

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

**Excise Appeal No. 76598 of 2017**

(Arising out of Order-in-Original No. 03/Commr/CE/ADJN/KOL-V/2017 dated 26.05.2017 passed by the Commissioner of Central Excise, Commissionerate Kolkata-V Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road Shantipally Kolkata-700107)

**M/s. Shree Durga Industry,**  
Vill- Sanpukur, Khanberia Main Road,  
P.O. Chatta Kalikapur, P.S. Maheshtala,  
Dist. South 24 Parganas, West Bengal-700140

**: Appellant**

**VERSUS**

**Commissioner of Central Excise, Kolkata-V  
Commissionerate,**

GST Bhawan Kendriya Utpad Shulk Bhawan,  
180, Rajdanga Main Road Shantipally Kolkata-700107

AND

**Excise Appeal No. 76599 of 2017**

(Arising out of Order-in-Original No. 03/Commr/CE/ADJN/KOL-V/2017 dated 26.05.2017 passed by the Commissioner of Central Excise, Commissionerate Kolkata-V Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road Shantipally Kolkata-700107)

**Shri Goldi Sethi,**  
**Partner of M/s. Shree Durga Industry,**  
Vill- Sanpukur, Khanberia Main Road,  
P.O. Chatta Kalikapur, P.S. Maheshtala,  
Dist. South 24 Parganas, West Bengal-700140

**: Appellant**

**VERSUS**

**Commissioner of Central Excise, Kolkata-V  
Commissionerate,**

GST Bhawan Kendriya Utpad Shulk Bhawan,  
180, Rajdanga Main Road Shantipally Kolkata-700107

**: Respondent**

**APPEARANCE:**

Shri Indranil Banerjee, Advocate  
Shri Mukul Agarwal, Advocate for the Appellant  
Shri A. Mukherjee, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)  
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NOs. 75246-75247/ 2026**

DATE OF HEARING: 20.11.2025  
DATE OF PRONOUNCEMENT: 17.02.2026

**ORDER: [PER SHRI R. MURALIDHAR]**

A Show Cause Notice dated 05.05.2016 was issued by the Additional Directorate General DGCEI proposing demand of Central Excise duty Rs.3,32,10,665.00 along with interest on the clearance of Folding Cot with or without Plywood Top for the period 2011-12 to 2014-15 (upto May 2015) and to impose penalty on the appellant firm and Shri Goldi Sethi. The SCN was issued by invoking the extended period provisions. The appellants submitted their replies to Show Cause Notice and also appeared for Personal Hearing. By the Order in Original dated 26.05.2017 the Commissioner of Central Excise, Kolkata -V Commissionerate confirmed the demand of Central Excise duty along with interest and imposed penalties on the appellant firm and the Shri Sethi. Being aggrieved, the appellants have filed the present appeal before the Tribunal.

2. Since both the appeals are arising out of common order, they have been taken up together for disposal.

3. The Ld. Counsel appearing for the appellant firm submits that the appellant is a small scale unit listed in Directorate General of Suppliers and Disposal (DGS&D), Government of India, Rate Contract for supplying Folding Steel Cot frame ( in short Folding Cot ) with or without Plywood Top, Picket Angles and Barbed Wires. On 02.06.2015 the

Officers of the Directorate General Central Excise Intelligence (DGCEI), Kolkata Zonal Unit visited the premises of the appellant and seized several records and documents. They have also recorded statements of various persons including the appellant no. 2 herein. He further submitted that the fabricated "Folding Cot Steel Frame" is not "manufacture" within the meaning of 2(f) of the Central Excise Act, 1944 and therefore it liable to be set aside on this ground alone. However, after taking opinion from experts on this issue, the appellant admitted in reply to Show Cause Notice that if the fabrication of Folding Cot would be treated as "manufacture" then the demand of duty would come to Rs. 58,59,681, after considering the SSI exemption benefit.

4. The second grievance of the appellant is that the demand of duty on Folding Cot has been made by the Revenue by adding the value of the Plywood Top, which is not legally sustainable. It is submitted that the fabrication of Folding Cot is an independent manufacturing activity. The Plywood Top is procured from the open market and supplied to Indian para military forces, as per their requirement. The attention of the Bench is drawn to the photograph of Folding Cot and the Ld Counsel explained about the Folding Cot as well as Folding Cot with Cotton Tape. It is submitted that the demand of duty is raised on the value of Folding Cot along with Plywood Top holding with the Folding Cot, a part and parcel of the goods, which is totally incorrect and contrary to the evidence. In this context, the he drew the attention of the Bench to the relevant portion of the Show Cause Notice, Tax Invoices, Consignment Note, Inspection Note, DGS&D Rate Contract to establish that they have cleared the Folding Cot with or

without Plywood Top. He has also cited various Case Laws in support of his submissions. It is also submitted that the appellant voluntarily declared the duty and therefore the extended period of limitation issue is mere academic one and the penalties are liable to be set aside. It is submitted that there is no intention to evade duty as the entire supply made to DGS&D authority, Government of India under the bonafide impression that fabrication of Folding Cot is not "manufacture" and no duty is leviable.

5. The Learned Authorised Representative on behalf of the Revenue reiterates the findings of the Adjudicating authority. He drew the attention to the relevant portion of the Adjudication Order to show that the appellant cleared the Folding Cot with Plywood top. It is submitted that that Folding Cot and Plywood Top are part and parcel of the goods and the value of Plywood Top would be clubbed while determining the duty. He also referred the tax invoices, consignment note as mentioned in the Adjudication Order by the Adjudicating authority

6. Heard both the sides and perused the appeal papers and documentary evidence placed before us. After completion of the hearing, the appellant submitted a "Short Notes of Arguments" which have taken on record.

7. We find that the contention of the appellant is that they procured M.S. Black Pipe from the market and fabricated by way of cutting, bending by hydraulic press machine, welding it legs with steel frame as per DGS&D rate contract. It is contended that the process of fabrication of cutting, bending and welding to M.S. Black Pipe would not amount to manufacture within the meaning of the definition

“Manufacture” under 2(f) of the Central Excise Act, 1944. The appellant is a listed DGS&D Rate Contractor and supplied Folding Cot with Plywood Top to the Indian Para Military Forces, e.g. BSF, CISF etc. It is submitted that the appellant was under impression that Fabrication is not excisable goods and they were also entitled to SSI exemption on a clearance value upto Rs. 150 Lacs as applicable during the material period. We find that the process undertaken by the appellant has resulted in a distinct and a new product, which is marketable as ‘folding cot’. Therefore, we take the view that the ‘folding cots’ get manufactured at the end of the appellant and the same would be exigible to payment of Excise Duty. On a specific query from the Bench, the Ld. Advocate fairly submitted that they have crossed the exemption SSI limit, which fact is recorded in the Adjudication Order. We find that the appellant has admitted the duty liability on clearance of Folding Cot after considering the SSI exemption limit, on which the duty leviable is Rs. 58,59,681.00. Even in the Memorandum of Appeal before this Tribunal, this is an admitted fact by the appellant.

8. Therefore, we do not find force in the submission of the Ld. Advocate regarding the excitability of Folding Cot at the stage of hearing of appeal before us. Hence, we hold that folding cots are manufactured products in terms of Section 2(f) of the CEA 1944 and the duty liability worked out to Rs.58,59,681 is required to be paid along with interest.

9. The second contention of the appellant is regarding the addition of the value of the Plywood Top with the value of Folding Cot. The Adjudicating

authority observed that the Folding Cot and Plywood top are part and parcel which were cleared from their factory and therefore the value of the Plywood Top will be added with the value of Folding Cot. The Revenue has proceeded on the basis of some DGS&D Rate Contract, Inspection Report, Invoices etc. But, it is seen from the Adjudication Order that in some cases the appellant had supplied Plywood Top separately under separate invoices. We have perused photographs of the Folding Cot, Folding Cot with Plywood top as well as Folding Cot with Cotton Tape. The Learned Advocate submitted that initially the appellant cleared Folding Cot only and the Indian Para Military Forces used the Cotton Tape on the Folding Cot, but to avoid slipping disc, they requested to supply Plywood Top to use on the Folding Cot. As such, the appellant purchased Plywood Top from the market and supplied to the para military forces with Folding Cot. It appears from the Show Cause Notice that the appellant cleared Folding Cot with or without Plywood Top. We have gone through the specimen copy of the Rate Contract, Inspection Report, Transport documents as submitted in the Written Submission that the appellant supplied Folding Cot Steel frame as per schedule to the Rate Contract. The Learned Advocate drew the attention of the Bench an undertaking dated 08.11.2011 given to the DGS&D in respect of declaration regarding outsourcing of Plywood Top "with Folding Cot Steel Frame". The relevant portion of the said undertaking is reproduced below:

*"Dear Sir,*

*With reference to said subject, we hereby declare that we manufacture the Folding Cot*

*Steel Frame as per R/C specification & drawing and supply the same item against Folding Cot Steel Frame without Plywood Top R/C Item No. 1.*

*For Item No.2 of R/C order i.e Folding Cot Steel Frame Fitted with Plywood Top, the steel Folding Cots are manufactured by us in our works as per R/C specification & Drawing and we procure Plywood Tops from Plywood manufactures and Traders as per our requirement and specification laid down in R/C.*

*Thus, we do confirm & make this undertaking that the Folding Cots manufactured by us & procure the plywood Tops to be fitted on the Folding Cots which are strictly as per R/C specification & supply order thereof.*

*This undertaking will remain valid for all subsequent RCs and SOs. Submitted for approval please"*

10. We have gone through the Contract, copies of the Invoices raised by the appellant, their purchase invoice. Some samples are reproduced below:

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No. 89/12-13 **CHALLAN** Original Copy

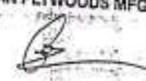
**M/S. ASIAN PLYWOOD MFG. CO.**  
 Bamangachi More, Jessore Road, Barasat, Dist. 24 Parganas (N)  
 (O) 033-2584 2377, (M) 9874682257

To Sae Durga industry Date 13/3/2018  
 M/s. Paikun Pachatta Kali Kaper TIN No. 19859202043  
Kal-1971 Date 03/08/09

RECEIVED THE FOLLOWING GOODS ON GOOD ORDER & CONDITION.

Sl. No.	Qty.	DESCRIPTION
		"C" Grade commercial ply. <u>3mm</u> <u>2.14 x 9.2 = 382 P</u>
		Party vat No-19635806004

Tax Invoice: 89/12/13 Date 13/3/2018  
 Challan No: 89/12/13 Date 13/3/2018  
 Order No: \_\_\_\_\_ Date \_\_\_\_\_  
 Vehicle No: WB-41D-7760

M/S. ASIAN PLYWOODS MFG. CO.  


Annexure - A5

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**Shree Durga Industry**

**TAX INVOICE**

Approved Defence Contractor

Office : 4, Tattva Lane, Flat No. 5B, 5th Floor, Kolkata - 700 016  
 Tel : 033-22822550 / 2585 Fax : 033 22822551 Mobile : 9830222892  
 Email : shreedurgaindustry12@gmail.com

Invoice No. SDI/2013-14/108

Challan No. 397

Your Order No. 1-17016/PROV/1054/HQNDRF/2013

Messrs COMMANDANT 3rd NDRF BN, CUTTACK, P.O. MUNDALI

DIST CUTTACK, ORISSA

Date 01/09/2014  
 Date 18/01/2014  
 Date 03/10/2013

Sl. No.	Qty.	Description of Goods	Rate	Amount Rs.	P	
① ITEM NO. 2	144 NOS.	M.S. PIPE 2.5 mm / 5.6 mm AS PER R/C	903.10 Per m.	134561	90	
Q/R/C	549 NOS.	PLYWOOD TOP TO BE FITTED AS PER R/C	1164.13 Per m.	639107	37	
		TAX INCLUSIVE	₹0	773669	27	
		AGAINST I/NOTE NO: KOL/ACN/00080 /0010/1P DT: 02/01/2014 By Levy No: AP37X5848 C/NOTE NO: C-PP/623/13-14	₹0	0	27	
				773669	00	
Rupees <u>Seven Lacs seventy three thousand six hundred sixty nine only.</u>				Grand Total	773669	00

VAT No. : 19635836004  
 CST No. : 19635836295

E. & O. E.  
 For Shree Durga Industry



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**SCHEDULE - A**

Contract No.-FC(SF)/HW-3/RC-P10C0000/0513/43/05096/760  
 Dated 30-AUG-12 For the Supply of FOLDING COTS (STEEL FRAME)

2. Advance Rate Contract No.:-  
 Dated

3.(a) Name and Full Address of the Firm :-

SHREE DURGA INDUSTRY  
 4, Tottee Lane,

Kolkata  
 WEST BENGAL - 700016  
 Tel. No. - 033-22522550/2585 (M)9830222892  
 Fax - 033-22522551  
 Email - sethigoldi@indiatimes.com

(b) Name and Full Address of Manufacturer :-

Vill: Sanpukur, P.O. Chattakalikapur, P.S. Maheshtala,  
 24 Pgs (S).

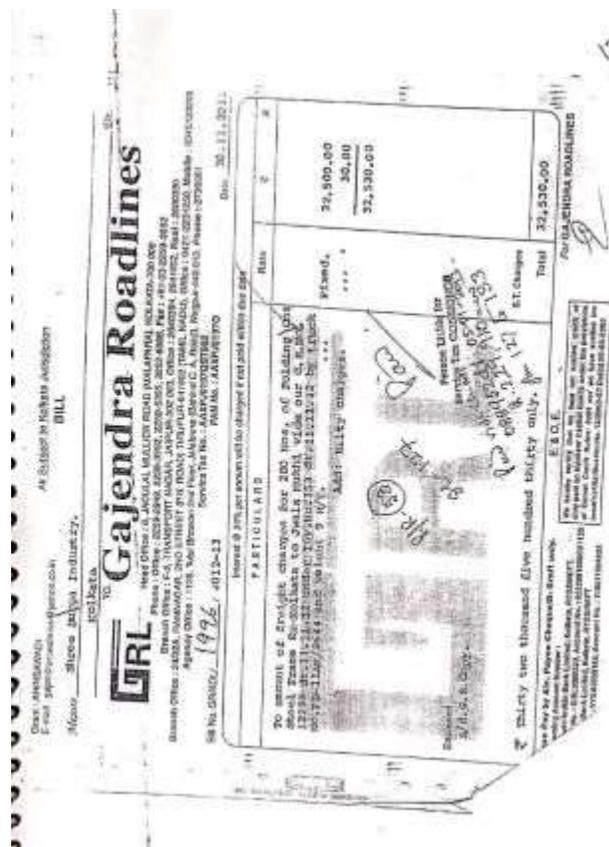
(c) Brand:

4. Validity of Rate Contract: 30-AUG-12 To 31-AUG-13

5. Description of Item, Specification, Unit, Rate

Item Model No. No.	Store Description					Unit	Rate (in Rs)
		ED	ED%	CST/VAT	CST/VAT%		
1	FOLDING COT STEEL FRAME			DESCRIPTION: As per Schedule		NOS.	842.44 Rs. EIGHT HUNDRED FORTY- TWO AND PAISE FORTY- FOUR ONLY
		N.A		Excl.		13.5	
3	Freight Charges for Folding Cot Steel Frame (Plain Area)			DISTANCE SLAB: From 51KM to 250KM	No./Km	.08	Rs. AND PAISE EIGHT ONLY
		N.A		N.A			
4	Freight Charges for Folding Cot Steel Frame (Plain Area)			DISTANCE SLAB: From 251KM to 500KM	No./Km	.08	Rs. AND PAISE

11. The above documents show that the appellant is purchasing the plywood top from the normal traders and the same is 'C' grade commercial plywood top. They are billing separately for their Folding Cot and the Plywood tops. No Excise Duty is being charged in the Invoice. The Contract specifies the rate per piece of Folding Cot Steel frame, without any reference to any Excise duty payable. This shows that both the seller [the appellant firm] and the buyer [Indian Military] have treated the Folding Cot as 'non-excisable' goods as per their interpretation.



Shree Durga Industry,  
Kolkata.

# Gajendra Roadlines

Head Office : 6, JADUAL MULLICK ROAD (MALAPARA), KOLKATA-700 006  
 Phone : Office : 2259-2949, 2259-3982, 2259-5395, 3252-8866, Fax : +91-33-2259-3992  
 Branch Office : F-2, TRANSPORT NAGAR, JAIPUR-302 003, Office : 2640394, 2641802, Resl : 2600380  
 Agency Office : 24/32A, RAMNAGAR, 2ND STREET (P.N. ROAD) TIRUPUR-641602 (TAMIL NADU), Office : 0421-2231250, Mobile : 9345129260  
 Service Office : 1135, Tulsi Bhawan 2nd Floor, Jalapura (Behind C. A. Road), Nagpur-440 012, Phone : 2736561

Bill No. GRKOL/245/2012-13  
 PAN No. : AAXPJ0197Q  
 Date 31.1.2013

Interest @ 24% per annum will be charged if not paid within due date

### PARTICULARS

To amount of freight charges for 801 Nos. of Plywood to be fitted Ex-Kolkata to Gitanagar vide our G.R. No. 13026 dt.23.1.13 under Inv.No.189 dt.23.1.13 by truck No. PB-23K/138 for 20 K/T. guarantee. Add: Bilty charges.

Rate  
 @ Fixed. 44,000.00  
 \*\*\* B 30.00  
**44,030.00**

*Handwritten notes:*  
 Enclosed G.R. Copy  
 10/1/13  
 ENI  
 28  
 20/1/13  
 20/1/13

Season Ticket No 14  
 Service Tax CONCESSION

S.T. Charges	Total	44,030.00
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₹ Forty four thousand thirty only.

Please Pay by A/c. Payee Cheque/D. Draft only.  
 Our Roaming Bank Account Numbers :  
 1. ICICI Bank Ltd. / Karstar Branch, Kolkata - 700 007  
 RTGS Code No. : ICIC0006279, Account No. : 627900513025  
 2. W.B. State Bank Limited, Kolkata, RTGS/REFT  
 IFSC Code No. : WBSA0005188, Account No. : 616011004636

E. & O. E.  
 We hereby certify that we have not availed credit of any paid on Input tax Credit under the provisions of Central Credit Rules, 2002 nor we have availed the benefit of Input tax credit 122003-51 dated 21-08-2003

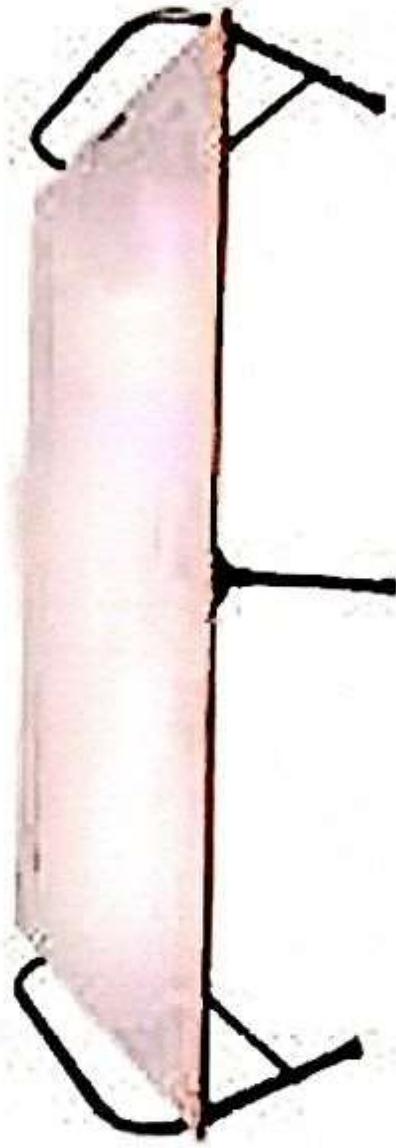
FOR GAJENDRA ROADLINES

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12. From the above freight invoices, it is observed that the Folding Cots and the Plywood Tops are being separately despatched to the destination.



19 ©





13. From the above pics, we observe that the Folding cot manufactured by the appellant is open and can either be fitted with the Plywood top or can be knitted by way of cotton tape.

14. The above details clarify that:

- (a) The Plywood top is not a specialized item and is available with all the traders. Hence, cannot be said to be an item which could have been supplied only by the appellant.
- (b) The fixing up of the upper layer on the blank MS Folding cot is purely optional. The plywood top can be fixed, if rigid surface is preferred and cotton tape knitting can be used if flexibility is preferred.

15. We have already held that the appellant had been manufacturing Folding Cot at their factory which is classified as excisable goods, at their factory premises. Plywood Tops is the outsourced trading goods for use as per requirement as can be seen from the purchase invoice. From the photographs and documents perused, it is clear that Plywood Top is an optional item. We also sought clarification from the Ld. Advocate as to whether the plywood tops supplied by the appellant are a specific specialized item, which can be supplied only by them and not by any other traders or manufacturers of plywood tops. The Ld. Counsel submits that this is general plywood top, which is available in the market. The Indian Military can easily procure the same in the open market also. They have given the order to the

appellant firm only in order to have a convenience of both the cots as plywood tops being supplied from one source and for easier accountability. These have procured by the appellant from the open market and supplied to the Indian Military. Therefore, it was submitted that the value of trading goods namely Plywood Top cannot be added with value of Folding Cot.

16. Now we take up some of the case laws on the issue. In the case of *Neycer India Ltd. Vs Commissioner of Central Excise, Trichy 2005(192) E.L.T. 620 (Tri.-Chennai)*, the Tribunal has held as under:

*"4. We have gone through the rival contention. The point at issue is whether the bought out items are accessories or parts of the cistern. In our view, relying on the decision of the Bombay High Court in the case of Koron Business Systems Ltd., the bought out items required to make the cistern functional should be considered as accessories only. These accessories are of different types and made of different materials. At the buyers option, these are supplied by the parts should be included in the assessable value of the cistern. The appellants relied on the decision of the Hon'ble Supreme Court in its judgment in the case of Union of India v. Koron Business Systems Ltd. - 1997 (93) E.L.T. 663 which upheld the judgment of the Bombay High Court. In that case the Bombay High Court held that plates and black shields are required for working of the photocopier but that by no stretch of imagination lead to the conclusion that plates*

*and black shields are part and parcel of the machine. It was held that the value of plates and black shields cannot be included in the value of the photocopiers. Ld. Advocate argued that no doubt that the above-mentioned fittings are required to make the cistern functional but on account of that they cannot be called as parts of these cistern. The Tribunal in the case of EID Parry India Ltd. v. CCE - 2000 (124) E.L.T. 815 has held that the value of the fittings which were removed from godown after testing under a separate invoice is not includable in the assessable value of the cistern. The Tribunal in the case of Super Electronics v. CCE - 2001 (127) E.L.T. 302 held that even though speaker in audio-decks is essential, the same cannot be integral part of the main item that is audio-decks appellants. What the appellants manufactured is only the cistern which is made of ceramics. In these circumstances relying on the various case laws cited by the appellants, we hold that the value of the boughtout items is not includable in the assessable value of the cistern. The case relied on by the Revenue is distinguishable. In that case the Bombay High Court held that the documents copier machine is not complete without camera and there cannot be a camera without timer and lens. Therefore, we allow the appeal with consequential relief by considering the bought out items as accessories only."*

17. Being aggrieved by the above order, Revenue had filed their appeal before the Supreme Court. The Apex Court has held as under [CCE Trichy Vs Neycer - 2015 (320) ELT 28 (SC) has held as under:

The Department/Revenue wanted to add the value of Handle assembly, Ball valve assembly, overflow assembly, Syphon assembly, Outlet flange assembly and Flush pipe assembly, while arriving at the valuation of the flushing cisterns manufactured by the respondent. It is an admitted position that the aforesaid fittings are not manufactured by the assessee. It is also an admitted position that the assessee supplied the same to those buyers only who asked for that and in such a situation the assessee buys the aforesaid components from the market and supply to the buyers at their option. In these circumstances, the Tribunal has rightly declined to add the value of the aforesaid components which are not the part of flushing cistern manufactured by the assessee.

18. Relying the Supreme Court's decision, the Kolkata Bench in the case of **Sur Iron and Steel Co (P) Ltd. Vs CCE Kolkata-IV – 2018 (363) ELT373 (Tri Kolkata)** has held as under :

2. Brief facts of the case are that during the period under consideration, the appellant was engaged in the manufacture of machineries for sorting screening, crushing, grinding, etc. and parts thereof falling under Chapter 84 and also electric welding machine etc. and parts thereof falling under Chapter 85 of the CTA, 1985.

3. In addition, the appellant was doing the trading in the following items :

(i) Welding Torch Regulator for Carbon-di-Oxide Welding;

(ii) HF Unit Tig Welding;

(iii) Control Penal Head, Track, Cable for submerged ARC welding system.

4. On the basis of Audit Report, the Department was of the view that the trading items were bought out items by the appellant and it is the value includible in the assessable value towards on manufactured goods. Accordingly, the duty demand was raised along with penalty. Being aggrieved, the appellant has filed this appeal

10. In the instant case, these items, which were bought out, are totally independent and optional. These are not even the accessories as stated by the Ld. Counsel for the appellant during the course of argument. In this regard, the Hon'ble Supreme Court in the case of Commr. of Central Excise, Trichy v. Neycer India Ltd. : 2015 (320) E.L.T. 28 (S.C.), observed that the value of the bought out items cannot be included in the assessable value of own manufactured goods under Section 4 of the Central Excise Act, 1944. In the instant case, it is admitted position that the assessee supplied the bought out items to the buyers only to ask for. In such a situation, the assessee buys the aforesaid components/items from the market and supplied to the buyers on their option. When it is so, then we find no reason to sustain the impugned order and the same is hereby set aside.

19. On a similar issue, in a recent decision this Tribunal in the case of **Schenk Process India Limited Vs. Commissioner of Central Excise & Service Tax, Ranchi, vide Order No. 76177/2023 dated**

**13.07.2023**, relying on the Supreme Court Neycer decision, and Sur Iron case law decided by the Kolkata Bench, held as under:

*M/s Schenck Process India Ltd., (The Appellant) are manufacturers of finished products namely Pitless Electronics In- Motion weigh Bridge (hereinafter referred to as the "said finished products"). In the manufacture of the "said finished products", they procure the personal Computer, Printer, UPS, Stabilizer and Air-Conditioner from market but they were not including the value of these bought out items for the purpose of payment of Central Excise duty. Accordingly, Central Excise duty amounting to Rs.2,07,264/-, including Education Cess was demanded from the Appellant.*

*6. We observe that the Appellant purchased items such as personal Computer, Printer, UPS, Stabilizer and Air-Conditioner' and supplied along with their finished goods namely ' Pitless Electronics In- Motion weigh Bridge'. A perusal of the functions performed by these goods, which were supplied along with the said finished products, reveal that they were not essential parts, as they were not required for performance of the main function ie, weighment of goods/railway wagons. The Weigh Bridge System supplied by the Appellant can run smoothly without these items, as controller 'DISOMAT-C' is sufficient for taking weighment of the system*

*6.3. In the case of Kerala State Development Corporation Vs Commissioner of Central Excise,*

*reported in 2008(224)ELT 88(T), it has been held as under: "5. The Revenue proceeded against the appellants for inclusion of the value of bought out items, (uncoated cards, armoured cables, communication cables, etc.) to the assessable value of Attendance Data Management Systems (ADAMS). The original authority demanded duty of Rs. 54,207/- under Section 11A(1) of the Central Excise Act, 1944. Interest under Section 11AB was also imposed. Equal penalty under Section 11AC was imposed. It was submitted that ADAMS is a single piece of machine capable of functioning independently usually installed at the entrance of a office/factory. The cards supplied to the employees are inserted in the slot of the machine and the time is recorded by the machine. It is connected to the computer, by means of cables. Then, the data is recorded and stored in the computer. The appellants used additional item such as cables cards etc. required for installation. The above items were bought from outside. Revenue has sought to demand duty on the bought out items. It is very clear that the bought out items such as cable, cards, etc., are used for installation of the system manufactured by the appellants. They may be necessary for function of the system. However the fact remains that they are all bought out items on which excise duty has already been paid. Therefore, there is no reason to add the value of these bought out items to the value of the goods supplied by the appellants. There is also no justification for imposing any penalty on the appellant in both*

*the cases and for invocation of the longer period. Therefore, the appeal is allowed with consequential relief if any."*

*7. Following the decisions cited above, we hold that the demands made in the impugned order are not sustainable. Since the duty itself is not liable to be paid, the question of demanding interest and imposing penalty does not arise.*

20. It has been factually demonstrated in this case that the Plywood Board is procured by the appellant from the market and most of the time the same is delivered directly to the premises of the Indian Para Military forces. As rightly submitted by the appellant, the Plywood Tops cannot be delivered fitted with the Folding Cot as the Plywood board would be broken. It is seen that Folding Cot can be used by Cotton Tape and therefore the use of Plywood Board by the user is purely optional. Therefore, after appreciating the factual evidence brought in before us and applying the ratio of the cited case laws, we have come to a considered decision that the value of the bought-out Plywood Tops, which are traded goods of the appellant, cannot be added to the value of the Floding cots. The demand on this count is set aside.

21. We find that the appellant has admitted the duty liability on Folding Cot [as a manufactured good], which is payable after allowing the benefit of SSI exemption. It is seen that the appellant is a SSI unit undertaking the DGS&D Rate contract of Government of India and has supplied the goods to the Indian para military forces. From the sales Invoice reproduced above, there is nothing to indicate that the Excise Duty element has been

charged on the Indian Military. The copy of the Contract also clarifies that no Excise Duty element has been shown to be paid to the appellant. This shows that the appellant had entertained a *bonafide* belief that in case of folding cots, no manufacturing takes place. Hence, they have neither charged Excise Duty, nor remitted the same to the exchequer. Prima facie no specific case has been made out against the appellant to invoke the extended period provisions of the CEA 1944. However, it is also on record that the appellant has agreed to pay the Excise Duty of Rs.58,59,681 for the entire period of demand, without contesting the same on account of time bar. Therefore, we do not find any necessity to impose the penalty equal to the Excise Duty in terms of Section 11 AC of the CEA 1944. Accordingly, we hold that even in respect of confirmed Excise Duty amount of Rs.58,59,681, no penalty is imposable against the appellant firm. In view of our findings that in respect of on plywood top supplied, their value is not includible, the Excise Duty thereon along with interest and penalty imposed stand fully set aside in respect of the appellant firm.

22. The major portion of the confirmed demand amounting to about Rs.2.74 crores [on account of value addition in respect of plywood tops supplied by the appellant], has been held as not legally sustainable and has been set aside along with interest and penalty thereon by us as per the detailed discussions above. In respect of the balance confirmed demand of Rs.58.59 lacs, the same has been admitted as payable by the appellant firm, the same has not been charged on their buyer. Therefore, considering these facts and also the fact that the penalty against the appellant firm has been

set aside, we also set aside the penalty imposed on the appellant Sri Goldi Sethi.

23. To summarize :

- (a) We hold that the work carried out in respect of folding cots, would amount to manufacture in terms of Section 2 (f) of the CEA 1944. The duty liability for the entire period in the proceedings has been worked out to Rs.58,59,681, after considering the SSI exemption benefit, which is required to be paid by the appellant firm. The amounts paid during the investigation and subsequently are required to be adjusted and the net balance amount would be payable along with interest at the applicable rates. The penalty on this Excise Duty stands set aside.
- (b) We hold that supply of Plywood Tops by the appellant by procuring the same from the third party sources, would be a trading activity and hence the value of the same cannot be added to arrive at the Assessable Value of the Folding cots. The confirmed demand, interest and penalty on this count is fully set aside.
- (c) The penalties imposed on the firm and Sri Goldi Sethi [second appellant], are set aside.

24. Thus the Appeal for the appellant firm stands allowed partly and the appeal of the Director Goldi Sethi stands allowed fully. The appellants would be eligible for consequential relief, if any, as per law.

(Order Pronounced in Open court on 17.02.2026)

**(R. MURALIDHAR)**  
MEMBER (JUDICIAL)

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

RKP