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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 79085 of 2018

(Arising out of Order-in-Appeal No. 63/SLG-CGST/2018 dated 10.08.2018 passed by the Commissioner, Siliguri Central Excise & C.G.S.T., Central Revenue Building, Hakimpara, Haren Mukherjee Road, Siliguri – 734 001)

M/s. Forma Chem Private Limited **: Appellant**
276, B.B. Ganguly Street,
Kolkata – 700 012

VERSUS

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

APPEARANCE:

Shri N.K. Chowdhury, Advocate, for the Appellant

Shri S. Dutta, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 75491 / 2026

DATE OF HEARING: 08.04.2026

DATE OF DECISION: 09.04.2026

ORDER:

The appellant is in appeal against the impugned order wherein the demand has been raised on shortage of goods on the allegation of clandestine removal of the same.

2. The facts of the case are that the appellant is engaged in the manufacture of various chemical products, such as Forma Solvent and Benzol. The said goods were being manufactured by using inputs such as Solvent GL, Pentane, Naptha, Benzene, etc. The appellant was having 17 numbers of storage tanks and mixing tanks which were mostly lying underground. They were clearing the finished goods on payment of duty after utilizing CENVAT Credit.

3. On 27.02.2013, a visit was done by the Departmental Officers and it was found that in respect of one item viz. Forma Solvent, the stock was 'nil' as against the recorded stock of 48,679 litres involving central excise duty of Rs.2,28,636/-

4. The Director of the appellant-company admitted to the said shortage. He stated that there might be two reasons for such shortage: (a) leakage in the storage tank; and (b) accounting error of Forma Solvent in their Daily Stock Account

5. Thereafter, after completion of the investigation, a Show Cause Notice was issued; the duty paid by the appellant was appropriated towards the above demand. The said Notice also proposed penalty under Section 11AC of the Central Excise Act, 1944.

6. The matter was adjudicated and the demand of duty was confirmed; the amount paid by the appellant was ordered to be appropriated. The ld. adjudicated authority also ordered imposition of penalty on the appellant under Section 11AC of the Act.

6.1. On appeal, the Ld. Commissioner (Appeals), vide the impugned order, has upheld the above order passed by the ld. adjudicating authority.

6.2. Against the said order, the appellant is before me.

7. The Ld. Counsel appearing on behalf of the appellant submits that mere shortage ipso facto does not mean that there was clandestine removal of goods by the appellant without payment of central excise duty. He contends that the shortage was explained properly by the appellant; that there was no admission on the part of the appellant in respect of

clandestine removal of the goods. Accordingly, he contends that the demand, along with interest and penalty confirmed against them is not sustainable. To support his contentions, the Ld. Counsel for the appellant relied on the following decisions: -

- *Kakkar Complex Steels P. Ltd. -Vs- Commissioner of C. Ex. Ludhiana [2013 (290) ELT 103 (Tri-Del.)]*
- *RHL Profiles Ltd. -Vs- Commissioner of Central Excise, Kanpur [2012 (285) ELT 103 (Tri-Del.)]*
- *Commissioner of Central Excise, Kanpur -Vs- Frontline Metal Pvt. Ltd. [2017 (357) ELT 715 (Tri-Del.)]*
- *Shivalaya Ispat & Power Pvt. Ltd. -Vs- Commissioner of C. Ex. Raipur [2017 (357) ELT 742 (Tri-Del.)]*
- *Melton India Pvt. Ltd. -Vs- Commissioner of Central Excise, Noida [2005 (181) ELT 129 (Tri-Del.)]*
- *Commissioner of C.Ex., Kanpur -Vs- Trela Footwear Exports Pvt. Ltd. [2014 (306) ELT 629 (Tri. - Del.)]*

8. Heard the arguments of the Ld. Authorized Representative of the Revenue also.

9. After considering the submissions made by both the sides, I find that, in this case, admittedly, at the time of visit by the Departmental Officers, stock taking was done and a shortage was found. The reason, as explained by the appellant, was that there may have been a leakage in their storage tank or an error in accounting of the stock. However, the appellant has not produced any evidence towards their claims. No evidence has been produced to show that the said leakage in the storage tank was rectified or repaired. Moreover, no reconciliation statement of stock account has been produced by them.

10. In these circumstances, the appellant is liable to pay central excise duty on the shortage of stock found during the course of investigation.

10.1. The case-law relied upon by the appellant are not applicable to the facts of the case on hand.

11. However, considering the facts and circumstances of the case, as it is not a case of suppression or fraud or collusion, I hold that penalty under Section 11AC of the Act is not imposable on the appellant.

12. In these terms, the following order is passed: -

(i) The demand of duty, as confirmed vide the impugned order, is upheld.

(ii) The penalty imposed on the appellant under Section 11AC of the Act, is dropped.

13. The appeal is disposed of in the above terms.

(Order pronounced in the open court on **09.04.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sdd