(2024) 03 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No: 88660 Of 2013

Crompton Greaves Ltd APPELLANT

Vs

Commissioner Of Central Excise Mumbai ? III RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Central Excise Rules, 2002 — Rule 7, 7(1), 7(4)
Central Excise Act, 1944 — Section 4, 11A, 11AA

Citation : (2024) 03 CESTAT CK 0010

Hon'ble Judges : C J Mathew, Member (T);Ajay Sharma, Member (J)

Bench : Division Bench

Advocate : Aditya Chirtale, PK Acharya

Final Decision : Dismissed

Judgement

C J Mathew, Member (T)

1. The limited issue for consideration in this appeal of M/s Crompton Greaves Ltd, challenging recovery of Rs. 12,53,572 under section 11A of Central Excise Act, 1944, along with applicable interest thereon under rule 7(4) of Central Excise Rules, 2002 read with section 11AA of Central Excise Act, 1944, directed by the original authority that came to be upheld in order1 of Commissioner of Central Excise (Appeals), Mumbai-III on disposal of their appeal, is the propriety of resort to ?provisional assessment? under rule 7 of Central Excise Rules, 2002 against the wishes of the assessee and the legality of finalization therefrom under empowerment of that rule. The appellant is a manufacturer of ? transformers? that are typically made to order on customer requirements and which, owing to the time taken for completion of contractual fulfillment, are subject to price escalation during pendency of execution requiring consideration thereto having to be altered through supplementary invoices.

2. It is contended by Learned Counsel for appellant that, of the 59 nos. transformers despatched between 1st April 2010 and 31st March 2011, only

three cleared to M/s SPML Infra Ltd encountered a problem of resistance to billing for price variation built upon formula conceptualized by Indian Electrical Engineering Manufacturers Association (IEEMA) and consequent dispute with central excise authorities on duty liability. It was reported that their negotiations with the recalcitrant customer did not make headway compelling suit before courts and despite which the assessment, made ?provisional? on clearance of goods valued at Rs. 11958293 between January and March 2011, was taken up for finalization without prescribed ascertainment entailed upon judicial resolution. Learned Counsel argued that resort to ?provisional assessment? was unnecessary and that, though they were ready for regular assessment on ?transaction value?, as available and billed at the time of clearance, central excise authorities took it upon themselves not only to overlook that but also to impose an unrealistic ?transaction value? that should, at most, have been restricted to such as was determined as payable by the jurisdictional court.

3. Learned Authorized Representative submitted that the contracted terms made it evident that the only payment received by them was not consistent with ?transaction value? intended by section 4 of Central Excise Act, 1944 and it was contended that appellant had not put forth any evidence, either in the form of invoices or debit notes, to satisfy the original authority that this was so. It was argued that ?assessable value? and other aspects of ?transaction value? had been misconstrued by the assessee in their pleas before the lower authorities. Reliance was placed on the decision of the Hon?ble Supreme Court in Steel Authority of India Ltd v. Commissioner of Central Excise, Raipur [2019 (366) ELT 769 (SC)] and it was further contended that the decision of the Tribunal in Transformers & Rectifiers (I) Ltd v. Commissioner of Central Excise, Ahmedabad [2015 (321) ELT 518 (Tri-Ahmd], and upheld by the Hon?ble Supreme Court, makes it clear that liability for interest in such cases, as decided by the Hon?ble Supreme Court in Commissioner of Central Excise, Pune v. SKF India Ltd. [2009 (239) ELT 385 (SC)], could not be diluted even if circumstances determined that penalty could be.

4. On perusal of rule 7 of Central Excise Rules, 2002, we entertain no doubt that assessment may be rendered provisional only at the instance of, and subject to justification evident in request from, the assessee. Hence, the allegation of the assessee that jurisdictional central excise authorities did forced them in that direction is quite grave. However, on perusal of the correspondence cited by the appellant as evidence of such compulsion, we find it to be nothing but advice from the jurisdictional central excise authorities and not to amenable to construing in support of the allegation. No evidence of protest against resort to rule 7 of Central Excise Rules, 2002 is on record to conclude that provisional assessment lacked in initiative from the assessee. Though it does strikes us odd that the original authority, while invoking rule 7(4) of Central Excise Rules, 2002 pertaining to finalization of ?provisional assessment?, did find it necessary to resort also to section 11A of Central Excise Act, 1944 which, clearly, is empowerment for recovery of short-levy on goods regularly assessed to duty, we

also take note from

?6. Considering the above facts, assessee had requested vide letter dated 07.05.2010, to allow them to clear the goods from the factory under Provisional Assessment during the year 2010 to 2011. In view of their request, the Assistant Commissioner, Central Excise, Kanjur Division vide letter F.No. V/Tech-M/KDN/15/ Prov.Assess/Crompton (T)/2010 dated 25th June, 2010 ordered Provisional Assessment under Rule 7 (1} of Central Excise Rules, 2002, allowing the assessee to clear their goods to their customers for the period 01.04.2010 to 31.03.2011 on payment of Central Excise Duty thereon, on provisional basis, with certain terms and conditions, that:

(a) the assessee was directed to execute bond for Rs.15,89,00,000/- in Form B-2 with security (25%) of the bond amount in the form of cash deposits or Bank Guarantees immediately after receipt of the said order.

(b) The Bank Guarantee for the bond furnished should be kept valid by the assessee on their own till the finalization of the Provisional Assessment.

(c) The assessee shall furnish the details of costing data and along with relevant documents regarding clearances made by them with a period of six months from the date of communication of the order of provisional assessment.

(d) The assessee will pay the difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed along-with interest at appropriate rate as per provisions of Rule 7 of Central Excise Rules 2002.? in order of the original authority that a request was, indeed, made for ? provisional assessment? which must, in the absence of any evidence to the contrary, be presumed to be at the instance of the appellant.

5. Turning to the charge of incorrect, and hasty, finalization of assessment, it is on record that the appellant is in legal wrangle with the customer of the impugned goods over the correct price to be paid. Hence, it cannot be claimed that a ?transaction value?, as set out in section 4 of Central Excise Act, 1944, did exist when goods were cleared even if not quantifiable then which is the purpose of rule 7 of Central Excise Rules, 2002. It is also quite possible that this contractually determined ?value? may undergo downward revision as outcome of court proceedings but that would still not alter the consideration, as surrogate of value, that the appellant considered to be the ?transaction value? of the impugned goods. may not be adjusted upon outcome of the proceedings before court. It is on record that finalization was, indeed, deferred amid requests made to assessee for submission of pertinent documents which was not forthcoming. No justification has been offered for truncation of the value except that payment had not been received. That, however, is of no consequence to valuation for levy of duties of central excise.

6. Even after elapse of over a decade, the dispute over the consideration does not appear to have attained finality. The appellant, doubtlessly, is holding fast to

the stand that the revised value is the actual value. Assuming of a contrary stand to question the finalization of provisional assessment is not acceptable. Therefore, the claim of ?transaction value? having been overlooked to insinuate ? provisional assessment? that would have the outcome of charging duty on enhanced consideration, which included elements that did not form part of the price, does not appear to be tenable.

7. In such circumstances, we find no reason to interfere with the rejection of the appeal of M/s Crompton Greaves Ltd by the first appellate authority and, accordingly, dismiss the appeal.

