'ble Supreme Court in Addison case (supra) that the onus is upon the person claiming refund of excise duty on post clearance discount to establish*

*that the incidence of duty on such discount has not been passed on to any other person. The Hon'ble Supreme Court in the Addison case has held in unequivocal terms that Credit Notes are valid instrument for the purposes of passing post clearance discounts and that an assessee is entitled for filing the claim for refund on the basis of Credit Notes raised by him towards discount as evident from para 14 of the said decision, set out herein below.*

*"We have considered the submissions made by the Counsel carefully and examined the material on record. The questions that arise for consideration in this case are whether the Assessee is entitled for a refund and whether there would be unjust enrichment if the said refund is allowed. It was held by the Special Bench of CEGAT, New Delhi by its judgment dated 17-3-1994 in Collector of Central Excise, Madras v. Addison & Co. Ltd (1994 (73) ELT. 331 (Tribunal)) that the turnover discount is not an admissible abatement on the ground that the quantum of discount was not known prior to the removal of the goods. in an appeal filed by the respondent-Assessee, this Court by its judgment dated 11-3-1997 in Addison & Co. Ltd. v. Collector of Central Excise, Madras (supra) held that the turnover discount is an admissible deduction. This Court approved the normal practice under which discounts are given and held that the discount is known to the dealer at the time of purchase. The Additional Solicitor General submitted that any credit note that was raised post clearance will not be taken into account for the purpose of a refund by the Department. We do not agree with the said*

*submission as it was held by this Court in Union of India v. Bombay Tyre International (supra) that trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price. It is the submission of the Assessee that the turnover discount is known to the dealer even at the time of clearance which has also been upheld by this Court. It is clear from the above that the Assessee is entitled for filing a claim for refund on the basis of credit notes raised by him towards turnover discount"*

*The CA certificate produced by the Appellant in the instant case goes to show that the Appellant has not passed on the incidence of duty on discount to its dealers. I also find from the sample certificates issued by the dealers that such dealers were not registered under the Central Excise Law for the purposes of availing or passing of Cenvat credit. Therefore, the question of any double benefit in the form of refund of excise duty on the component of discount as well as Cenvat credit on the said component does not arise Further, certificate from the dealers also confirms that the incidence of duty was not passed on by them to their buyers. These evidences establish that the duty element on the discount component was borne by the Appellant himself. Therefore, the decision in Fenner India case is not applicable to the facts of the present case as in that case no other evidence was produced apart from Credit Notes to justify the refund claim. In so far as the Addison case is concerned, I find that the Hon'ble Supreme Court had rejected the revenue's Civil Appeal No. 8488 of 2009 wherein the assessee had produced evidences in the form of CA certificate*

*to show that the incidence of duty on discount was borne by the manufacture himself. Therefore, the decision of the Hon'ble Supreme Court in the Addison case (supra) cannot be said to be against the Appellant.*

*9. In view of the above discussions and the documentary evidence produced by the Appellant as referred."*

We follow the same.

15. We, further, take note of the fact that the dealers are not registered with Central Excise department therefore, they cannot take Cenvat Credit of duty paid of the goods in question. Consequently, duty cannot be passed on by the dealers. In view of this, we hold that appellant are entitled for the refund claims filed by them. Further, it would be in the interest of justice if appellant was allowed for provisional assessment in terms of Rule 7 of the Central Excise Rules, 2002.

16. In view of this, we set aside the impugned orders and allow the refund claims with consequential relief, if any.

17. Accordingly, the appeals are allowed.

(Pronounced in the open court on \_16.12.2025)

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)