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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76236 of 2024

(Arising out of Order-in-Appeal No. 83/CX-Kol/CX/Kol-S/2024-25 dated 09.05.2024 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Yamuna Power & Infrastructure Limited : Appellant
Banagram Bishnupur,
Rasapunja, 24 PGS,
West Bengal – 700 104

VERSUS

Commissioner of C.G.S.T. and Central Excise : Respondent
Kolkata South Commissionerate,
G.S.T. Bhavan, 180, Rajdanga Main Road, Shantipally,
Kolkata – 700 107

APPEARANCE:

Shri Aditya Dutta, Advocate, for the Appellant

Ms. Suman, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 75413 / 2026

DATE OF HEARING / DECISION: 19.03.2026

ORDER:

The present appeal has been filed against the Order-in-Appeal No. 83/CX-Kol/CX/Kol-S/2024-25 dated 09.05.2024passed by the Ld. Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107.

2. The facts of the case are that M/s. Yamuna Power & Infrastructure Limited, Banagram Bishnupur, Rasapunja, 24 PGS, West Bengal – 700 104 (hereinafter referred to as the "appellant") is engaged in the manufacture of Panels, Cu. Busbar, Chember Capacitor, etc., falling under Chapter 85 of the Central Excise Tariff Act, 1985.

2.1. A Show Cause Notice dated 17.07.2020 was issued to the appellant for the Financial Year 2016-17 and 2017-18 (up to June, 2017) raising the following issues: -

(a) Availment and utilization of irregular CENVAT Credit to tune of Rs. 10,852/- on the basis of ineligible documents.

(b) Non-payment of central excise duty to tune of Rs.23,750/- against clearance of spares during the period 2016-17.

(c) Short payment of central excise duty of Rs. 5,65,047/- on differential value of excisable goods on account of freight outward and insurance from customers.

3. The said Show Cause Notice was adjudicated by the Ld. Assistant Commissioner of C.G.S.T. & C.X., Maheshtala Division, Kolkata South Commissionerate, vide the Order-in-Original No. 29/AC/MSTL/Kol-S/2021-22 dated 15.11.2021 whereby he has disallowed CENVAT Credit to the tune of Rs.10,852/-, confirmed the demand of central excise duty of Rs.23,750/- in respect of clearance of spares and also confirmed the demand of central excise duty of Rs.5,65,047/- on the ground of non-inclusion of freight and insurance charges in the assessable value of excisable goods. The ld. adjudicating authority appropriated the amount of Rs.86,042/- already paid by the assessee-appellant towards the demand of Rs.5,65,047/- as above and accordingly directed the appellant to pay the remaining amount of Rs.4,79,005/-; The ld. adjudicating authority also demanded interest at the applicable rate and equal amounts as penalty in respect of the demands confirmed vide the above Order-in-Original.

4. On appeal, the Ld. Commissioner of C.G.S.T. & C.Ex., Appeals-I, Kolkata, vide the impugned order dated 09.05.2024, has: -

(i) Upheld the recovery of CENVAT Credit of Rs.502/-, along with interest and equal penalty thereon, while dropping the rest of the disallowance of CENVAT Credit;

(ii) Dropped the demand of central excise duty of Rs.23,750/- on clearance of spares, along with interest and penalty.

(iii) The demand of central excise duty of Rs.5,65,047/- on account of non-inclusion of outward freight and insurance in the assessable value has been restricted to Rs.4,79,005/-, after deducting the payment made by the appellant of Rs.86,042/-.

5. Aggrieved by the said order, the appellant has filed the present appeal.

6. As regards the demand of Rs.4,79,005/- confirmed against the appellant, the Ld. Counsel appearing on behalf of the appellant submits that the said demand has been raised on the amounts of freight and insurance charged and realized from their customers separately, on an actual basis, which were not included in the assessable value of the goods sold to their customers for the purpose of payment of central excise duty. He submits that in the event of freight and insurance charges being realized from the customers separately and shown separately in the invoice, the same are not includable in the assessable value for the purpose of discharging excise duty as held by the Hon'ble Supreme Court in the case of *Commissioner of Cus. &C.Ex., Nagpur v. Ispat Industries Ltd. [2015 (324) E.L.T. 670 (S.C.)]*. In view

of the above, the appellant's contention is that the demand, along with interest and penalty, confirmed against them by including the transportation and insurance cost in the assessable value is not legally sustainable.

6.1. It is also submitted by the Ld. Counsel for the appellant that they agree to pay the demand of Rs.502/-, along with interest, being the demand confirmed on account of disallowance of CENVAT Credit in the impugned order. However, he sought waiver of penalty in respect of the above demand confirmed and admitted by them.

7. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order. She submits that the appellant is responsible for handing over the goods at the buyer's premises and hence, the transportation and insurance charges up to the buyer's premises are includable in the assessable value. She thus justifies the demands confirmed vide the impugned order.

8. Heard both sides and perused the records of the case.

9. I find that the demand of central excise duty of Rs.4,79,005/-, being disputed by the appellant in this case, has been confirmed against the appellant on account of non-inclusion of freight and insurance charges received from the customers in the assessable value of excisable goods. I also find that there is no evidence brought on record to substantiate the claim that the appellant is responsible for handing over the goods at the buyer's premise. Hence, I am of the view that the transportation and insurance charges up to the buyer's premises are not includable in the assessable value. Further, it is on record that

the appellant has received the freight and insurance charges separately. As per Section 4 of the Act, the transaction value is the price actually paid or payable for the goods, when sold. Therefore, the freight/ transportation charges and insurance charges are not includable in the assessable value when they are billed separately from the customer, as held by the Hon'ble Apex Court in the case of *Commissioner of Cus. &C.Ex., Nagpur v. Ispat Industries Ltd. [2015 (324) E.L.T. 670 (S.C.)]*.The relevant observation of the Hon'ble Supreme Court in the aforesaid order is reproduced below: -

> *"19. A cursory reading of the substituted provision makes it clear that the concept of "normal value has given way to the concept of "transaction value". Thus, no longer is there a normative price for purposes of valuation of excisable goods. The actual price that is paid or payable on each removal of goods becomes the transaction value. Interestingly, it will be noticed that under Section 4(3)(c), the place of removal is defined as it had been defined in the substituted Section 4 (by the 1973 Amendment) before its further amendment in 1996. What is conspicuous by its absence in the present Section is Section 4(2) and sub-section (b)(iii) in the previous Section 4 (after its amendment in 1996). It is clear therefore, that for the second period in question in the present case, namely, 1-7-2000 to 31-3-2003, the depot, premises of a consignment agent or any other place from which excisable goods are to be sold after their clearance from the factory are no longer places of removal. Also, the definition of "transaction value" makes it clear that freight or transportation expenses are not included in calculating the excise duty payable."*

9.1. I find the ratio of the decision cited supra to be squarely applicable to the factual matrix of the present case. Therefore, by applying the ratio laid down in the decision in the case of *Ispat Industries Ltd (supra)*, I hold that the freight and insurance charges are not includable in the assessable value for the purpose of calculating the central excise duty. Accordingly, the demand of central excise duty confirmed in the impugned order on this score by inclusion of the freight and insurance charges is not sustainable and consequently, the same stands set aside.

9.2. Since the above demand itself is found to be unsustainable, the question of demanding interest or imposing penalty on such amount does not arise. Accordingly, the same are also set aside.

10. In respect of disallowance of CENVAT Credit of Rs.502/- by way of the impugned order, the appellant has agreed to make the payment, along with interest. However, considering the fact that no suppression of facts with the intent to evade central excise duty exists in the present case, I hold that no penalty is imposable on account of such reversal of CENVAT Credit.

11. In the result, I pass the following order: -

(i) The demand of Rs.4,79,005/-, along with interest and penalty thereon, on the ground of non-inclusion of freight and insurance charges, as confirmed in the impugned order, is set aside.

(ii) The demand of Rs.502/-, on account of disallowance of CENVAT Credit, as confirmed in the impugned order, along with applicable interest, is upheld. The imposition of penalty to this extent, however, is set aside.

12. The appeal is disposed of in the above manner.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd