

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.42421 of 2013

(Arising out of Order-in-Appeal No. 214/2013 dated 27.8.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Sesa Sterlite Ltd.

Sterlite Copper Factory
SIPCOT Industrial Complex
Madurai Bypass Road, T.V. Puram Post
Tuticorin – 628 002.

Appellant

Vs.

Commissioner of GST & Central Excise

Central Revenue Building
Tractor Street, NGO A Colony
Tirunelveli – 627 007.

Respondent

APPEARANCE:

Shri Vishal Agarwal, Advocate for the Appellant
Smt. Sridevi Tartila ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40421/2023

Date of Hearing: 08.06.2023

Date of Decision: 12.06.2023

Per M. Ajit Kumar,

This is an appeal filed by M/s. Sesa Sterlite Ltd. Tuticorin against Order in Appeal No. 214/2013 dated 27.8.2013 passed by Commissioner of Central Excise (Appeals), Madurai.

2. The facts of the case are that M/s. Sesa Sterlite manufacture copper anode in their smelter at Tuticorin and transfer the same to their own unit at Silvasa (Dadra & Nagar Haveli) and there is no sale of the product to any other independent buyer. Therefore, for assessment for copper anode, the central excise ad-valorem value has

to be arrived at under the provisions of Central Excise (Valuation) Rules, 2000 and by following Cost Accounting Standards - 4 (CAS-4). The goods are hence cleared provisionally and the value finalized at a later date. The learned adjudicating authority in his Order in Original dated 28.5.2012 has finalized the provisional assessment for the period from November 2002 to March 2003 by fixing the value of copper anode at Rs.94,594/- per MT. Aggrieved by the order, the appellant has taken up the matter before the Commissioner (Appeals) who vide the impugned order has upheld the Order in Original and rejected the appeal filed by the appellant. The appellant has assailed the impugned order before us.

3. No cross-objections have been filed by the department.
4. We have heard Shri Vishal Agarwal, learned Advocate for the appellant and Smt. Sridevi Taritla, learned ADC (AR) for Revenue.
5. The learned counsel for the appellant has stated that much water has flown since the issue of the impugned order and that they are now not disputing the value fixed. He drew our attention to the table at para 5 of the Order in Original dated 28.5.2012 which shows the provisional values of copper anode declared by them under Rule 8 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000.

November 2002	Rs.1,07,000/- per MT
December 2002	Rs.1,02,000/- per MT
January 2003	Rs.90,000/- per MT
February 2003	Rs.94,000/- per MT
March 2003	Rs.94,000/- per MT

He stated that as noticed from the table the values adopted by them during different periods have been higher than the value as finalized in the Order in Original. The learned counsel prayed for finalizing the

pending assessments by setting off the excess payment for the earlier periods against any short-payment of duty and only the balance amount, if any, be demanded.

6. The learned AR Smt. Sridevi Taritla has submitted that since the appellant has accepted the value as finalized in the impugned order, no issue survives to be decided by the Hon'ble Tribunal. A fresh prayer at this stage may not be maintainable. She also stated that the appellant would have taken CENVAT credit on the higher provisional values, that needs to be verified by the department and reversed. All these matters need to be considered if the fresh plea of the appellant is to be decided. She hence prayed that the appeal may be dismissed.

7. We have gone through the appeal and heard both the parties. We find that the prayer in the appeal was for setting aside the impugned order. Now the appellant's counsel has orally accepted the value as determined in the impugned order. He only requests for netting the excess payment against the amounts short-paid before the department raises a demand, if any. They have not given any written application amending their plea and making a fresh prayer, perhaps knowing that it is not maintainable. It was pointed out to the appellant's counsel that the prayer in the appeal was to set aside the impugned order and what they were stating now was a fresh plea. Further for any appeal to be taken up there must be an existing dispute involving a question of law or fact, on which the existence or extent of a legal right depends. By their acceptance of the impugned order the earlier dispute does not survive. We find that the issue now submitted by the appellant is what may arise post the finalization of the demand,

if any, by the department, based on the impugned order and is currently not the subject matter before us.

8. On the basis of the discussions above, we find that the issue of valuation being settled, no issue remains to be decided by us. Hence the impugned order is upheld. The appeal is dismissed.

(Pronounced in open court on 12.6.2023)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex