CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 52195 of 2014

[Arising out of Order-in-Original No. 01/CE/SRC/Comm/J&K/13-14 dated 19.02.2014 passed by the Commissioner, Customs & Central Excise, Jammu]

M/s Kangaro Industries Ltd **……Appellant**
B-xxx-6754, Focal Point, Ludhiana, Punjab 141010

VERSUS

Commissioner of CE, Jammu & Kashmir **……Respondent**
OB-32, Rail Head, Complex, Jammu & Kashmir-180012

AND

Excise Appeal No. 50855 of 2015

[Arising out of Order-in-Original No. 09/CE/SRC/Comm/J&K/14-15 dated 23.01.2015 passed by the Commissioner, Customs & Central Excise, Jammu]

M/s Kangaro Industries Ltd **……Appellant**
B-xxx-6754, Focal Point, Ludhiana, Punjab 141010

VERSUS

Commissioner of CE, Jammu & Kashmir **……Respondent**
OB-32, Rail Head, Complex, Jammu & Kashmir-180012

APPEARANCE:

Present for the Appellant: Shri Amar Pratap Singh and Shri Ankit Awal, Advocates

Present for the Respondent: Shri Aneesh Dewan, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60490-60491/2024

DATE OF HEARING: 11.07.2024
DATE OF DECISION: 27.08 .2024

PER S. S. GARG

These two appeals are directed against the two impugned orders dated 23.01.2015 and 19.02.2014 passed by the Commissioner of Customs and Central Excise, Jammu. The issue involved in both the appeals is identical, therefore, both the appeals are taken up together for discussions and disposal; for the sake of convenience, the facts of the appeal No. E/50855/2015 are taken up.

2. Briefly the facts of the present case are that the appellants are engaged in manufacture of staples in strips, falling under Tariff entry 83052000 ('impugned goods') of the Central Excise Tariff Act, 1985 and are clearing such impugned goods, on payment of appropriate excise duty in terms of Notification dated 06.02.2010. The said Notification, issued under Section 5A of the Central Excise Act, 1944 ('the Act'), provides exemption to specified excisable goods manufactured in a unit setup in the State of Jammu & Kashmir. This exemption is available for a period of 10 years to new units set up after 06.02.1010 or existing units having expanded installed capacity by not less than 25% or new investment leading to new employment.

2.2 Moreover, the procedure of availment of such exemption is also unique as it requires the manufacturer to first utilize entire CENVAT credit available, while discharging its central excise duty; and the remaining payable duty, if any, must be paid in cash through account current or PLA. The said duty paid through PLA is refundable in cash subject to value addition norms fixed and notified in the said

Notification. The impugned goods, manufactured by the Appellant are covered under S.No. 19 of the Notification, on which value addition is fixed at 36%. The Notification further provides that the manufacturer has an option not to avail such fixed rates and may apply to the Commissioner of Central Excise for fixation of a special rate, if the actual value addition at least 115% of the rate specified in Notification.

2.3 Since the actual value addition was more than 115% of the rate specified, i.e. 51.79%, the appellants applied to the Commissioner, Central Excise, Jammu ('Commissioner/ Respondent'), vide letter dated 25.09.2014, for fixing the special rate.

2.4 Further, vide the letter dated 19.11.2014, the Department asked for some clarifications and the appellant vide letter dated 25.12.2014 responded to the Department letter and revised its claim to 52.05%. After following the due process, the Ld. Commissioner vide the impugned Order, fixed value addition norms to 46.79% in terms of para 6(3) of the Notification and has denied benefit on the following grounds:

(i) ***Central Excise Duty*** - The entire excise duty is to be deducted while computing the amount, if value addition is in terms of para 6.5 of the Notification. The Appellant contention that only the excise duty paid from cenvat credit is to be deducted is incorrect. Excise duty is never considered as part of revenue generation for assessee or as

part of value addition activities. Thus, the refunds granted under the Notification cannot be considered as part of value addition.

(ii) ***Freight Outward*** - The point of sale is the factory gate as the Appellant is not stock transferring the goods to customer premises, which is an inter-state sale. Further, the freight paid is not a part of the sale value but is a separate activity, different from manufacturing done for profit or on a cost-to-cost basis. Therefore, freight and insurance are not to be included in the sale value.

(iii) Rebates and discounts are admissible deductions for the purpose of arriving at the sale value for fixation of special sales.

(iv) Butane oil and silver ink are not consumables and thus required to be added to the cost of raw material.

2.5 As per the appellant, the appellant in the present case is only praying for deciding the first two issues, issue (i) and (ii). The appellant is not contesting issue no. (iii) and (iv). Hence, the present appeal.

3. Heard both the parties and perusal of the material on record.

4. Ld. Counsel for the appellant submits that the impugned orders are not sustainable in law as the same have been passed without properly appreciating the facts and the law and binding judicial precedents in the appellants own case for the previous period. He further submits that the explanation provided under para 6(5) of the Notification provides that only excise duty paid is required to be

deduced from the sale value. Thus, the Notification provides for partial exemption of excise duty paid. He places reliance on Circular No. 682/73/2002-CX dated 19.12.2002 issued in regard to identical Notification No. 56/2002-CE dated 14.11.2002 which states that "Refund" envisaged in the notifications is not on account of any excess payment of excise duty by the manufacturers but is basically designed to give effect to the exemption. Ld. Counsel further submits that Notification No. 1/2010-CE has been issued under Section 5A of the Act which empowers the Government to issue notification granting exemption. Therefore, the goods cleared by appellant are exempt. The special mechanism under the Notification allows the Appellant to take credit and grants refund of duty paid through PLA. The portion of excise duty, which is refunded to the appellant is the duty which is considered as exempt. He further submits that this issue is no more res integra and has been settled by the tribunal in the appellants own case which is reported in *2018 (363) E.L.T. 543 (Tri.-Chan.).*

4.2 He further submits that aggrieved by the order of the Hon'ble Tribunal, Department filed CEA no. 2/2018 before Hon'ble High Court of Jammu and Kashmir. However, vide order dated 10.10.2018 the Department withdrew the appeal due to monetary limit.

4.3 As regards the second issue relating to fright and transit insurance, the Ld. Counsel submits that all the sales made by the appellant are FOR destination sales. The invoice issued by the appellant shown 'freight as PAID'. Therefore, when the appellant

cleared goods to the customer, the freight has already been paid. Furthermore, in the balance sheet 'outward freight' is shown under selling and distribution expenses. With regard to transit insurance the appellant has taken a Transit Insurance Policy which clearly showed that the insurance of the goods is to be done by the appellant. This issue has already been settled by this tribunal in the case of Kangaro Industries Ltd cited (Supra).

4.4 Ld. Counsel further submits that by relying upon the decisions in the appellant's own case cited (Supra) three more appeals bearing no. E/60942/2017, E/60001/2018, and E/60218/2018 were also decided by the Tribunal in favour of the appellant vide Final Order No. 60006-60008/2018 dated 06.01.2022 by relying upon the Order dated 31.10.2017.

5. On the other hand, Ld. DR, reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that in the present case only two issues are involved, whether the entire excise duty is to be deducted while computing the amount, if value addition is in terms of para 6.5 of the Notification and secondly freight and transit are part of the sale price as appellant's sales are for destination sales. Both these issues have been considered by the Tribunal in the appellant's own case. The first case is reported in 2018 (363) E.L.T. 543 (Tri.-

Chandigarh), the Tribunal has considered both these issues and has held in para 9 & 15 which are reproduced here in below:

9. We find that the procedure of payment of duty through PLA and subsequent refund of the same amount, are merely a mechanism to implement the area based notification. Admittedly, the clearance of the goods is under an exemption notification issued under sub-section (1) of Section SA of Central Excise Act, 1944. If the intent is to ascertain actual value addition, then this artificial mechanism of paying duty and subsequent refund, which is merely a mechanism to implement the exemption notification will require to be kept out of calculation. The Commissioner has clearly fallen into an error when he claims that refund is the exemption notification is an incentive and not value addition. We note that refund is not due to any excess duty paid but an extraordinary mechanism to implement the exemption notification. The refunded amount is the portion which is exempted. We also find that had there been plain exemption, then this problem would not have been arisen.

15. In view of foregoing, on the same analogy, we hold that when an amount of duty is refunded to the assessee, under Notification No. 1/2002- C.E., the same has to be deducted from the excise duty paid by the appellant while arriving at actual value addition.

7. Similarly, the second issue of freight and transit insurance has also been settled by the Tribunal in the appellant's own case cited

(Supra), the relevant findings of the order are reproduced here in below:

"16. On the issue of freight outward, the Commissioner has held that as per Accounting Standard-9, transaction relating to sale of goods is complete when seller of the goods transferred to the buyer the property in the goods for price. He has concluded that point of sale is the factory gate as the appellant is not stock transferring the goods to the customer's premises. Hence, freight and insurance is not be included in the sale value. On the basis of Section 4 of Central Excise Act, the Commissioner has held that the duty of excise is charged on transaction price at the place of removal and such place of removal is place of sale. Hence, outward freight will not form part of the sale value. We find that in this case the sales made by the appellants are on FOR destination basis. The invoices placed on record show that the freight on these goods has been paid by the appellant. Besides this, marine transit insurance policy placed on record also shows that the insurance of the goods is to be done by the appellant. It is settled law that in the context of Section 4(3) (C) when the goods are on FOR destination sales and the freight is paid by the seller and the goods are to be insured by the seller, then the seller cannot claim deduction of freight and insurance from sale price. In this regard, reference is invited to Hard Castle Petrofer Pvt. Ltd. v. C.C.E., Jammu [2014 (304) E.L.T. 576 (Tri.-Del.)J. We also find that in the balance-sheet for 2011-2012, the freight outward is shown under selling and distribution expenses. Hence, the freight outward is includible in the sale value.

16.1 In the case law of C.C.E., Shillong v. India Carbon Ltd. (supra) relied by the Revenue, the transportation charges upto buyer's premises were

reimbursed by the buyer. That is not the case in the present appeal. Hence, the ratio of the said case law is not applicable to the facts of this appeal.

16.2 In view of above, the finding of the Commissioner on this count is also not sustainable and is liable to be set aside."

8. Further, we find that against the decisions of the Tribunal dated 31.10.2017, the department filed appeal before the Jammu and Kashmir High Court but the same was withdrawn on the monetary grounds. We also find that the Tribunal vide Final Order No. 60006-60008/2018 dated 06.01.2022 by relying upon the earlier decision of the Tribunal disposed of three appeal of the appellant in their favour.

9. In view of our discussion above and by following the ratio of the above cited decisions (Supra) in the appellant's own case, we are of the considered view that impugned orders are not sustainable in law therefore, we set aside both the impugned order by allowing the appeal of the appellant with consequential relief, if any, as per law.

(pronounced in the open court on 27.08.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash