CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85043 OF 2014

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-119-13-14 dated 15th October 2013 passed by the Commissioner of Central Excise (Appeals), Pune–I.]

Commissioner of Central Excise
Pune – I
41-A ICE House, Sassoon Road, Pune - 411001 … ***Appellant***

versus

3M Electro & Communication India Pvt Ltd
145 Off Mumbai – Pune Road, Pimpri, Pune - 411018 ***…Respondent***

APPEARANCE:

Shri Sunil Kumar Katiyar, Assistant Commissioner (AR) for the appellant

Ms Padmavti Patil, Advocate for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87181/2023

DATE OF HEARING:	22/08/2023
DATE OF DECISION:	30/11/2023

PER: C J MATHEW

The issue in this appeal of Revenue, against order[1] of

[1] [order-in-appeal no: PUN-EXCUS-001-APP-119-13-14 dated 15th October 2013]

Commissioner of Central Excise (Appeals), Pune – I, is the empowerment vested in jurisdictional central excise authority to order 'provisional assessment' under rule 7 of Central Excise Rules, 2002 in relation to clearance of goods effected by M/s Finolex Cables Ltd.

2. The respondent herein is a manufacturer of 'cable joining kits' which is assembly of several components that were either 'bought out' or manufactured in their factory. As the 'cable joining kits' were not liable to duties of central excise, liability was being discharged on the components so manufactured on value corresponding to cost of production, as per CAS-4 norms prescribed by the Institute of Cost and Works Accountants of India, made applicable by circular[2] of Central Board of Excise and Customs (CBEC). Upon submission of CAS-4 at the end of each financial year, the differential duty was also being discharged by the respondent herein.

3. Notwithstanding the practice followed till then, the jurisdictional central excise officer, *vide* order dated 18th January 2013, ordered 'provisional assessment' for financial year 2012-13 which was challenged successfully before the first appellate authority leading to this appeal of Revenue.

4. Learned Authorised Representative submits that the grounds of

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[2] [no. 692/8/2003-CX dated 13th February 2003]

appeal for restoration of order of 'provisional assessment' is correct in law and that the procedure adopted by the original authority could not but be validated.

5. Learned Counsel for the respondent submitted that rule 7 of Central Excise Rules, 2002 affords option for 'provisional assessment' only to the assessee in specified situations and, necessarily, subject to execution of a bond for payment of the differential duty; it is contended that no such bond had been furnished. Furthermore, it is contended that, in the event of assessment resorted to by the assessee not being found to be tenable, the jurisdictional central excise authority was empowered to take recourse to appropriate provision in the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 for re-determination.

6. As pointed out by the Learned Counsel for the respondent, the issue stands squarely decided in their own case in *Commissioner of Central Excise, Pune – I v. Finolex Cables Ltd [2014 (308) ELT 578 (Tri.-Mumbai)]* holding that

> *'4. We have perused Rules 7 of the Central Excise Rules, 2002. Sub-rule (1) of such Rules states that "where the assessee is unable to determine the value of the excisable goods or determine of the rate of duty applicable thereto, he may request the Assistant Commissioner of Central Excise in writing giving reasons for payment of duty on provisional basis and the Assistant Commissioner may order allowing*

> *payment of duty on provisional basis at such rate or on such value as may be specified by him." If such permission is granted, the rule provides Air execution of a Bond by the assessee with such surety or security as the said Assistant Commissioner may specify. The Rule further provides that where the provisional assessment has been sought, the Assistant Commissioner of Central Excise shall pass order for final assessment as soon as may be. The C.B.E. & C. Manual also, in para 3.1 thereof, states that Rule 7 of the Central Excise Rules does not provide for the department, suo motu, issuing directions for resorting to provisional assessment. Therefore, when the Central Excise officers, during the scrutiny or otherwise, find that self-assessment is not in order, the assessee may be asked for all necessary documents, records or other information for issue duty demand for differential duty, if any, after conducting proper inquiry and in case the assessee fails to provide the records/information, 'best judgment' method may be adopted to demand the duty. Thus, both the Rule and instructions issued thereon provides for assessment of duty finally in a case where assessee is unable to determine the correct amount of duty or correct rate of duty and also does not opt for provisional assessment.'*

7. In view of the decision of the Tribunal *supra*, we find no merit in the appeal of Revenue, which is, accordingly, dismissed.

(Order pronounced in the open court on 30/11/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*