CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 762 of 2011

(Arising out of Order-in-Original No. 02/2011-Commr. dated 07.01.2011 passed by the Commissioner of Central Excise and Customs, Belgaum.)

M/s. Ultra Tech Cements Ltd.,
(UNIT: Rajashree Cement Works)
Aditya Nagar, Malkhed Road,
Dist. Gulbarga.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Belgaum Commissionerate.

Respondent(s)

WITH

(i) Central Excise Appeal No. 938 of 2012 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 115/2012 dated 01.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

(ii) Central Excise Appeal No. 939 of 2012 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 115/2012 dated 01.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

(iii) Central Excise Appeal No. 940 of 2012 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 115/2012 dated 01.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

(iv) Central Excise Appeal No. 1445 of 2012 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 122/2012 dated 02.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

(v) Central Excise Appeal No. 3301 of 2012 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 504/2012 dated 03.10.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

(vi) Central Excise Appeal No. 3302 of 2012 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 501/2012 dated 03.10.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

(vii) Central Excise Appeal No. 26475 of 2013 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in- Appeal No. 06/2013-Commr/C.Ex. dated 28.02.2013 passed by the Commissioner of Central Excise and Customs, Belgaum.)

(viii) Central Excise Appeal No. 21492 of 2014 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Belgaum.)

(Arising out of Order-in-Original No. BEL/EXCUS/000//COM/B.HR/009/2014 (CX) dated 25.02.2014 passed by the Commissioner of Central Excise and Customs, Belgaum.)

(ix) Central Excise Appeal No. 23319 of 2014 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Belgaum.)

(Arising out of Order-in-Original No. BEL/EXCUS/000/COM/B.HR/008/2014 (CX) dated 11.08.2014 passed by the Commissioner of Central Excise and Customs, Belgaum.)

(x) Central Excise Appeal No. 23320 of 2014 (M/s. Ultratech Cement Ltd., Vs. Commissioner of Central Excise, Mangalore.)

(Arising out of Order-in-Appeal No. MLR-EXCUS-000-ADC-DIVII-APP-HAB-078-2014 dated 07.08.2014 passed by the Commissioner of Central Excise (Appeals), Mysore.)

APPEARANCE:

Mr. Ravi Raghavan, Advocate with
Mr. Tushar Sharma, Advocate for the Appellant.

Mr. P. Saravana Perumal, Addl. Commissioner (AR) with
Mr. Sanjay Venkat, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21139 - 21149 / 2024

DATE OF HEARING: 23.10.2024.

DATE OF DECISION: 23.10.2024

PER: D.M. MISRA

These appeals are filed against respective Orders-in-Appeals passed by the Commissioner of Central Excise (Appeals), Mangalore/Gulbarga/Belgaum. Since the issue involved in all these appeals lies in a narrow compass, they are taken up together for hearing and disposal. The details of appeals are tabulated below:

Sl. No.	Appeal Nos.	Date of SCN	Period of Dispute	OIO Nos. /OIA No. & Date	Duty demanded	Penalty imposed	Barred by limit-ation
1	E/762/2011	07.04.2010	April 2009 to July 2009	OIO No. 02/2011 dated 07.01.2011	Rs. 1,52,83,885/-	-	-
2	E/938/2012	25.01.2011	January 2010 to November 2010	OIA No. 115/2012 dated 01.03.2012	Rs. 13,93,772/-	Rs. 13,39,772/-	-
3	E/939/2012	10.03.2010	March 2008 to May 2009	OIA No. 115/2012 dated 01.03.2012	Rs. 16,74,205/-	Rs. 16,74,205/-	March 2008 to February 2009
4	E/940/2012	25.06.2010	June 2009 to December 2009	OIA No. 115/2012 dated 01.03.2012	Rs. 10,62,350/-	Rs. 5,00,000/-	-
5	E/3301/2012	27.08.2010	August 2009 to April 2010	OIA No. 504/2012 dated 03.10.2012	Rs. 28,39,876/-	-	-
6	E/3302/2012	30.12.2011	December 2010 to October 2011	OIA No.501/2012 dated 03.10.2012	Rs.24,58,484/-	Rs.1,00,000/-	
7	E/26475/2013	03.04.2012	March 2011 to December 2011	OIO No.06/2013 dated 28.02.2013	Rs.5,15,19,634/-	Rs.60,00,000/-	-
8	E/23319/2014	30.01.2014	March 2013 to August 2013	OIO No. BEL/EXCUS/000 /COM/B.HR/008 /2014 (CX) dt. 11.08.2014	Rs.2,25,94,848/-	-	-
9	E/23320/2014	18.10.2012	November 2011 to July 2012	OIA No. MLR-EXCUS-000-ADC-DIVII-APP-HAB-078-2014 dt. 07.08.2014	Rs.17,72,585/-	-	-
10	E/21492/2014	21.01.2013 20.06.2013	January 2012 to June 2012 July 2012 to December 2012	OIO No. BEL/EXCUS/000 /COM/B.HR/009 / 2014-(CX) dt. 25.02.2014	Rs.3,81,21,838/-	-	-
11	E/1445/2012	30.03.2013	April 2009 to March 2010	OIA No.122/2012 dt.02.03.2012	Pertains to refund of Rs.1,70,763/- consequent to difference in valuation of goods cleared for captive consumption.		

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of cement of various grades and clinkers falling under Chapter 25 of Central Excise Tariff Act (CETA), 1985. The appellant had cleared cement to their own RMC/packing units declaring the assessable value as 110% of cost of production following the principle of valuation prescribed under Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Alleging that the principle of valuation adopted by the appellant is incorrect and the value should be determined applying Rule 4 read with Rule 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, show-cause notices were issued periodically to the appellants demanding differential duty with interest and also

penalty has been proposed in the respective notices. On adjudication, the demands have been confirmed with interest and penalty and appeals filed against the respective Orders before the Ld. Commissioner(Appeals) were upheld. In Appeal No.E/1445/2012, the appellant has challenged the order of the Commissioner (A) upholding the rejection of refund claim by the adjudicating authority, which was filed by the appellant seeking refund of duty excess paid during the period April 2009 to March 2010 consequent to reduction in cost of production in comparison to the cost of production arrived at in the CAS-4 certificate under Rule 8 of Central Excise (Valuation) Rules, 2000.

3. At the outset, the learned advocate for the appellant has submitted that the demands have been confirmed on assumptions and presumptions. It has been presumed that the differential value of comparable prices of clearances be applied over the value adopted for clearance of cement to their sister units, on which duty has been paid. Further, he has submitted that the appellant has rightly applied Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, since the quantity of cement on which differential duty has been proposed to be demanded, was not sold by the appellant, but was stock transferred to their own sister unit for captive consumption in the manufacture of cement. Further, in terms of Section 4 of Central Excise Act, 1944 the assessable value of goods has to be determined in respect of each of the clearances and not on the basis of the conceptual value of the goods sold in another transaction. In support, they have placed reliance on the Board's Circular dated 30.06.2000 and Circular dated 01.07.2002. Further, it is submitted that though order has been passed by the Tribunal in appellant's own case in Final Order No.21426/2023 observing that Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 be applicable, however, the said order has been challenged before the Hon'ble Supreme Court being Civil Appeal No.14433/2024. They have submitted that in the said Final Order, the Tribunal has not considered the fact that no comparable price was available during the relevant period and hence, valuation could not have been adopted as per Rule 4 as per

Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Further, in the said order, also did not consider the aspect of revenue neutrality.

3.1 He submits that the subsequent Notification No.14/2013-CE (NT) dated 22.11.2013 amended Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 where Rule 8, 9, 10 of the Central Excise Valuation Rules, 2000 has been amended. The amendment had been brought into force with effect from 1.12.2013. Under Rule 8, it was incorporated that where the excisable goods are captively used by the manufacture for production or manufacture of other articles and are also sold to independent customers, the valuation of goods meant for captive consumption has to be done as per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. It is submitted that the said amendment has been brought only to overcome the decision of the Larger Bench of the Tribunal in the case of **Ispat Industries Ltd. vs. CCE: 2007 (209) ELT 185 (Tri.-LB)**. Further, he has submitted that the said amendment being clarificatory in nature, hence, to be applied retrospectively. In support, they have referred to the judgment in the case of **CCE vs. Fosroc Chemicals (India) Pvt. Ltd.: 2015 (318) ELT 240 (Kar.)** and **UOI vs. Steel Authority of India Ltd.: 2013 (297) ELT 166 (Chhattisgarh)**. Further, he has submitted that the situation is revenue neutral and the differential duty payable on goods cleared for captive consumption to their sister units would be available as credit at their sister unit. In support, they have referred to the judgment in the case of **Nirlon Ltd. vs. CCE, Mumbai: 2015 (320) ELT 22 (SC)**. Further, he has submitted that the said principle has been followed in the case of **Hindalco Industries Ltd. vs. CCE, Kolkata-II: 2024 (6) TMI 1000-Cestat-Kolkata** and held that there is no question of evasion of duty.

3.2 Further, they have submitted that the demand is barred by limitation(Appeal No. E/939/2012) as no facts have been suppressed from the knowledge of the department nor mis-declared, therefore, extended period demanding differential duty cannot be sustained for the period March 2008 to February 2009. Further it is submitted that since the issue relates to interpretation of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and the differential duty payable is admissible to their sister unit as credit hence, imposition of penalty also not sustainable.

4. The learned Authorized Representative for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeals for consideration is, during the period in question i.e., from April 2004 to December 2012, the clinkers transferred by the appellant to their sister concern to be valued under Rule 4 or Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. This Tribunal in appellant's own case for their own unit for the period from March 2011 to November 2013 held that Rule 4 read with Rule 11 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 be adopted following the judgment of the Larger Bench of the Tribunal in the case of **Ispat Industries** case (supra). This Tribunal vide Final Order No.21426/2023 dated 22.12.2013 observed as:

> "7. Heard both sides and perused the records. The present dispute relates to determination of assessable value of clinkers manufactured by the appellant and cleared to their own sister units during the period March 2011 to November, 2013.
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> 8. The Revenue's contention is that Rule 8 of the Central Excise Valuation Rules, 2000 cannot be made applicable as the goods were not wholly consumed or transferred to their sister units but a portion of the goods were sold to independent buyers. It is their argument that Rule 4 of the Central Excise Valuation Rules, 2000 read with Rule 11 be applied in arriving at the assessable value of the clinkers transferred to the sister units. The relevant Rules are reproduced below:
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> > **RULE 4.** The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time

nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable.

RULE 8. Where whole or part of 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 of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

RULE 11. If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub section (1) of section 4 of the Act.

9. We find that this issue has been considered by the Larger Bench of the Tribunal in Ispat Industries Ltd.'s case and their lordships after noting the Circulars issued by the Board in this regard observed as follows: -

*"**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.*
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> *27.................*
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> *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. Therefore, we have no hesitation to hold that the appropriate rules for determination of the assessable value of the goods for the transferred clinkers to sister units will be Rule 4 read with 11 of the Central Excise Valuation Rules, 2004 rather than Rule 8 of the Central Excise Valuation Rules, 2000 for the period in question."

7. Learned advocate for the appellant has argued that the aspect of revenue neutrality is not considered while deciding the case for earlier period. In support, they have referred to the judgment of the Hon'ble Supreme Court in **Nirlon Ltd.'s** case. We find that the said argument of the learned advocate is misplaced and the principle of law laid down by the Hon'ble Supreme Court has been misunderstood in ascertaining the correct method of valuation applicable for clearance of goods to own unit on stock transfer basis. The revenue neutrality is not a statutory concept but a principle of equity developed by courts as a mitigating factor in appreciating the intention of the persons while applying the principle of law to a particular situation to determine the reason for non-payment of duty. Revenue neutrality cannot be considered as an incentive not to follow the statutory provision governing principle of valuation solely on the ground that the other unit could

avail the benefit of credit of the differential duty payable. This can be discerned from the observation of the Hon'ble Supreme Court in **Nirlon Ltd.'s** case which is reads as:

> "**8.** We may note that Mr. K. Radhakrishnan, learned Senior Counsel appearing for the Revenue, vehemently countered the aforesaid submission of the appellant and argued that there was clear intention to evade the Excise duty. His submission was that the clearance of the goods which were sold at the factory gate were totally different as they differed in technical specifications from those removed for captive consumption which was confirmed by the appellant itself vide its letter dated 21-2-2000 and this would depict clear intention on the part of the appellant to remove the goods by paying lesser duty.
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> **9.** We have ourselves indicated that the two types of goods were different in nature. The question is about the intention, namely, whether it was done with *bona fide* belief or there was some *mala fide* intentions in doing so. It is here we agree with the contention of the learned Senior Counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty."

Their Lordships in the facts of said case observing revenue neutrality as a factor to analyze and appreciate the intention of the parties for non-adherence to the correct method of valuation and held that there could not be any *mala fide* intention to be attributed in the said case.

8. We find that this Tribunal for the earlier period while applying the principle of valuation under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to the circumstances of the case has set aside the demand for the extended period of limitation holding that the same cannot be applicable to cases involving interpretation of statutory principles of valuation and in absence of suppression or misdeclaration of facts on the part of the assessee.

9. Following the precedent decision in appellant's own case, the impugned order in Appeal No. E/939/2012 is modified to the extent of setting aside the demand for the extended period of

limitation and the demand with interest to be confirmed for the normal period of limitation. All these appeals including Appeal No.E/939/2012 are remanded to the adjudicating authority to redetermine the assessable value applying the principle of Rule 4 read with Rule 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and compute the differential duty with interest for the normal period. As the issue pertains to interpretation of provision of Central Excise (Valuation) Rules, 2000 imposition of penalty is also not warranted and accordingly not sustainable, hence, set aside.

10. Since, we are remanding the matters to redetermine the assessable value, therefore, the refund arising out of difference in the CAS-4 Certificate and actual cost of production subjection matter of Appeal No. E/1445/2012 is infructuous. Consequently, the appeal is dismissed.

11. All appeals are disposed of on above terms.

(Operative portion of the order was pronounced in open court
on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv