CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2

Excise Appeal No. 21428 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-111 to 117 -13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

Victoria Polyform

Kaipully P.O. Arimpur,

Thrissur Kerala – 680020 **.......Appellant**

VERSUS

The Commissioner of Central Excise

And Service Tax, Calicut

C R Building, Manachira,

Calicut, Kerala – 673001 **....... Respondent**

WITH

(i) Excise Appeal No. 22178 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-112-13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

(ii) Excise Appeal No. 22179 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-115 -13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

(iii) Excise Appeal No. 22180 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-116 -13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

(iv) Excise Appeal No. 22181 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-117 -13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

(v) Excise Appeal No. 22182 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-114-13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

(vi) Excise Appeal No. 22183 of 2014

[Arising out of the Order-in-Appeal Nos. CAL-EXCUS-000-APP-113 - 13-14 dated 28.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

(vii) Excise Appeal No. 20706 of 2018

[Arising out of the Order-in-Appeal No. CAL-EXCUS-000-APP-114-2018 dated 12.03.2018 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

Appearance:

Shri. P. Raghunathan, Consultant for the Appellant

Shri. Neeraj Kumar, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20213-20220 of 2025

Date of Hearing: 27.08.2024
Date of Decision: 26.02.2025

Per: P A Augustian

The issue in the present appeals is whether the valuation of goods sold by the appellant from their depot during the period from 01.04.2004 to 31.12.2012 is covered under Rule 7 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000.

2. The brief facts are the appellants are manufacturing plastic water storage tanks and selling 90% of their production at the factory gate to independent buyers and were paying duty on such transaction value. As regards the balance quantity, they transferred the same to their depot in Tamil Nadu on which they were paying duty on the basis of the price charged to independent buyers at the factory gate. However, Audit objected to the method of valuation of the goods transferred to the depot on the ground that the appellant should have carried out the valuation under Rule 7 of the Central Excise Valuation (Determination of

Price of Excisable goods) Rules, 2000. Accordingly, Show Cause Notices were issued for the period from 01.04.2004 to 31.03.2008 invoking the extended period of limitation and for the remaining period till 31.12.2012 by issuing separate Show Cause Notices as follows:-.

Sl. No	**Period**	**0I0 No. & date**	**Assessable Value at depot**	**Duty**	**Penalty**	**Remarks**
1.	01.04.2004 to 31.03.2008	02/2009 CE dated 23.01.2009	1,46,16,659/-	4,96,686/-	4,96,686/-	SCN issued invoking extended period of limitation
2.	01.04.2008 to 28.02.2009	12/2009 CE dared 19.06.2009	96,65,729/-	2,59,446/-	2,59,446/-	do
3.	01.3.22009 to 31.03.2009	04/2011 CE dated 03.01.2011	1,01,74,940/-	2,01,341/-	2,01,341/-	do
4.	01.01.2010 to 30.11.2010	06/2011 CE dated 21.03.2011	1,70,42,815/-	2,39,470/-	2,39,470/-	do
5.	01.12.2010 to 31.03.2011	14/2011 CE daed 14.08.2011	45,72,834/-	2,38,130/-	2,38,130/-	do
6.	01.04.2011 to 31.10.2011	07/2012 CE dared 23.08.2012	95,57,670/-	4,72,742/-	4,72,742/-	do
7.	01.11.2011 to 31.12.2012	09/2013 CE dated 31.10.2013	77,51,663/- 1,98,25,708/-	3,46,004/- 3,67,917/-	7,13,923/-	do

3. Thereafter, Adjudicating Authority confirmed the demand and aggrieved by the said orders, appeals were filed before Commissioner (Appeals). The Commissioner (Appeals) vide Order-In-Appeal dated 12.03.2018 upheld the Order-In-Original, however for the first period restricted the demands for normal period and also set aside the penalty

under Section 11AC. Further for the period 01.01.2013 to 31.12.2013 Show Cause Notice dated 27.012.2014 was issued and the adjudicating Authority confirmed the demand vide order-in-original dated 15.01.2015 and on appeal Commissioner (Appeals) vide order-in-appeal dated 12.03.2018 has upheld the order-in-original. Aggrieved by all the above 8(eight) impugned orders present appeals are filed before the Tribunal.

4. As the issue involved in all the 8(eight) appeals is common they are being disposed by this order,

5. When the appeal came up for hearing, learned Consultant for the appellant draws our attention to the Rule 7 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000, which is extracted as under;

> *"Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."*

6. Learned Consultant submits that as per the above Rule, it is applicable only when entire goods are transferred to a depot, consignment agent or such other places for further sale. In the

appellant case, 90% of the sales are at the factory gate to independent buyers and about 10% of the goods are transferred to the depot. Hence, valuation under Rule 7 is not applicable in the appellant's case.

7. Learned Consultant further submits that the issue is no more *res integra*. Larger Bench considered the issue in the matter of **ISPAT INDUSTRIES Vs. COMMISSIONER OF C.EX. RAIGAD – 2007 (2) TMI 5 – CESTAT, MUMBAI-LB** and it is held that;

> *"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*
>
> > *"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 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. 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. 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."

8. Learned Consultant further submits that the very same issue was also considered by the Tribunal in the matter of **M/s. Jai Balaji Industries Ltd Vs. Commissioner of C.EX., Bolpur – 2021 (12) TMI 358 – CESTAT, KOLKATA**

"21. This decision of the Larger Bench was relied upon by the Tribunal in the case of Bharat Petroleum Corporation Ltd (supra) to hold that Rule 7 of the Valuation Rules, 2000, which uses the same expression" where excisable goods are not sold..", can be invoked only where there are no sales of the goods at the factory gate and all the goods of the assessee are transferred to consignment agents. If the assessee's excisable goods are also sold at the factory gate, Rule 7 will not apply."

9. Learned Authorised Representative (AR) reiterated the submissions in the impugned order and submits that the Appellate Authority has rightly confirmed the demand for the normal period and appeals are unsustainable.

10. Heard both sides and perused the records.

11. We find that it is an admitted fact that 90% of the sales are carried at the factory gate to unrelated customers and as per the Rule 7 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000, it is very clearly stated that, where excisable goods are not sold by the assessee at the time and place of removal, Rule 7 can be invoked. Considering the decisions relied by the learned Consultant for the appellant, the demand by invoking the Rule 7 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000 is unsustainable. Accordingly, the appeals are allowed with consequential relief, if any, in accordance with law.

(Order Pronounced in Open court on 26.02.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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