CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

EXCISE Appeal No. 12167 of 2019-DB

[Arising out of Order-in- Appeal No VAD-EXCUS-001-APP-75-2019-20 dated 28.05.2019 passed by Commissioner (Appeals) CGST & Central Excise, -VADODARA-I]

Gujarat State Fertilizers & Chemicals Limited .... Appellant
P.O. Fertilizernagar
VADODARA, GUJARAT-391750

VERSUS

Commissioner of CGST & C Ex., Vadodara-I .... Respondent
CGST & Central Excise, GST Bhawan,
1st Floor, Race Course Circle, Vadodara-I

APPEARANCE :

Shri Willingdon Christian, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

DATE OF HEARING : 04.09.2025
DATE OF DECISION: 03.12.2025

FINAL ORDER NO. 11383/2025

MR. SATENDRA VIKRAM SINGH :

M/s. Gujarat State Fertilizers & Chemicals Limited (Appellant) are engaged in the manufacture of various excisable goods. They are clearing Caprolactam and Sulphuric Acid to their sister unit by assessing the goods for payment of excise duty at the rate 110% of the cost of production of such goods. During scrutiny of their records, the department found that for the period April 2014 to September 2014, the Appellant had short paid excise duty whereas in second half of the Financial Year (i.e. from October 2014 to March 2015) they paid excess excise duty. They adjusted excess paid duty towards short paid duty and finally on their own, calculated and paid the differential duty of Rs. 81,481/- for the Financial Year 2014-15.

The following chart shows value adopted for payment of excise duty in respect of both the products and the value which should have been adopted as per CAS-4:-

(Value in Rs. Per MT)

Period	**CAPROLACTAM**		**SULPHURIC ACID**	
	Invoice value	**110% of CAS 4 figure**	**Invoice value**	**110% of CAS 4 figure**
April 2014-September 2014	1,47,295	1,49,020	3,577	3,079
October 2014	1,56,397	1,49,020	2,103	3,079
Nov 2014 – March 2015	1,65,454	1,49,020	2,103	3,079

1.1 A Show Cause Notice dated 05.12.2017 was issued to the Appellant demanding short paid Central Excise duty of Rs. 12,75,143/- under Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AA of the said Act and penalty under Rule 25 of the Central Excise Rules, 2002. The matter was adjudicated vide order dated 25.02.2019 wherein the above duty was confirmed against the appellant alongwith interest and penalty equal to Central Excise duty of Rs. 12,75,143/- was imposed under Rule 25 of the Central Excise Rules, 2002. Aggrieved with this order, the appellant filed appeal before the Commissioner (Appeals) who upheld the order of the Adjudicating Authority except for reducing penalty upon the Appellant from Rs. 12,75,143/- to Rs. 1,27,514/-. Hence, the present appeal.

2. The Appellant has taken the following grounds:-

(a) Both the lower authorities have failed to appreciate that the goods were cleared for captive consumption by their another unit and there was no independent sale. The value was arrived at by adopting previous year's CAS-4 certificates. Therefore, adjustment of excess payment of excise duty against short payment of duty is legally permissible.

(b) There is no Revenue loss to the government because if they had paid higher duty, then their recipient unit would have availed the Cenvat credit.

(c) There is no allegation that they had paid differential duty of Rs. 81,481/- to the government but have charged higher duty from their recipient factory or, the recipient factory has availed higher amount of Cenvat credit.

(d) They rely on the following decisions:-

(i) 2004 (168) ELT 34 (Tri.) – Vinir Engineering Pvt. Limited vs. CCE

(ii) 2004 (172) ELT 473 (T) - Bajaj Tempo Limited vs. CCE, Pune

(iii 2005 (185) ELT 234 (Raj.) - UOI Vs. Rajasthan Spinning & Weaving Mills Ltd.

(iv) 2005 (71) RLT 279 (Tri.) - CCE vs. BPL Sanyo Technologies Ltd.

(v) 2006 (193) ELT 250 (Tri.) - CCE Vs. Ananda Fire Works Inds.

(vi) 2006 (194) ELT 321 (T) Nirlon Limited vs. CCE

(vii) 2007 (208) ELT 292 (T) - Honda Siel Power Products Ltd.. vs. CCE

(viii) 2008 (229) ELT 609 (T) - Phlox Pharmaceuticals Ltd. vs. CCE

(ix) 2009 (13) STR 457 (T) - South Asian Petrochem Limited vs. CC (Airport & Admn.)

(x) 2009 (233) ELT A 133 / 2007 (219) ELT 991 (T) - CCE vs. South Asian Petrochem. Limited

(xi) 2010 (261) ELT 435 (T) CCE vs. Hindustan Zinc Limited.

(xii) 2012 (276) ELT 332 (Kar.) - Toyota Kirloskar Auto Parts Pvt. Limited vs. CCE

(xiii) 2014-TIOL-2591-CESTAT-MAD Devi Thread Processors P. Ltd. vs. CCE

(xiv) 2016 (336) ELT 328 (T) - Hindustan Zinc Limited. vs. CCE

(xv) 2016 (339) ELT 87 (T) - Suzlon Energy Limited. vs. CCE

(xvi) 2016 (339) ELT 459 (T) - CCE vs. Menon Piston Rings Pvt. Ltd.

(xvii) 2011 (271) ELT 209 (T) - CCE vs. Yamuna Gases & Chemicals Ltd.

(xviii) 2003 (153) ELT 497 (SC) - CCE vs. Divya Enterprises Ltd. 2000 (115) ELT 66 (T)

(xix) 2016 (342) ELT 253 (T) - Jindal Steel & Power Limited vs. CCE

(e) The goods cleared by them have been consumed in their sister concern which has availed the credit of the duty so paid. This is a case of Revenue neutrality and on this principle, the impugned Show Cause Notice is liable to be quashed. They relied on the decision of Ahmedabad Tribunal vide order No. A/2438/WZB/AHD/08 dated 10.11.2008 in the case of Ineos ABS Limited which has been further upheld by Hon'ble Gujarat High Court reported in 2010 (254) ELT 628 (Guj.). The appeal filed by the department against the said order of Gujarat High Court was dismissed by Hon'ble Supreme Court as reported in 2011 (267) ELT A-155 (SC).

(f) The impugned Show Cause Notice dated 05.12.2017, covering the period from April 2014 to March 2015 is time-barred. The clearances made by them were duly reflected in excise returns. The recipient unit has also reflected receipt of said duty paid goods in their Cenvat credit register. On receipt of CAS-4 certificate, they voluntarily paid the differential duty of Rs. 81,481/- and intimated to the department. There is no allegation of willful suppression of facts, mis-declaration, fraud etc. in the Show Cause Notice. In view of above, they prayed to set-aside the impugned order with consequential relief.

3. Learned advocate submitted synopsis wherein he relied on the CBEC Circular No. 692/08/2003-CX dated 13.02.2003 and the decision of Hon'ble

Madhya Pradesh High Court at Gwalior in the case of Principal Commissioner of CGST & C.Ex. Bhopal vs. Godrej Consumer Products Limited – 2017 (367) ELT 985 (MP). He also drew attention of this Bench on the decision of Tribunal in the case of Essar Steel Limited vs. CCE, Raipur – 2017 (345) ELT 139 (Tri. Del.) and requested to decide the matter on merit in the light of various case laws and the provisions of Central Excise Act, 1944.

4. Learned AR argued that there was short payment of Central Excise duty for some period whereas excess payment in the other period. The appellant on their own adjusted excess paid duty with short paid amount which is not permissible. He emphasized that automatic adjustment of duty is not allowed under the scheme of Central Excise Act, 1944. He defended the decision of lower authorities by highlighting the fact that the Appellant was not clearing the goods under provisional assessment. He placed reliance on the decision of Hon'ble Apex Court in the case of *Autolite (India) Limited vs. Commissioner – 2003 (154) ELT A169 (SC)*, decision of Mumbai Tribunal in *Mahindra & Mahindra Limited vs. Commissioner of Central Excise, Mumbai-V – 2018 (362) ELT 382 (Tri. Mum.),* decision of Delhi Tribunal in *Krishna Electric Industries Limited vs. CCE, Indore – 2017 (352) ELT 67 (Tri. Del.)* and decision in the case of *Sterlite Industries (India) Limited vs. CCE, Tirunelveli– 2017 (357) ELT 161 (Tri. Chennai)*.

5. We have gone through the records and heard the rival submissions. The short issue to be decided is whether the appellant is liable to pay only the differential duty after making adjustment of excess paid duty during a period with short paid duty during the other period.

5.1 We find that the decision of Hon'ble High Court of Judicature of Madhya Pradesh at Gwalior in the case of *Principal Commissioner of CGST & C. Ex., Headquarters Bhopal vs. Godrej Consumer products Limited (supra)* has discussed this issue in detail. It held that overall duty liability/ short payment should be arrived at after considering the duty already paid during that year on such goods. It also held that adjustment of short/ excess paid duty is permissible against demand determined based on annual costing. It considered the decision of Tribunal in the case of *Essar Steel India Limited (supra)* and *Jindal Steel and Power Limited (supra)*. The relevant findings in para 7, 11 and 13 are reproduced below:-

> **"7.** The Tribunal while relying on the decision in *Jindal Steel & Power Ltd.* v. *Raipur-1* - 2016 (342) E.L.T. 253 (Tri. - Delhi) and *Essar Steel India Ltd.* v. *CCE, Raipur* - 2017 (345) E.L.T. 139 reversed the order, holding :
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> > "7. We have considered the submissions made by both sides. The goods have been cleared by the appellant to their own sister unit located in tax exempted areas. Consequently, the appellant is require to pay excise duty on goods so cleared. The basis of valuation is also required to be done in terms of Rule 8 of the Central Excise Valuation Rules, 2000 following the Cost Accountant Standards (CAS-4). It is not in dispute that valuation has been done properly as per CAS-4. However, such valuation has been done on the basis of CAS-4 certificate prepared on the basis of annual cost of production. The appellant has paid duty on a month to month basis on the basis of the cost of the goods for the previous month. When the valuation is finalised on an annual basis, there has been short payment of duty in some months as well as excess payment in other months. The appellant has already paid the excess duty wherever the value as per CAS-4 is more than the value adopted for payment of duty, but after adjusting the excess paid duty in other months. Such adjustment has not been permitted by the adjudicating authority even in the *de novo* adjudication.
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> > 8. We are of the view that the stand taken by the adjudicating authority is untenable. An identical issue has been considered by the Tribunal in the case of *Essar Steel India* (supra), in which the Tribunal observed as follows :
> >
> > "5. We have heard both the sides and perused appeal records including written submission. The admitted facts of the case are that there is no sale of iron ore concentrate by the appellant and clearance to sister unit for further use is subjected to excise duty and valuation for such duty has to be worked out in terms of Rule 8 of Valuation Rules, 2000. The central point of dispute is the frequency of periodicity of costing in terms of CAS-4. The appellants followed different value during the same financial year based on revision of costing within the year more than once. The Revenue contended that the costing should be annual basis and, hence, during whichever month the value happens to be less than the average annual cost, duty was confirmed.

6. First, we consider the appellant's plea regarding the transaction value arrived at based on costing should be at the time of removal. It was submitted that the scheme of things for excise duty purposes in terms of Section 4 and Rules made thereunder and Central Excise Rules, the duty liability based on self-assessment has to be discharged at the time of removal of goods when the invoices are prepared. The legal position as submitted by the appellant cannot be contested. However, it is an admitted fact that the appellants themselves did not follow costing to arrive at deemed transaction value for each clearance. They have considered a period of many months and worked out the costing, in terms of CAS-4 for that period and paid duty. Thereafter, they revised said costing when there are changes in raw material cost. That being the case, we find that the reliance placed by the appellant on the principle that time of removal is relevant and, hence, annual costing is not tenable, is unsustainable. The fact remains that while the duty liability has to be discharged at the time of removal of excisable goods in a situation where there is no sale transaction and known value, the deemed transaction value has to be constructed based on costing method which necessarily will involve an averaging of cost for a period, considering all the parameters. It is neither the case of the appellant nor there is such an approved standard for arriving at cost of excisable goods for each individual clearance.

7. Now, the question remains when at the time of each clearance of excisable goods for captive consumption the exact transaction value could not be arrived at the relevant time the duty has to be paid on a provisional basis and upon arriving at the costing applying CAS-4 and the assessable value in terms of Rule 8 of Valuation Rules final determination of duty liability has to be made. In the present case, admittedly no provisional assessment was resorted to by the appellant. Hence, the determination of actual cost much later on the clearance resulted in certain adjustments and payments by the appellant.

8. The appellants referred to guidelines issued by the institute of Cost & Works Accountants of India on CAS-4. We have perused the same. Para 8 deals with periodicity of CAS-4 Certificates. The guidelines state that the frequency of revising the certificate of cost of production will depend upon the significance in the changes in the cost due to various factors like input cost fluctuations, changes in the employee cost and other expenses. It further notes that where goods are cleared on cost of production worked out as per the audited accounts of the previous audited period, it is advisable to prepare a fresh certificate of cost of production based on the audited accounts of the period for which the goods are cleared and the differential duty is paid or taken credit of as the case may be. In such circumstance, it is advisable to compute the actual material cost as per the issue valuation adopted by the assessee for material issues. Further, in the FAQ on CAS-4 the ICAI clarified that cost determination of a product is always for a period and computed on the basis of actual accounts of the company. The costs so determined should be actual cost reconciled with the audited accounts of the company after the accounts for the period is audited.

9. On perusal of the guidelines by the ICAI, we find while arriving at costing based on CAS-4 the correct method will be to determine the same based on actual audited data as per the accounting year of the company. To that extent we find the CAS-4 cost price arrived at on annual basis by the Revenue is correct procedure.

10. The next issue for decision is on the quantification of differential duty. Even though there is no provisional assessment in the present case, the duty determination on the inter-unit transfer is made on annual costing. As such when the Department arrived at cost on annual average basis the duty liability, excess or

shortage has also to be determined on such basis. It is not tenable while for arriving at per unit duty liability the whole year data is considered for costing, for total duty liability only months when short payment was noticed were considered. In other words when CAS-4 based annual costing formed basis for arriving transaction value, the overall duty liability/short payment should be arrived at after considering duty already paid during that year on such goods. We find the reasoning given by the Original Authority against adjustment of already paid duty as untenable. Section 11B has no application in such situation, when the appellants duty liability is determined on annual CAS-4, the duty already paid during said period has to be adjusted. The question of unjust enrichment has no relevance here. There is no refund considered here. The point that the duty paid in excess in certain months has been availed as credit by sister unit hence, cannot be adjusted towards short payment also not tenable. The demand arose based on annual costing. Such cost price in terms of Rule 8 will apply to all clearances made during the relevant year. Admittedly, duty already discharged has to be considered for arriving at overall short payment. Selectively applying the said cost price only for months when the clearances were below such cost price is not legally sustainable."

8, 9, 10 …. …..

11. In the case at hand, the Tribunal has relied on its own decision in *Essar Steel India Ltd.* v. *CCE, Raipur* - 2017 (345) E.L.T. 139, wherein while dwelling on the issue of quantification of duty, it is held :

"10. The appellant has claimed that they have already paid the short-paid duty payable after deducting adjusting the excess. The adjudicating authority is directed to verify the same and recover only the differential, if any, after such adjustment."

12. …. ….

13. In view whereof we are of the considered opinion that the substantial questions of law as proposed does not arise in the given facts of the case.**"**

5.2 We also find that this Tribunal in the case of *Suzlon Energy Limited vs. CCE, Cus. & ST, Vadodara (supra)* has held that in case of interunit transfer, valuation was adopted on the basis of CAS-4. As there is no sale of goods, adjustment of duty paid short with duty paid in excess is permissible. Relevant findings in para 5 and 6 are reproduced below:-

"5. After hearing both the sides and on perusal of the records, we find that it is a case of inter-unit transfer of the goods of the appellant's own company. In some cases, the appellant paid excess duty and there was short payment of duty of the amount of CAS-4. The Tribunal in the case of *M/s. Devi Thread Processors Pvt. Ltd.* (supra) following the decision of the Tribunal in the case of *Bajaj Tempo Ltd.* v. *Commissioner of Central Excise, Pune* - 2004 (172) E.L.T. 473 (Tri.-Mumbai) held that as there was no sale of the goods involved and the appellant cleared the goods to the raw material supplier on job work basis on conversion charges, it was directed adjustment of excess/short payment

of duty made by the appellant. The case of *Kalyani Ferrous Industries* (supra) would not be applicable in this case, as there was sale of goods.

6. In view of the above decisions, we direct the Adjudicating Authority to adjust the excess payment of duty against the short payment of duty and thereafter, the refund demand of duty would be decided, after considering the payment of interest, if any, in accordance with law. Both the appeals are disposed of in the above terms.**"**

5.3 Likewise, in the case of Bajaj Tempo Limited (supra), Mumbai Tribunal also arrived at the same findings in respect of valuation on the basis of CAS-4. It held that :-

"Heard both sides at length. The issue relates to valuation of the impugned goods cleared from one factory of the appellants to another factory under the new Valuation Rules brought into effect from 1-7-2000. The appellants continued to clear the impugned goods as per the values determined under the old rules but under intimation to the department. Subsequently, they re-determined the value for the consignments cleared after 1-7-2000 and paid differential duty of Rs. 1,18,25,451/- the Cenvat credit of which they have taken at their recipient factory. Such payment was made before issue of any show cause notice and within six months of the clearance in respect of all the consignments. The fresh valuation done under the new rules has not been disputed by the department. He demand for Rs. 26,63,851/-, which is the subject matter of the impugned orders passed by the lower authorities, is attributable to the fact that in respect of some consignments the duty was paid on a higher value compared to the re-determined value and hence the appellants, according to the Department, should have asked for a refund claim instead of adjusting the same while paying the differential amount. In other words, it is the department's case that the appellants should have paid differential duty of Rs. 1,44,94,102/- and claimed refund of Rs. 26,68,651/- instead of paying the adjusted amount of Rs. 1,18,25,451/-. We think that such a course as contended by the department would have resulted in an unnecessary exercise, particularly when any additional payment or refund would have resulted in variation of the credit at the other unit of the appellant. Our attention has also been drawn by the learned Advocate for the appellants to the earlier decisions of the Tribunal permitting adjustment of excess and short payments of duty in the following cases :-

(1) *Smithkline Beecham Consumer Healthcare Ltd.* v. *C.C.E., Chandigarh* - 2003 (153) E.L.T. 579 (Tri. - Del.)

(2) *Vinir Engineering Pvt. Ltd.* v. *C.C.E., Bangalore* - 2004 (168) E.L.T. 34 (Tri. - Bang.)

Following the aforesaid decisions and considering the fact that the net amount of differential duty payable by the appellants has been paid and the credit of the same has been taken at the recipient factory of the appellants only to the extent of such payment, we find no justification to sustain the demands confirmed against the appellants in the impugned orders passed by the lower authorities. As such, the said orders are set aside and the appeal is allowed.**"**

5.4 We find that the case laws relied upon by the appellant fully cover the instant issue. On the other hand, the case laws cited by Revenue dealt with

a different situation. The decision relied upon in the case of Mahindra & Mahindra Limited (supra) is on Revenue neutrality but the facts in this case are entirely different as short payment of duty arose because of furnishing wrong CAS-4 certificate showing less value. It was on pointing out by Revenue after auditing their balance sheet, revised CAS-4 was submitted and differential duty arose. In case of Krishna Electric Industries Limited vs. CCE, Indore (supra), the goods were being sold from depots and Rule 7 of the Valuation Rules for assessment to be adopted after being cleared from the factory. In some cases, differential duty arose due to increase in price for certain period whereas in certain other period, goods were sold at lower rate from the depot. The context in the present matter is entirely different than the issue in Krishna Electric Industries Limited. It was held that adjustment of excess paid duty with short payment of duty is not permissible and the duty paid in excess need to be taken back by way of refund. The decision in the case of Sterlite Industries Limited (supra) is also on different facts as here some of the elements were not included while preparing CAS-4 certificate. We therefore, find that the facts in the cases relied upon by the department are on different footing and therefore are not applicable to the instant case.

5.5 We find that ICWAI in their revised guidelines issued in 2012, have also prescribed the periodicity of cost sheet/certification. It mentions:

> "The basic purpose of CAS-4 is to determine the cost of production for goods captively consumed and calculate deemed transaction value thereof. Therefore, valuation is required at the time of removal of the goods. If costing is for the future period, it will be done at projected costs, projected capacity utilisation. In such cases, valuation of opening and closing stock of WIP and finished stock is to be ignored. In case, when the normal capacity utilization is not quantifiable and/or actual capacity utilization is likely to be low, as compared to previous period; it is advisable that the manufacturer shall go for Provisional Assessment under Rule 7 of Central Excise Rules, 2002. **After the end of**

the year annual certification should be done based on the finalized books of account and if the cost of production is found different than the provisional costs, differential duty shall be paid by the manufacturer."

6. Considering the submissions made by both sides, we are of the view that the decision of lower authorities denying adjustment of excess paid duty for some month (due to adoption of assessable value higher than CAS-4 figures) with short payment in some months, is not proper. In this case, there is no sale to independent buyers and only interunit transfer of goods for captive consumption is involved. There seems nothing wrong in adopting previous financial year's audit data to prepare CAS-4 and use the same for assessing duty on interunit transfer of goods and then reconcile duty payment figures as and when figures for the current year is available. Accordingly, we set-aside the impugned order passed by the Commissioner (Appeals) and allow the appeal filed by the appellant.

7. Appeal is allowed.

Pronounced in the open court on 03.12.2025)

(Dr. Ajay Krishna Vishvesha)
Member (Judicial)

(Satendra Vikram Singh)
Member (Technical)

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