

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

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 2764 OF 2011

[Arising out of the Order-in-Original No. 04/2011-12 dated 10/08/2011 passed by Commissioner, Central Excise, Delhi II, New Delhi.]

**Commissioner of Central Excise,
Delhi – II,**
C.R. Building, I.P. Estate,
New Delhi.

Appellant

VERSUS

M/s AGV Alfag Ltd.
Khasra No. 665, Nawada Industrial Area,
Uttam Nagar,
New Delhi – 110 059.

Respondent

APPEARANCE

Shri Rakesh Aggarwal, Authorized Representative (DR) – for the Department
Shri Rajesh Jain, Shri Ramashish and Ms. Tanya Sarawat, Advocates – for the respondent.

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51207/2025

DATE OF HEARING : 23.06.2025

DATE OF DECISION: 22.08.2025

P.V. SUBBA RAO

The department has filed this appeal to assail the order dated 10.08.2011¹ passed by the Commissioner of Central Excise, Delhi II whereby he set aside the demands and other

1. impugned order

actions proposed in five show cause notices² issued to M/s AGV Alfab Ltd.³

2. The respondent is a construction contractor and during the relevant period carried out construction of curtain walls/structural glazing and aluminium cladding to various buildings, hotels, offices etc. The respondent did this in the following steps :-

- (a) The walls of the buildings are first mapped and marked for fixing clamps ;
- (b) The walls are drilled at regular intervals and clamps are fixed ;
- (c) Vertical aluminium sections are fixed to the clamps with bolts ;
- (d) Horizontal aluminium sections are fixed with clamps ;
- (e) On the aluminium sections, double sided tapes are put to facilitate fixing of glass ;
- (f) Toughened customized glasses are fixed on the tapes ;
- (g) The empty space between the glass and the aluminium sections is filled with structural silicon to permanently join the glass with the aluminium sections.

3. Thus, a curtain glass is created for the building. The respondent also manufactured some doors and windows. The five SCNs covering different periods from September 2007 to December 2010 proposed recovery of duty on the doors and

2. SCN

3. respondent

windows manufactured by the respondent as well as on the curtain walls manufactured by the respondent.

4. The respondent contested the demands. It is the position of the respondent that no curtain glass has been manufactured by the respondent. It is only built on the building and it is in the nature of the works contract. Therefore, no central excise duty was payable on the curtain glass.

5. After considering the submissions of the respondent, the Commissioner held in the impugned order that the doors and windows do come into existence in the factory and, therefore, were chargeable to excise duty. However, considering the total turnover of the doors and windows cleared, the Commissioner found that the turnover was below the threshold for charging duty and, therefore, no central excise duty was payable.

6. Insofar as the curtain wall is concerned, the Commissioner found that in respect of the same respondent, this Tribunal, by order dated 02.11.2004 reported as **AGV Alfab Limited** versus **Commissioner of Central Excise, Delhi – II**⁴, held that the respondent was a civil contractor and the curtain wall is constructed on existing buildings connecting the pieces on site. It is too big to be manufactured in the factory and to be lifted and installed and once constructed, it cannot be removed or re-fitted as such. The respondent prepares aluminium sections by cutting aluminium angles by drilling holes, etc. in their own premises or at construction site and these activities do not bring in into

4. 2005 (186) E.L.T. 451 (Tri. – Del.)

existence any new commercial product. Accordingly, the appeal was decided in favour of the respondent herein.

7. The Commissioner further noted that this order of the CESTAT has not been appealed against by the department as confirmed by letter dated 08.12.2008 issued by the Assistant Commissioner (Tech), CPIO, Central Excise, Delhi.

8. Following the decision of this Tribunal, the Commissioner held that no central excise duty is chargeable on the curtain glass. He, accordingly, dropped the demand of duty.

9. There is no appeal before us by the respondent against the finding of the Commissioner that windows and doors are chargeable to excise duty although no duty was confirmed as the turnover below the threshold limit.

10. Revenue filed this appeal to assail the order of the Commissioner on the ground that the Commissioner :-

(i) failed to give his finding on the contentions raised by the department that the noticee was paying sales tax on value of sale in respect of curtain walls, which meant that sale of "goods" preceded the activity of actual erection of the curtain walls at site.

(ii) failed to verify and discuss the argument of the Noticee that they were required to pay excise duty because they were registered and were paying service tax for the activities of fabrication and erection of wall curtains and that

both service tax and excise duty cannot be levied on the same activity.

(iii) failed to notice that payment of sales tax by the noticee was not an issue in the earlier decision of CESTAT.

11. We have heard Shri Rakesh Agarwal, learned authorized representative for the Revenue and Shri Rajesh Jain, learned counsel for the respondent and perused the records.

12. Learned authorized representative for the revenue asserted that the impugned order is not correct for the above three reasons in the appeal. Learned counsel for the respondent, on the other hand, asserts that the impugned order is correct and proper and calls for no interference.

13. We have considered the submissions.

14. The short issue to be decided is whether the curtain glass fixed by the respondent in the form of works contract on the walls of buildings can be charged to central excise duty. In the case of the respondent itself, for an earlier period, this Tribunal decided that no excisable goods came into existence in the process and aluminium sections and glass are fixed by the respondent on the walls when the curtain glass comes into existence. It was further decided that the curtain glass cannot be removed and fixed elsewhere. For this reason, no central excise duty was payable on the curtain glass. This order of the Tribunal has not been appealed against by the revenue as recorded by the Commissioner in the impugned order. Such being the case, the

Commissioner correctly followed judicial discipline in dropping the demand on the curtain glass.

15. Revenue's contention in this appeal is that the Commissioner failed to give his finding on the contention of the department that the respondent was paying sales tax on the value of sales in respect of the curtain walls which means that the sale of goods preceded the activity of actual erection of the curtain glass. We do not find any force in this argument. Sales tax is levied on either sale or deemed sale of goods and NOT on manufacture. Central excise duty cannot be charged on any goods simply because they are sold. It is for the department to establish that there was manufacture of goods. The order of the Tribunal is that there was no manufacture.

16. The second submission in the appeal is that the Commissioner failed to verify and discuss the arguments of the noticee that they were not required to pay excise duty because they were paying service tax for the activities of fabrication and erection of wall curtain and both service tax and excise duty cannot be levied on the same activity. We fail to understand how this can be a ground to assert that the central excise duty is chargeable on the curtain glass. Service tax is payable on services including on certain works contracts. As far as the excise duty is concerned, this can be charged if there is manufacture of goods and not otherwise. Nothing in the appeal establishes that there was manufacture of goods.

17. The third submission of the Revenue in this appeal is that in the earlier decision of CESTAT the fact that the sales tax was paid by the noticee was not discussed. We find no force whatsoever in this submission. The Committee of Chief Commissioners who reviewed the impugned order should have at least been aware that sales tax is levied on the sale of goods and not on manufacture and central excise duty cannot be charged on any goods which are sold simply because sales tax is paid or because any goods were used in execution of works contract and for that reason sales tax was paid.

18. In view of the above, we find no infirmity in the impugned order of the Commissioner and the appeal filed by the Revenue deserves to be dismissed. The impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court on 22/08/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)