

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No. 52145 of 2022 (SM)

(Arising out of Order-in-Appeal No. 32(SM)/CE/JPR/2022 dated 09.05.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur).

M/s. Surya Metalloy Pvt Ltd
Sanod Road, Deratu, Nasirabad,
Ajmer (Raj.)

Appellant

Versus

**Commissioner (Appeals) of Central Excise
and Central Goods & Service Tax,**
NCR Building, Statue Circle, C-Scheme,
Jaipur (Rajasthan) - 302 005.

Respondent

APPEARANCE:

Shri Bipin Garg & Ms. J. Kainaat, Advocates for the appellant.

Ms. Tamanna Alam, Authorised Representative for the respondent.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50743/2023

DATE OF HEARING: 14.03.2023

DATE OF HEARING: 02.06.2023

Anil Choudhary:

The issue involved is whether Central Excise duty of Rs. 43,87,461/- have been rightly demanded alongwith interest and equal amount of penalty under Section 11AC of the Central Excise Act.

2. The brief facts of the case are that during the course of audit, it was noticed that the appellant holder of Central Excise registration No. AAQCS6094REM001, engaged in the manufacture of MS Ingots falling under Chapter heading 72061090, appeared to have short paid Central

Excise duty of Rs.86,45,221/- during FY 2015-16, in as much as there was an apparent difference of Rs.6,91,61,767/+ in total value of goods sold as shown in their balance sheet in comparison to the value shown in ER-1 returns. It was noticed that the appellant had shown value as Rs.27,24,96,537/- in the ER-1 returns, whereas in the balance sheet the value was shown as Rs. 34,16,58,304/-. A show cause notice was issued to the appellant, proposing therein recovery of Central Excise duty of Rs.86,45,221/- alongwith interest and imposition of penalty under Section 11AC of the Act.

3. The appellant contested the SCN by filing reply dated 15.12.2020 explaining the apparent difference in the turnover shown in the balance sheet as well as in the ER-1 returns, as regards the goods manufactured and sold;

Particulars	Amount Rs.
Revenue from operations as per Financial Statements (Balance sheet)	34,16,58,304
Less: Excise Duty included in above Revenue	(3,40,62,078)
Less: Non-excisable Turnover of Commodity Operations included in above revenue	(3,50,99,689)
Net Revenue for sale of goods on which Excise duty is applicable and reported in ER-1	27,24,96,537

4. Further the reconciliation was explained as follows;

"Sale of products" as per B/s (I)	34,16,58,304
Turn-over from "commodity operations" as per B/s (II)	5,01,61,164
Excise duty as per B/s (III)	3,40,62,078

Revenue from operations as per B/s (Net, IV=I+II-III)	35,77,57,390
Assessable Value (V=I-III)	30,75,96,226
Figure wrongly shown in "sale of products" instead of "commodity operations" (VI)	3,50,99,689
Net value as per assessee & shown in ER-1 (VII=V-VI)	27,24,96,537

4.1 This was explained by the Appellant through letter dated 05.09.2018, duly supported by CA Certificate also. Thus, following is the summary of difference as pointed to Department with reference to SCN:

S.No.	Amount of difference Reason of difference as per SCN	Reason of difference
1	Rs.3,40,62,078/- (i)	This is the amount of excise duty appearing in Balance Sheet and tallied with ER-1 Return for the Year 2015-16 as per month wise summary enclosed as Annexure-6
2	Rs.3,50,99,689/- (ii)	This is profit from sale and purchase in commodity operations billed to M/s Achintya Commodities, M/s Shetala Mata Commodities Pvt Ltd, and M/s Subh Commodities Pvt. Ltd. Party wise details are given in separate sheets.
	Rs.6,91,61,767/-	Total (apparent difference in T.O. of Excisable goods)

4.2 The Appellant submits that first differential amount pertains to the excise duty, appearing in Turnover in the Financial Statements, and again reduced separately under 'Excise Duty column' on which no demand of excise duty can sustain, as it is the duty charged and recovered from the customers and paid to the Government, and is not a consideration received from the customers against any sale of goods. Hence, out of Rs. 6,91,61,767/-, an amount of Rs. 3,40,62,078/- is

clearly not subject to excise duty, and demand to that extent is completely erroneous and cannot sustain.

4.3 The appellant submits that the second differential amount pertains to profit on sale and purchase of commodity operations, which was inadvertently reported in the 'Sale of products' column in the Financial Statements, instead of disclosing separately as Turnover from commodity operations. From the above tabulations, it can be summarized that the total net sales from commodity operations amounts to Rs. 8,52,60,853/- out of which Rs. 3,50,99,689/- was wrongly reported in 'Sale of Products' column and Rs. 5,01,61,164/- was disclosed separately in Final account/ Balance sheet. The party wise details of net sales of commodity of Rs. 8,52,60,853/- alongwith supporting documents are as follows:

S.No.	Party Name	Amount (Net of Purchases)	Documents enclosures
1	M/s Achintya Commodities	4,94,11,699/-	(a) Copy of sales ledger Accounts of party in our books for the year 2015-16 (Annexure-7) (b) Sample copies of Sales bills for the year 2015-16 (Annexure-8) (c) Corresponding sample copies of purchase bills for the year 2015-16 (Annexure-9) [all bills available]
2	M/s Shetala Mata Commodities Pvt Ltd	45,00,838/-	(a) Copy of sales ledger Accounts of party in our books for the year 2015-16 (Annexure-10) (b) Sample copies of Sales bills for the year 2015-16 (Annexure-11) (c) Corresponding sample copies

			of purchase bills for the year 2015-16 (Annexure-12) [all bills available]
3	M/s Subh Commodities	3,04,00,120/-	(a) Copy of sales ledger Accounts of party in our books for the year 2015-16 (Annexure-13) (b) Sample copies of Sales bills for the year 2015-16 (Annexure-14) (c) Corresponding sample copies of purchase bills for the year 2015-16 (Annexure-15) [all bills available]
4	Sundry entries for brokerage, Commodities transaction tax, Transaction charges etc,	9,48,196/-	Copies of Ledgers accounts enclosed as Annexure-16
	Total	8,52,60,853/-	

4.4 Aforementioned details supported by documents clearly establishes that difference of Rs.3,50,99,689/- relates to net profit of commodities operations, which is part of total profit of commodity operations of Rs. 8,52,60,853/- The Appellant further reiterates to submit that they have all the documents available with them, and if required, can be furnished. The transaction in purchase and sale of commodity (Trading) is not liable to excise duty, as the same is merely trading in Commodities and not manufacturing activity of the appellant. The Central Excise duty is leviable on the excisable goods manufactured or produced in India as per Section 3 of Central Excise act, 1944.

5. It was further urged that even at the audit stage, the appellant had explained the apparent difference with supporting documents and

also at the pre SCN stage. Appellant had also produced the relevant ledgers and invoices before the department. Appellant had also produced the CA certificate in support of the contentions. It was explained that the apparent difference is due to clerical error and the same is fully explained and reconciled from the books of accounts maintained in the ordinary course of business.

6. The O-I-O was adjudicated on contest. The Adjudicating Authority agreed that out of the differential amount of 6,91,61,767/- amount of Rs. 3,40,62,078/- is on account of Central Excise duty forming part of the excisable turnover and accordingly dropped the demand of Rs. 42,57,760/-.

7. As regards the balance amount of Rs. 3,50,99,689/- which was explained as pertaining to profit on sale and purchase of commodity operations, which have inadvertently been reported as sale of products. The same is part of the total profit commodity of operations, Rs. 8,52,60,853/-. The said amount of Rs. 3,50,99,689/- plus amount already shows as profit from commodity operations in the balance sheet Rs. 5,01,61,165/-, total Rs. 8,52,60,952/- which is the profit from operations in commodity trading, as morefully explained hereinabove with reference to supporting evidences. The Adjudicating Authority rejected this contention observing that the submissions were not supported by any corroborating evidence, further observed that under such situation of there being error in the balance sheet, appellant was required to get their balance sheet amended in terms of Section 131 of the Companies Act, 2013 which they failed to do. Further observed that

on scrutiny of ledger and invoices claimed to be relating to commodity transactions submitted by them, it appears that the same do not establish that the difference of Rs. 3,50,99,689/- was related to sale of commodity. Accordingly, the Adjudicating Authority was pleased to confirm the demand alongwith penalty on the same.

8. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide impugned Order-in-Appeal have been pleased to reject the appeal, agreeing with the findings of the Adjudicating Authority.

9. Being aggrieved the appellant is before this Tribunal *inter alia* on the grounds relied upon before the Commissioner (Appeals). It is further urged that the Commissioner (Appeals) have rejected the appeal in a mechanical manner, though he has observed in para 6.1 of the impugned order that the appellant have produced ledger of commodity trading account, which shows closing balance as 8,52,60,953/-. The appellant have also produced ledger account of all the three commodity brokers namely i) M/s Achintya Commodities, ii) M/s Shetala Mata Commodities and iii) M/s Subh Commodities, through which the appellant have traded in commodities. Further ledger for transaction charges on commodities, brokerage on commodity transaction and commodity transaction tax details have also been produced.

10. Commissioner (Appeals) observed as follows:-

"6.1 The appellant has though contested that total net sales from commodity operations was Rs. 8,52,60,853/-, out of which the disputed amount of Rs.3,50,99,689/- was wrongly reported under 'Sales of Products' and remaining amount was shown separately. I find that the appellant has produced ledger of

commodity trading account, which shows closing balance as Rs.8,52,60,953/- The appellant has also produced ledgers for all the three commodity brokers namely M/s Achintya Commodities, M/s Shetala Mata Commodities Pvt. Ltd and M/s Subh Commodities, through which the appellant traded in commodities and ledgers for 'Transaction Charges on Commodities', 'Brokerage on Commodity Transaction' and 'Commodity Transaction Tax'. From the ledgers produced by the appellant it is evident that the turnover from commodity operations was Rs. 8,52,60,853/-. I further find that in the balance sheet of the appellant for the year 2015-16, the turnover from commodity operations had been mentioned as Rs.5,01,61,164/- under the Note 17 'Revenue from operation', which is less by Rs.3,50,99,689/- from the actual figure of Rs. 8,52,60,853/-. The difference corroborates with the amount on which Central Excise duty has been demanded and confirmed in the case."

11. The Commissioner (Appeals) have although appreciated the facts and not found anything untrue have erred in observing that the appellant have failed to produce documentary evidence to establish that the disputed income (escaped turnover) is related to commodity trading.

12. Further, learned Counsel for the appellant relied on the following rulings;

- i. Premier Plastics vs. commissioner of C.Ex., Kanpur [2010(253) E.L.T. 117(Tri.-Del.)]
- ii. Coca Cola (I) Pvt Ltd vs. Commissioner of Service Tax, Delhi [2015 (40) STR 547 (Tri.Del)]
- iii Freightlinks International (I) P Ltd vs. CCE, C & ST, Cochin [2014(33) STR 711 (Tri.Bang)
- iv Rungta Projects Ltd. vs. Commissioner of C.Ex., Allahabad [2011 (24) STR 495 (Tri.-Del)
- v Reynolds Petro Chem Ltd vs. CCE & ST-Surat-I [2022(7) TMI 656-CESTAT Ahmedabad]

13. Learned AR for revenue relies on the impugned order.

14. Having considered the rival contentions, I find that appellant have lead sufficient evidence and explained the apparent difference. Both the

Court below have not found anything erroneous or misgiving in the cogent explanation given by the appellant corroborated by books of accounts and vouchers. Undisputedly, appellant has profit from trading in commodities Rs. 8,52,60,853/- during the period. Further, the contentions are also supported by the certificate of the Chartered Accountant. I further find that there is a categorical finding recorded by the Commissioner (Appeals) in favour of the appellant to the effect that the appellant have properly explained the apparent difference supported by books of accounts- commodity trading account, ledger etc. Thus, in spite of finding that the apparent difference is properly reconciled, still the Commissioner (Appeals) have rejected the appeal by some irrelevant observations without there being any finding of fact against the pleadings of the appellant.

15. In view of my aforementioned findings and observations, I allow the appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits, in accordance with law.

[Order pronounced in the open court on 02.06.2023]

(Anil Choudhary)
Member (Judicial)

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