CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 639 of 2012

(Arising out of Order-in-Appeal No. BC/294/BEL/2011-12 dated 31.01.2012 passed by Commissioner of Central Excise (Appeals), Mumbai-III)

M/s. Foam Home (I) Pvt. Ltd. **Appellant**
Plot No. H/30-2, MIDC Taloja,
Raigad 410 208.

Vs.

Commissioner of Central Excise, Belapur **Respondent**
1st floor, CGO Complex,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Prakash Shah, Advocate, for the Appellant
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/87008/2021**

Date of Hearing: 21.10.2021
Date of Decision: 21.10.2021

PER: SANJIV SRIVASTAVA

This appeal lies against Order-in-Appeal No. BC/294/BEL/2011-12 dated 31.01.2012 passed by Commissioner of Central Excise (Appeals), Mumbai-III. By the said order, the Commissioner (Appeals) has upheld Order-in-Original No. 43/VPS/DC/FoamHome/R-II/Tal/Bel/10-11 dated 12.08.2011, by which the adjudicating authority has held as under:-

"ORDER

I. I confirm the demand to the extent of Rs.1,76,953/- (Rupees one lac seventy-six thousand nine hundred fifty-three only) consisting of Rs.1,71,799/- Basic, Rs.3,346/- (Ed. Cess) and Rs.1,718/- SHE Cess and order recovery thereof from M/s. Foam Home India Pvt. Ltd. under Rule 8 of Central Excise Rules, *2002 read with Section 11A(1) of the Central Excise Act, 1944. I, however, drop the demand of remaining amount of Rs.14,565/- being inadmissible.*

II. I order recovery of interest for the aforesaid amount from M/s. Foam Home India Pvt. Ltd. for the non-payment period at appropriate rate under Section 11AB of Central Excise Act, 1944; and

III. I impose and order recovery of penalty of Rs.1,76,953/- (Rupees one lac seventy-six thousand nine hundred fifty-three only) on M/s. Foam Home India Pvt. Ltd. under Rule 25(d) of Central Excise Rules, 2002."

2.1 Brief facts of the case are that during the course of audit of records of the appellant, it was revealed that the appellant had received insurance claim of Rs.22,64,848/- from The Oriental Insurance Company towards the finished goods damaged in the flood occurred on 26.7.2005.

2.2 Subsequently, the appellant cleared the damaged goods at two unrelated buyer on payment of duty on the basis of assessable value determined on the basis of transaction value, which allegedly is much lower. Thus they have enjoyed double benefit of availing cenvat credit on the inputs that had gone into the manufacture of the finished goods and recovery of differential value resulted due to damage of proper finished goods through insurance claim.

2.3 Thus the appellant has contravened the provisions of Central Excise Valuation Rules, 2000 and Rule 4, 5, 6 & 8 of the Central Excise Valuation Rules, 2002. Hence a show cause notice dated 24.01.2011 was issued which was adjudicated by the order-in-original referred in para 1, supra.

2.2 The appeal against the order of the adjudicating authority has been dismissed by the Commissioner (Appeals) by the impugned order referred to in para 1 above.

2.3 Aggrieved by the impugned order of the Commissioner (Appeals), the appellant has filed this appeal.

3.1 We have heard Shri Prakash Shah, Advocate, for the appellant and Shri Sanjay Hasija, Superintendent, Authorised Representative, for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:

- the issue involved in the matter is in a very narrow compass- whether the amount received as insurance claim in respect of the damaged goods can be added to the transaction value for determination of assessable value of the damaged goods when they have been cleared on payment of duty on the transaction value to the unrelated buyer.
- The goods have been cleared on a transaction value which is undisputedly by the unrelated buyer, the Revenue could not have resorted to Rule 11 of the Central Excise Valuation Rules for addition of the amount due as a compensation from the Insurance Company against the damaged goods.
- In the case of Vardhman Textile Component Ltd. [2013 (294) ELT 602 (Tri.-Del.)] the issue involved has been considered and decided in favour of the appellant.
- The appeal may be allowed.

3.3 Learned AR while reiterating the findings recorded in the impugned order, refers to para 9 of the impugned order and states that the Commissioner (Appeals) has decided the matter. In this manner the appellant has not submitted the papers relating to insurance claim.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 In the present case, the goods have undisputedly been cleared on payment of central excise duty on the assessable value based on actual transaction value between the appellant and unrelated buyer. Section 4 of the Central Excise Act reads as follows:-

"***Valuation of excisable goods for purposes of charging of duty of excise. —*** *(1) Where under this Act, the duty of excise* *is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. — For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods."

4.3 A three judges bench of Hon'ble Supreme Court in the case of CERA Board and Door [2020-TIOL-137-SC-CX-LB] explained these provisions in following manner

"88. For the valuation under Section 4(1) to follow the "transaction value", (after amendment) the three conditions stipulated in clause (a), namely (i) that the goods are sold for delivery at the time and place of removal, (ii) that the assessee and buyer are not related and (iii) that the price is the sole consideration for the sale, should be satisfied.

89. If the three conditions, enumerated in clause (a), (indicated above) are not satisfied, then the case would fall under clause (b) of sub-section (1) of Section 4, which starts with the words "in any other case". In other words, in cases not covered by clause (a), the value can be determined in such manner as may be prescribed.

90. After the amendment under Act 10 of 2000, the Central Government issued a new set of rules called the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. These rules were issued in exercise of the power conferred by Section 37, in supersession of the 1975 Valuation Rules.

91. Rule 3 of the aforesaid 2000 Rules makes it clear that the value of excisable goods, for the purposes of clause (b) of subsection (1) of Section 4, should be determined in accordance with the said Rules. Therefore, it is clear that the valuation as per the Rules is permissible only in cases covered by Section 4(1)(b) and not by Section 4(1)(a). For the purpose of the issues on hand, it may not be necessary for us to dwell deep into the aforesaid rules.

92. Suffice it to say, that if a sale is covered by clause (a) of sub-section (1) of Section 4 (after amendment), the value of excisable goods shall be the 'transaction value'. This expression 'transaction value' is defined in clause (d) of sub-section (3) of Section 4. But if a case is not covered by clause (a) of subsection (1) of Section 4, then the value of the excisable goods should be determined in accordance with the 2000 Rules.

93. Therefore, in essence, an adjudicating authority is obliged to do the following, in respect of transactions that took place after 01.07.2000:

(i) first, he must see whether there is a sale and

(ii) next, he must see if such sale satisfies the three conditions stipulated in clause (a) of sub-section (1) of Section 4.

94. In cases where there is a sale and the three conditions stipulated in clause (a) of sub-section (1) of Section 4 are satisfied, the adjudicating authority should determine the value based upon the transaction value. But (i) in cases where there is no sale and (ii) in cases where there is a sale but the three conditions stipulated in clause (a) are not satisfied, then the adjudicating authority should fall back upon the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000."

4.4 In view of the provisions of Section 4(1) as also explained by the Hon'ble Apex Court, resort can be made to the Central Excise Valuation Rules, 2000 only in case where transaction value is not available or do not satisfy the three criteria enumerated by Hon'ble Apex Court. It is not the case of the Revenue that the transaction value between the appellant and the unrelated buyer is a coloured value and hence rejected. Without questioning the said transaction value, Revenue could not have resorted to the Central Excise Valuation Rules, 2000 for determination of assessable value by adding the amount of insurance claim received by the appellant.

4.5 Similar view has been expressed by the Tribunal in the case of Vardhman Textile Component Ltd. (supra). The relevant paragraph of the said decision is reproduced below:-

*"**2.** The appellants lodged claim with the insurance company for the damaged goods which were received by them. The appellant also cleared the damaged goods at much reduced value and paid the duty accordingly. The Revenue's sole case is that insurance claim received by the appellant in respect of such damaged goods should be added to the assessable value of the damaged goods so cleared by them and they should pay the duty on the insurance claim so received by them. As the Commissioner has reduced the penalty, Revenue is also in appeal.*

***3.** After considering the disputed issue, we find that the lower authorities have simplicitor raised the demand on the quantum of insurance claim received by the appellant. There is no doubt about the damage of the goods and subsequent reduction of value of such damaged goods. The appellants have already paid duty on the clearance of damaged goods at the value on which they were sold. The authorities have not referred to any provision of law requiring payment of duty on the insurance claim. Such insurance amount was given to the appellants in respect of goods which were damaged and not on any other account. And as such there is no justification for addition of the same in the value of the goods damaged subsequently sold. We find no reason to confirm the demand of duty and accordingly, appellants appeal is allowed and Revenue's appeal is rejected."*

4.6 Therefore we do not find any merit in the impugned order.

5. The appeal is allowed and the impugned order set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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