CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 1728 of 2011

(Arising out of Order-in-Appeal No. TH-I/RKS/25/2011 dated 11.10.2011 passed by the Commissioner of Central Excise, Mumbai-I)

M/s. Century Rayon .....**Appellant**
Murbad Road, Shahad,
Tal-Kalyan
Thane

Vs.

Commissioner of Central Excise, Thane I .....**Respondent**
4th Floor, Navprabhat Chambers,
Ranade Road,
Dadar (W), Mumbai

APPEARANCE:

Shri Prasad Paranjape, Advocate for the appellant
Shri A. Choudhary, DC (AR) for the respondent

CORAM:

Hon'ble Dr. D.M. Mishra, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/86141 / 2019

DATE OF HEARING : 18.06.2019
DATE OF DECISION : 18.06.2019

PER: Dr. D.M. Mishra

This is an appeal against Order-in-Appeal No. TH-I/RKS/25/2011 dated 11.10.2011 passed by the Commissioner of Central Excise, Mumbai-I.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods falling under Chapter 28, 54, 55 of Central Excise Tariff Act, 1985. During the relevant period, they have transferred excisable goods to their depots on payment of appropriate excise duty however, alleging that the assessable value of the transferred goods were not determined correctly during the period July 2000 to February 2001 as they have not included the cost of transportation from factory to depot; duty was short paid to the extent of ₹17,03,456/-. Consequently, show cause notice was issued on 31.07.2001 for recovery of the said duty with interest and penalty. On adjudication, the demand was confirmed with interest and penalty of ₹2.00 lakhs under Rule 173Q of erstwhile Central Excise Rules, 1944. Aggrieved by the said order they filed appeal before the ld. Commissioner (Appeals) who confirmed the demand and penalty but set aside the interest against the appellant. Hence, the present appeal.

3. At the outset, Learned Advocate Shri Prasad Paranjape for the appellant submits that during the relevant they used to sell the goods at the factory gate as well as through various depots. They have filed price declaration under Rule 173C of erstwhile Central Excise Rules, 1944 from time to time for stock transfer goods from factory to various depots. In the price declaration they have shown separately and claimed as deduction the transportation charges from factory to depots. He submits that

with the amendment to place of removal with effect from 01.07.2000, the definition of place of removal prescribed under section 4(3)(c) of Central Excise Act, has been amended whereunder "a depot, premises of a consignment agent or any other place or premises from where the excisable goods are sold after the clearance from the factory has been deleted leaving only the place of removal as the factory or place or premises of production or manufacture of the excisable goods and a warehouse or any other place where the goods have been permitted to be deposited without payment of duty." It is his contention that therefore since during the period in question depot was not considered as a place of removal, hence the transportation cost between the factory gate and depot cannot be added to the assessable value. In support, the Learned Advocate refers to the judgment of this Tribunal in the case of *CCE Kanpur v. LML Ltd. 2014 (303) ELT 130 (Tri-Del), Emerson Network Power (I) Pvt. Ltd. v. CCE Mumbai 2017 (6) GSTL 321 (Tri-Mum)* and Hon'ble Supreme Court in the case of *Commissioner of Central Excise Nagpur v. Ispat Industries Ltd. 2015 (324) ELT 670 (SC)*.

4. Learned AR for the revenue reiterates the finding of the Learned Commissioner (Appeals).

5. We have carefully considered the submission advanced by both sides and perused the records.

6. We find undisputedly the definition of 'place of removal' has undergone change during the relevant period in dispute. Taking into consideration the definition of place of removal as was in force during the relevant period, this Tribunal following the principles of law laid down in *Ispat Industries Ltd.*'s Case (supra) observed as follows:

> "7. During the period of dispute, the definition of "place of removal" as given in Rule 4(3)(c) of the Central Excise Rules, 1944 covered only :
>
> (i) a factory or any other place or premises of production or manufacture of excisable goods;
>
> (ii) a warehouse or any other place or premises, wherein the excisable goods have been permitted to be deposited without payment of duty.
>
> 7.1 In terms of Section 4(1), where under this Act, the excise duty is chargeable on any excisable goods with reference to their value, then, on each removal of the goods such value shall be, in a case where the goods are sold by the assessee for delivery at the time and place of removal, and the assessee and buyers of the goods are not related and price is the sole consideration for sale, be the transaction value. In any other case, where the goods are not sold at the time and place of removal, the value shall be determined in terms of provisions of Central Excise Valuation Rules, 2000.
>
> 7.2 Thus, in terms of Section 4(1), the assessable value of the goods is the transaction value *at the time and place of removal.* The place of removal

during the period of dispute, as mentioned above, covered only the factory or any other place or premises of production or manufacture of the excisable goods or a warehouse or any place wherein the excisable goods have been permitted to be deposited without payment of duty and, as such, the place of removal did not include depot, premises of consignment agents or any other place or premises from where the goods after their clearance from the factory are to be sold. In view of this, when the goods during the period of dispute were sold after their clearance from the factory, from depots, notwithstanding the provisions of Rule 7 of the Central Excise Valuation Rules, the assessable value would be the transaction value at the time and place of removal and hence the same would not include the cost of transportation from the factory to Depots. It is well settled law that in case of conflict between the Rules made by rule making authority under delegated legislative power and provisions of the Act, it is the provisions of the Act, which would prevail [Paras 28 & 29 of Apex Court's judgment in the case of *Ispat Industries* v. *Union of India* reported in 2006 (202) E.L.T. 561 (S.C.)]. In view of this, we do not find any infirmity in the impugned orders. The Revenue's appeals are dismissed. The cross-objections also stand disposed of."

Similar view was also expressed by the Tribunal in *Emerson Network Power (I) Pvt. Ltd.* as follows:

"4. We have carefully considered the submissions made by both the sides and perused the records. From the order-in-original as well as the order of the

Commissioner (Appeals), we find that the demand was confirmed only on the ground that the sales depot of the appellant is the place of removal. Therefore, transportation from the factory gate upto the depot is not excludable from the assessable value. During the relevant period the definition of place of removal was as under :

> Section 4(3)(c) : "place of removal" means -
>
> (i) a factory or any other place or premises of production or manufacture of the excisable goods;
>
> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty.

4.1 We also reproduce the relevant Rule 5 of Central Excise Valuation Rules, 2000 below :

> "Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods".

From the combined reading of definition of place of removal and Rule 5 of Central Excise Valuation Rules, 2000, it is clear that in the transaction value in terms of Section 4(1)(a), the transportation from the place of removal upto the place of delivery of such excisable goods is excludable from the transaction value. At the relevant time, the place of removal was only factory gate or warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods were removed. As per the said definition the depot or branch of assessee was not place of removal. Therefore, the factory gate is only the place of removal in the present case. If this is so, then transportation charges collected from the customers for transportation of goods from the factory gate upto the place of customer is not includible in the assessable value. Therefore, the findings of both the lower authorities is contrary to clear provisions of law on the inclusion/exclusion of transportation charges as discussed above. The very same issue has been considered by this Tribunal in the case of *Andhra Pradesh Paper Mills Ltd.* (supra) wherein the Division Bench of this Tribunal has clearly held that for the period from 1-7-2002 to 13-5-2003 there cannot be any demand on incidental charges like freight and insurance charges for clearance of goods from factory gate to depot. For the reason that the depot was absent in the definition of place of removal in the Central Excise Act, 1944. The relevant order of the Tribunal is reproduced below :

> 7.2 As regards the demand of duty for the period from 1-7-2000 to 13-5-2003, we find that during this material period there was no definition in the provisions of the Central Excise Act for the 'place of removal'. Though the adjudicating authority has relied upon the provisions of Central Excise Valuation Rules, we find that provisions of Section 4 of Central Excise Act, 1944, did not have definition of 'place of removal'; due to which it cannot be held that the clearances made by the appellant from various depots can be termed as clearances from 'place of removal' and price prevailing during this period at those depots needs to be considered. In our view, for the period in question i.e. 1-7-2000 to 13-5-2003, we have no hesitation to hold that there cannot be any demand on the appellant, there being

absence of definition of 'place of removal' in the Central Excise Act, 1944.

4.2 As regards the reliance placed by the learned AR on the judgment of *Siemens Ltd.* (supra), we find that the decision of *Siemens Ltd.* is not in respect of clearance of excisable goods but it is for clearance of inputs as such under the provisions of Rule 57F(i), (ii) & (iv) of erstwhile Central Excise Rules. Therefore, the issue in the present case is entirely different from the cited judgments.

5. As per our above discussion, the demand is not sustainable. The impugned order is set aside and the appeal is allowed."

7. Following the aforesaid precedent, we do not find merit in the impugned order. Consequently, the same is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Operative part pronounced in Court)

(Dr. D.M. Mishra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

//SR