Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10575 of 2013

(Arising out of OIA-15TO16/2013/AHD-II/CE/AK/COMMR-A/AHD dated 31/01/2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Messrs Mira Industries **.....Appellant**
Near Memco Bus Stop,
Post Saijpur Bogha, Naroda Road, Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii **.....Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Shri Sudhanshu Bissa, Advocate for the Appellant
Shri Vijay G. Iyengar, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU
Final Order No. A/ 10854 /2023

DATE OF HEARING: 15.12.2022
DATE OF DECISION: 10.04.2023

RAMESH NAIR

The brief facts of the case are that the appellant is engaged in the manufacturing of Power Driven Pumps (PD Pumps) and parts thereof falling under chapter 84 and 85 of Central Excise Tariff Act. It was noticed by the department that appellant had collected freight and handling charges of Rs. 20,37,289/- and Rs. 44,01,058/- respectively @ 0.5% on assessable value, from their customers for the period from 2007-08 to 2010-11 and April 2011 to February 2012 respectively and had not included the above said charges in the assessable value of excisable goods cleared on payment of duty. Therefore the appellant were issued two show cause notices dated 30.03.2012 and 22.03.2012 proposing recovery of Central Excise Duty on freight and handling charges recovered from their customers as they were forming part of assessable value of excisable goods cleared by them from their factory premises. In adjudication, the adjudicating authority confirmed the demand of Central Excise duty under the proviso to Section 11A(1) of the Central Excise Act, 1944. He has also imposed penalty of the same amount under Section 11AC of the Central Excise Act, 1944. Being aggrieved

by the orders-in-original, the appellant filed appeals before the Commissioner (Appeals), who by the impugned order-in appeal No. 15 to 16/2013 (Ahd-II) CE/AK/Commr(A)/Ahd dated 31.01.2013 rejected the appeals and upheld the orders-in-original. Therefore, the appellants are before us.

02. Shri Sudhanshu Bissa, learned Counsel appearing for the appellant submits that amount was shown in the invoice as "freight and handling" and thus, it was clear that this recovery was not towards the value of the excisable goods manufactured by the appellant, but it was for freight and handling i.e. those activities which were arranged for and handled by the appellant though they were basically the obligation of the buyers. There was also no evidence on record of this case showing that this recovery was for outward handling charges as contemplated under Section 4 of the Act while defining the term "transaction value", and therefore, it was only an inference on the part of the authorities below that this recovery was outward handling charges and hence includible in the value of the goods. Only because the appellant had shown this recovery was "freight and handling charges" the authorities below had no jurisdiction to conclude that this recovery was nothing but outward handling charges collected from the customers; and the confirmation of demand of excise duty of these recoveries without any proof, evidence or basis that the appellant has depressed the real value of the excisable goods and a part of the transaction value was actually recovered in guise of freight and handling charges, is unsustainable.

2.1 He further submits that the facts of this case show that show cause notice were issued to appellant and it was also clear from the show cause notices that excise duty was proposed to be recovered on this recovery only with reference to section 4 of the Act and the explanation thereunder defining the term "transaction value" but no evidence at all was brought on record even at the time of issuing the show cause notice to suggest that 0.5% of the value of the goods recovered by the appellant was actually a part of the price of the goods but the same was recovered in guise of freight and handling charges. A perusal of the show cause notice indicates that Section 4 of the Act was referred to, paragraph 2.5 of part III of chapter III of CBEC manual was referred to and the recoveries shown in invoices and the records maintained by the appellant were considered while proposing to recover excise duty on this element. However no evidence was adduced by

the audit officers or even by the Range and Divisional Officers while raising the above demand to show that the appellant had not provided any service like forwarding or packing or handling of the goods or transportation, and also no evidence was shown in the proceedings to suggest that the appellant had not recovered this amount towards such facilities provided to the buyer located at various places though it was really the buyers' obligation to take delivery of the goods. In this fact of the matter, the authorities below could not have held that this recovery was includible in the value of the goods for assessing excise duties thereon. It is settled legal position that freight, insurance, handling etc. are activities and elements not forming part of the assessable value of the excisable goods. He placed reliance on the following judgments :

- COMMR. CUS. &C.EX., NAGPUR VS. ISPAT LTD. – 2015(324)ELT 670(SC)
- COMMR. CUS&C.EX., AURANGABAD VS. ROOFIT INDUSTRIES LTD. – 2015(319)ELT 221 (SC)
- TOYOTA KIRLOSKAR MOTORS LTD. VS. CCE, BANAGLORE - 2007(217)ELT 104 (TRI. CHENNAI)
- TOYOTA KIRLOSKAR MOTORS LTD. VS. COMMR. – 2016(331) ELT A137(SC)
- STOVE INDUSTRIES LTD. VS. CCE, AHD-I- 2016(344)ELT 1035 (TRI.-AHMD.)
- CCE, CHENNAI –I VS. KALPANA LAMPS AND COMPONENT - 2017(7)GSTL 100 (TIR- CHENNAI)
- LAMINA SUSPENSION PRODUCTS PVT. LTD. VS. CCE, BANGALORE – 2018(17)GSTL 296(TRI. BANG.)
- FINAL ORDER NO. A/10836/2019 DATED 29.04.2019.

03. On the other hand, Shri Vijay G. Iyengar, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings in the impugned order.

04. We have carefully considered the submission made by both sides and perused the records. The issue required to be decided in this matter is that whether the amount shown separately as freight and handling charges in the invoices can be included in the assessable value u/s 4 of the Central Excise

Act, 1944 or not. We find that Revenue's case has no merits as during the disputed period duty liability has been discharged by the appellant on the basis of transaction value. We have seen the specimen invoice copy produced by the learned Counsel and note that duty paying documents were indicating separately the value for the freight and handling charges.

4.1 It is the case of the department that price of the goods so recovered should include elements of freight and handling charges which cannot be considered as transportation/handling cost but it is additional consideration. In this regard this Bench is of the view that during transportation of goods from the factory gate to the destination there can be certain charges incurred for handling of finished goods which the appellant has recovered only as cost of freight and handling. There is no evidence on record to show by the department that said charges are nothing but arrangement for reducing the assessable value of goods. In the absence of any such evidence it has to be held that the entire element of freight and handling charges shown separately in the invoices is nothing else but freight and handling charges. It is now a settled law as per the relied upon judgments cited supra by the Learned Counsel that any amount collected separately as freight in the invoices cannot be included in the assessable. CESTAT, West Zonal Bench, Mumbai in the case of *CCE, Nagpur* v. *Ram Krishna Electrical Pvt. Ltd.*2011 (272) E.L.T. 149 (Tribunal) (supra) has also held as follows :-

> *"5.1 The Hon'ble Apex Court in the case of Commissioner of Central Excise v. Accurate Meters Ltd. 2009 (235) E.L.T. 581 (S.C.) considered a similar situation wherein the goods were supplied by the assessee to the State Electricity Boards and two separate contracts were entered into, one for sale of meters and another for transportation and transit insurance thereof. As per the terms of the contract, the assessee was bound to transport the goods from the factory-gate to the place of State Electricity Boards at the rates specified in the tender. In the said case the Apex Court held that the place of removal remains the factory-gate and the cost of transportation from the place of removal to the place of delivery cannot be included in the assessable value even though the cost of transportation has been calculated on average basis and not on actual basis. The ratio of the said judgment apply squarely to the facts of the present case.*
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> *5.2 Similarly, this Tribunal in the case of Majestic Auto v. CCE cited supra, had held that the equalised cost of freight shown separately in the invoices cannot be included in the assessable value even after 1-7-2000 when the place of removal remains the factory-gate."*

4.2 We also find that in the matter of Lamina Suspension Products Pvt. Ltd. Vs. Commissioner of C.Ex. Mangalore - 2018 (17) G.S.T.L. 296 (Tri. - Bang.) the tribunal dealing with the identical issue held as under : -

> ***"4.*** *By considering the total facts of the case, it appears that the appellant is a manufacturer of leaf spring which attracts the Central Excise duty under the heading 85 of CETA, 1985. The appellant clears the goods from their factory and through their depots situated in different parts of the country. The appellant has shown the handling charges collected @ 1% of the value as a part of the transaction cost by raising separate bills. So, the Department has demanded the duty of Rs. 64,660/- with equal penalty under Section 11AC of the Central Excise Act, 1944 as handling charges.*
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> ***5.*** *It may be mentioned that the cost of transportation from the place of removal up to the place of delivery of such goods is not includible in the assessable value under Section 4 of the Central Excise Act, 1944 and not chargeable to Central Excise duty under Section 3 of the Act. In the instant case, the appellant has claimed the handling charges of 1% of the value as part of the transportation cost. Therefore, it is not includible in the assessable value.*
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> ***6.*** *In view of the above, we set aside the impugned order and allow the appeal.*

4.3 In the above judgments it is held that amount charged as freight & handling charges and separately shown in the invoices cannot be included in the assessable value u/s 4 of the Central Excise Act, 1944. Therefore being the same facts and issue involved in the present case also, the freight and handling charges shown separately in the invoice of the appellant is also not includable in the assessable value of the excisable goods, consequently, duty demand on the said elements is not sustainable.

05. Accordingly, the impugned order is set aside. The appeal filed by the appellant is allowed.

(Pronounced in the open court on 10.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul