Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10069 of 2014- DB

(Arising out of OIO-SUR-EXCUS-002-COM-009-13-14 dated 09/10/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II(Appeal))

Alkem Laboratories Ltd **.....Appellant**
N.h.no. 8, Naugama, Post- Mandva,
Ankleshwar,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **......Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE:
Shri Anand Nainawati Advocate for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C. L. MAHAR

FINAL ORDER NO. 11486/2024

DATE OF HEARING: 05.03.2024
DATE OF DECISION: 03.07.2024

C. L. MAHAR

Brief facts are that the appellant is engaged in manufacture of excisable goods and holds Central Excise Registration. The appellant is engaged in manufacture of Sucralose and Fructo-Oilgo Saccharide (hereinafter referred to as FOS) from October 2006 and were clearing their finished products, namely, Sucralose and FOS as under :-

(i) 'Stock transfer' for captive consumption to the other units and factories of the appellant situated at Daman, Baddi, Ankleshwar, Taleja and Mumbai.

(ii) 'Sale' for captive consumption to M/s Surya Herbals Ltd. Noida for using the same for manufacture of 'Jeevanprash' for and on behalf of appellant.

(iii) 'Stock transfer' for captive consumption to the related persons / sister concerns of the appellant, namely (a) M/s Indichemie Health Specialities Pvt. Ltd. situated at Daman and Baddi (b) M/s Galpha Laborites Situated at Ankleshwar a Baddi for using the same in manufacture of pharmaceutical products for and on behalf of appellant.

(iv) 'Sale' to the related persons / buyers / Sister concerns of appellant, namely, M/s Indichemie Health Specialities Pvt Ltd, situated at Daman and Baddi (b) M/s Cachet Pharmaceuticals its situated at Baddi & Bhiwadi (c) M/s Galpha laboratories Lt. situated at Ankleshwar and Baddi for using the same in manufacture of their own that final products.

(v) The appellant also cleared Sucralose and FOS to indepenant buyers under Central Excise invoice on payment of central excise duty. (No dispute)

2. The officers of the department visited the factory premises of the appellant, conducted search and verification of documents. Statements were also recorded of concerned person. It appeared to the department that the appellant has resorted to undervaluation of the products FOS and Sucralose when cleared to their related parties as well as to M/s Surya Herbals by not following CAS-4 valuation method as provided under Rule 8 of Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000. The department noted that appellant contravened the provisions of sub-section (i) (b) of section 4 of the Central Excise Act, 1944 r/w Rule 8,9 and proviso to Rule 9 of the Central Excise Valuation (Determination of Price of excisable goods) Rules 2000, in as much as appellant failed to adhere to CAS-4 to arrive at assessable value of FOS and Sucralose cleared to their other units / factories and to their related parties / sister concerns who then have captively consumed the entire quantity of FOS

and Sucralose for manufacture of their pharmaceutical (API and Formulation) Product. So also appellant contravened the Provision of Section 4 (i) (b) of Central Excise Act, 1944 r/w Rules 8, 9 and proviso to Rule 9 of the Central Excise Valuation Rules, 2000 as the valuation of FOS and Sucralose cleared by them to M/s Surya Herbals Ltd. is to be 110% of the cost of production as per CAS-4 issued by Cost Accountant.

3. In view of the above, show cause notice dated 29.08.2011 was issued invoking the extended period alleging suppression of facts with intent to evade payment of duty for the period 2006-07 to 2009-10 and proposing to demand:-

(a) The differential central excise of Rs. 6,40,096/- in respect of stock transfer of the goods to their other units for captive consumption during the period 2006-07 to 2009-10.

(b) The differential excise duty of Rs. 10,84,876/- in respect of clearance of goods to M/s Surya Herbal Ltd for use in the manufacture of Jeevanprash during the period 2006-07 to 2009-10

(c) The differential excise duty of Rs. 3,88,978/- in respect of stock transfer of the goods to the group companies for captive consumption during the period 2006-07 to 2009-10

(d) The differential excise duty of Rs. 50,61,824/- in respect of the goods cleared to the group companies during the period 2006-07 to 2009-10.

3.1 The SCN also proposed, inter alia, to demand interest and to impose penalties. After due process of law, the original authority confirmed, the duty demand along with interest and imposed penalties. Aggrieved by such order, the appellant in now before the Tribunal.

4. The Learned Counsel Shri Anand Nainawati appeared and argued for the appellant. It is submitted by the Learned Counsel that, the appellant is not captively consuming the entire quantity of excisable goods (FOS & Sucralose). There is sale made, to independent buyers fulfilling the condition of transaction value for the purpose of arriving at the central excise duty. Rule 8 as it stood prior to 01.12.2013 would be applicable only if entire quantity is captively consumed. In other words the Ld Counsel urged that if all the clearances are for captive consumption, and there are no clearances to independent buyers, then the provisions of Rule 8 will apply.

4.1 The decision in the case of Ispat Industries Ltd Vs CCE – 2007 (209) ELT 185 (Tri-LB) was relied to support the above arguments. It is prayed that the appeal may be allowed.

5. The Learned AR Shri R. R. Kurup appeared and argued for the department. The finding in the impugned order was reiterated.

6. Heard both sides.

7. The issue to be considered is whether the assessable value is to be determined applying Rule 8 of Central Excise Valuation Rules, 2008 and whether the demand, interest and penalties are legally sustainable. Undisputedly the appellant is clearing goods to independent buyers also. The Ld. Counsel has adverted to the worksheet appended along with the reply to the SCN to submit that there is no variation in the price adopted for sale to independent buyers when compared to price in the case of stock transfer made to inter-units. The Larger Bench of the Tribunal in the case Ispat Industries Ltd. Vs CCE, Raigad 2007 (209) ELT 185 (Tri.-LB) considered the issue of application of Rule 4 vis-a-vis Rule 8 and held that Rule 8 would apply only in case where it's entire

production of a particular commodity is captively consumed. The relevant paras of the said decision read as under:-

> *"5. We have considered the rival submissions and are of the view that the assessee is correct in contending that provisions of Rule 8 would apply only in a case where its entire production of a particular commodity is captively consumed. This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under*
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> *"Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods" (emphasis supplied).*
>
> *If the intention was not to restrict the applicability of Rule 8 to cases where the entire production was being captively consumed, the Rule would have simply stated "where excisable goods are consumed by an assessee himself or on his behalf in the manufacture of other articles" instead of preceding the above expression with the words "where the excisable goods are not sold". This view is also supported by the judgment of the jurisdictional High Court in the case of Indian Drug Manufacturers Association v. Union of India, wherein the Court held that <u>Rule 8 applies in a situation where goods are not sold but are cleared 'exclusively' to be used in consumption or for manufacture of other articles.</u> We also agree with the contention of the assessee that Rule 8 will apply only in two situations, (a) where the goods are consumed by him in the same factory (captive consumption) or (b) where such goods are transferred to another factory for consumption in the manufacture of other articles on behalf of the assessee. In this case, it is not the case of the revenue that the goods were transferred to other units for manufacture of other articles on behalf of the assessee/appellant, i.e. the Dolvi Unit. We agree with the assessee's contention that the expression 'assessee', wherever it appears in the Central Excise Rules, applies to a particular factory, which is why different units belonging to one company are separately registered and separately assessed to duty. <u>Since the assessee in the present case is the Dolvi plant and it is not the revenue's case that the other three units of the company to whom HR coils were transferred were undertaking further manufacturing operations on behalf of the Dolvi Unit, the provisions of Rule 8 will not apply. We, therefore, hold that Rule 8 is inapplicable in the instant case</u>.*
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> *6. We also note that in the present case the application of Rule 4 is being disputed by the Revenue not on the ground that the said rule is inapplicable to the present case but on the ground that a more specific provision in Rule 8 is available to enable determination of the assessable value. As discussed above, the provisions of Rule 8, in our view, are not applicable to the present case and therefore the value determined by the assessee under Rule 4 deserves acceptance.*
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> *7. We also agree with the submission of the assessee that even if both the rules, i.e. Rule 4 and Rule 8, were applicable, it would only be logical to read and apply the various rules in the Central Excise Valuation Rules in a sequential manner. Though the Central Excise Valuation Rules, 2000 do not specifically prescribe such sequential application of various rules, the same, in our view, is the only reasonable way to read these rules. Any other interpretation would only lead to confusion and chaos. Since the applicability of Rule 4 is not really in dispute, there was no need to look further and regardless of the applicability or otherwise of Rule 8, the assessable value should have been determined in terms of Rule 4 of the Valuation Rules.*
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> *8. The conclusion that we are drawing in the present case would lead to determination of a value which, in our view, will not only be reasonable but also*

consistent with the provisions of Section 4 of the Central Excise Act. We would, at this stage, draw support from the judgment of the Supreme Court in the assessee's own case, as reported in 2006 (202) E.L.T. 561, wherein the Court applied "The Gunapradhan Principle" in interpreting the Customs Valuation Rules. We have kept in mind the following observations of the Court in coming to our above conclusion :

"26. In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.

27.................

36. In our opinion, the Gunapradhan principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14. We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9 (2) are the 'accessories'. The 'accessory' must, therefore, serve the 'primary'."

9. In view of what we have observed above, we answer the reference in the following terms :

(a) the provisions of Rule 8 of the Valuation Rules will not apply in a case where some part of the production is cleared to independent buyers;

(b) the provisions of Rule 4 are in any case to be preferred over the provisions of Rule 8 not only for the reason that they occur first in the sequential order of the Valuation Rules but also for the reason that in a case where both the rules are applicable, the application of Rule 4 will lead to a determination of a value which will be more consistent and in accordance with the parent statutory provisions of Section 4 of the Central Excise Act, 1944.

10. The papers are now returned to the referral Bench for passing orders on the appeal."

7.1 In the above case, the Larger Bench has held that the provisions of Rule 8 will not apply in a case where some parts of the production are sold to independent buyers. So also in a situation where both Rule 4 and Rule 8 would apply, by sequential order, Rule 4 would take precedence over Rule, 8 for determination to the consistent with Section 4 (8) Central Excise Act, 1944.

7.2 In the case of Shiv Shakti Ingots Ltd Vs. CCE, CUS & ST, Vapi 2016 (338) ELT 421 (Tri-Amhd) a similar issue was considered. The assessee therein was engaged in manufacture of M.S. Ingots and TMT bars through their different units. Unit I and unit 2 supplied M.S. Ingot to unit 3 for manufacture of TMT bars. Unit I and Unit 2 paid duty on M.S. Ingot on the transaction value of such goods cleared to unit 3. The department was of the view that as unit 1 and unit 2 cleared the good to related person unit-3, that as per proviso to Rule 9 of the Valuation Rules, 2000, the appellant is liable to pay duty on 110% of Cost of production by applying Rule 8 of the Valuation Rules, 2000. The period of dispute is 12/2008 to 6/2013. The Tribunal followed the above decision in Ispat Industries Ltd. and held that as appellants have partly sold goods to independent buyers Rule 8 cannot be pressed into application.

7.3 It also requires to be stated that though it is alleged by department that appellant has undervalued the good by not adopting Rule 8, there is no evidence in the nature of cost comparison or details of comparable market price put towards to show that the goods have been undervalued. After appreciating the facts, and following the decisions above we hold that the demand of duty cannot sustain and requires to be set aside. Ordered accordingly.

8. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in the open court on 03.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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