IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No.41577 of 2013

(Arising out of Order-in-AppealNo.142/2013 (M-II)dated 09.04.2013 passed by Commissioner of Customs, Central Excise& Service Tax(Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Concrete Products and Construction Co., **...Appellant**
Railway Station Yard,
Ambattur,
Chennai – 600 053.

Versus

Commissioner of GST & Central Excise, **...Respondent**
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellant :Shri P.C. Anand, Consultant

For the Respondent :Shri S. Bala Kumar, AC (A.R)

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 30.05.2023
DATE OF PRONOUNCEMENT : 01.06.2023

FINAL ORDER No.40390/2023

Order : Per Ms. SulekhaBeevi C.S.

Brief facts are that the appellants are engaged in manufacture of Concrete Sleepers and are also availing CENVAT Credit facility of duty paid on inputs. On verification of records, it was found that the appellant had collected outward freight chargers from their customers and paid

lesser freight to the transporters. They had included only the lesser freight in the assessable value while discharging the excise duty on finished products. The Department was of the view that the appellant has to pay excise duty on the amount of freight charges collected from the customers and not on the lesser freight paid to the transporters. It was also noted that though the appellant had collected inspection charges from the customers under commercial invoices, they did not discharge Central Excise duty on such charges for the period from January 2010 – January 2011. Show Cause Notice dated 21.04.2011 was issued proposing to demand the duty of excise on freight collected for the period March 2009 – February 2011 and also the duty on inspection charges for the period January 2010 – January 2011 along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Against such order, the appellant had filed appeal before the Commissioner (Appeals) who vide order impugned herein set aside the demand on inspection charges. However, the Commissioner (appeals) confirmed the demand in respect of freight charges. Aggrieved, the appellant is now before the Tribunal.

2. The learned consultant Shri P.C. Anand appeared and argued for the appellant. It is submitted by him that, the appellant, namely, M/s Concrete Products and Construction Company, is located at the railway station yard at Ambattur and is engaged in the manufacture of concrete sleepers. These sleepers are used by the railways for laying the tracks. The appellant had entered into a contract with the railways for manufacture and sale of railway sleepers. The excise duty was paid on

such sleepers as per the contract value agreed between the parties and the place of removal was the factory gate. However, for convenience, the appellant paid the outward freight charges and collected the freight amount as agreed upon by issuing commercial invoices. Though the appellant had collected higher freight from the customer they had paid lesser freight to the transporters on the basis of negotiations made with the transporters. A small profit was thus received by the appellant in regard to freight charges. The Department is of the view that the said amount also has to be included in the assessable value for discharging Central Excise duty.

3. The appellant has actually paid lesser freight to the transporters than that has been shown in the invoices. Only the amount that has been paid as charges to the transporters needs to be included in the assessable value. Thus the appellant has correctly discharged the excise duty on freight charges. To support this contention the Ld. Consultant relied upon the decision of the Honorable Supreme Court in the case of *Baroda Electric Meters Ltd. Vs Collector of Central Excise 1997 (94) ELT 13(SC).* The decision in the case of *Indian Oxygen Ltd. Vs Collector of Central Excise dated 1988 (36) ELT 723 (SC)* was relied to submit that the profit made on transportation charges need not be included in the assessable value since excise duty is not a tax on profits, but only on the actual value of the finished goods.

4. Learned Consultant prayed that the appeal may be allowed.

5. The learned AR Shri S. Bala Kumar submitted the findings in the impugned order.

6. Heard both sides.

7. The issue is whether the appellant has to include the surplus freight charges that have been collected from the customers in the assessable value for discharging the Central Excise Duty. Undisputedly, the freight charges which has been paid to the transporters has been included in the assessable value for discharging excise duty. The issue as to whether the amount that has been collected as surplus and is a profit in the hands of the appellant is required to be added to assessable value was considered by the Honorable Apex Court in the case of Indian Oxygen Ltd. (Supra). Honorable Apex Court observed as under:

> " 5. *The Tribunal noted that the appellant had not come forward to offer concrete evidence of actual freight charges etc. It, however, emphasised that the price at the factory gate is ascertainable. Assessment should, therefore, be made in terms of that price. Hence, there was no scope of deduction from that price. It, therefore, directed that if the ex-factory prices were not ascertainable and the goods were to be assessed ex-depot, then it would be for the manufacturer to claim on the basis of actual evidence. It remanded the case to the Asstt. Collector to refix the assessable-value as directed. It is necessary to reiterate the principle upon which the assessable-value will have to be determined in this. The cost of transportation from factory at Visakhapatnam and the depot at Vijayawada cannot be included normally in computation of the value. The value has to be computed under Section 4(1)(a) read with Section 4(4)(d)(i) of the Act, where the wholesale price is ascertainable at the factory gate, the question of transportation charges becomes entirely irrelevant. The cost of transportation from the factory gate to the place of delivery and transit expenses were not to be added to the wholesale price at factory gate for purposes of duty under the Act. In this case the price of the goods at the factory gate Visakhapatnam is known. It is clear from Section 4 that the delivery and collection charges have nothing to do with the manufacture as they are for delivery of the filled cylinders and collection of the empty cylinders. These charges have to be excluded from the assessable-value. Insofar as the loading charges Incurred for loading the goods within the factory are concerned, they are to be included in the assessable value, irrespective of who has paid for the same but the loading expenses incurred outside the factory gate are excludible. Duty is excise to a tax on the manufacture,*

not a tax on the profits made by a dealer on transportation."

8. The said decision was affirmed and applied in the case of Baroda Electric Meters Ltd. (Supra).

"*The Tribunal accepted the position that equalised freight was charged by the appellant from everyone, but proceeded to say that even though freight cannot be a part of the assessable value that wherever freight actually paid less that the amount collected by way of freight and transportation charges the difference was appropriated by the appellant and, therefore, the same would be a part of the assessable value. In our opinion, the Tribunal proceeded on an incorrect premise. It was clearly held in Indian Oxygen Ltd. v. Collector of Central Excise – 1988 (36) E.L.T. 723 (S.C) = 1988 (Supp.) SCC 658, that the duty of excise is a tax on the manufacturer and not a tax on the profits made by a dealer on transportation. In view of that the decision, the view taken by the Tribunal cannot be sustained.*
2. Consequently, the appeals are allowed and the impugned judgment of the Tribunal is set aside."

9. After appreciatingtheevidence and following the decisions as cited above we are of the considered opinion that the demand cannot sustain. In the result, the impugned order is set aside. Appeal is allowed with consequential reliefs, if any, as per law.

(Order Pronounced in the open court on 01.06.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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