

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

~~~~~

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 55438 Of 2013**

[Arising out of OIA No. 94/CE/APPL/DLH-V/2012 dated 06.11.2012 passed by the Commissioner (Appeals) of Central Excise, Faridabad]

**Jai Ba Metals**

Plot No. 30/4, Wear Well Cycle Compound  
Faridabad

**: Appellant (s)**

Vs

**CCE-Delhi-IV**

New CGO Complex, NH-IV... NIT  
Faridabad, Haryana

**: Respondent (s)**

APPEARANCE:

Shri Rajiv Agnihotri, Advocate for the Appellant  
Ms. Shivani, Shri Ravinder Jangu, DRs for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)  
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60577/2023**

Date of Hearing:18.08.2023

Date of Decision:31.10.2023

**Per : S. S. GARG**

The present appeal is directed against the impugned order dated 06.11.2012 whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the order-in-original.

2. The brief facts of the present case are that the appellant is engaged in the manufacture of non-alloy bright bar (S.H. 72155010). An Audit of the appellant was conducted for the Year 2005-06 to 2009-10 and it was alleged that the appellant has been clearing the finished products at lesser value to the buyer M/s Gera Enterprises, Faridabad.

- On these allegations, a Show cause notice dated 6.4.2011 was issued to the appellant that the appellant had been clearing the manufactured goods at a lower assessable value to M/s Gera Enterprises, who is a related person of the Appellant as the same is a proprietary concern owned by Shri M.L. Gera who is the father of Shri Raj Kumar Gera i.e. the proprietor of the appellant. The show cause notice proposed recovery of short levy of Rs. 2,44,191/- on the basis of the value of clearances of Rs. 1,81,57,445/- during the period March, 2006 to 15.03.2011 for violation of provisions of Section 4(1)(b) of Central Excise Act, 1994 read with Rule 8 and 9 of Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000. The said Show Cause notice was issued by invoking the extended period of limitation.

- After following due process, the adjudicating authority confirmed the demand alongwith interest and penalty.

- Aggrieved by the said order, the appellant filed an appeal before the Ld. Commissioner (Appeals) who in turn, rejected their appeal.

- Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. He further submits that as per the respondent the instant case is covered by Section 4(1)(b) of the Central Excise Act, 1944, for the purpose of valuation of the said excisable goods manufactured by the appellant. Further where the goods manufactured are entirely consumed captively by an assessee, their assessable value shall be

110% of the cost of production as per Rule 8 of the said Valuation Rules, 2000. As per Rule 9, when the goods are not sold by an assessee except to a related person, who does not sell the goods but consumes the same in the production of articles, their value shall be determined as per Rule 8. Based on interpretation of the aforesaid provisions, the order imputes that since the goods are sold by the appellant to its related person viz. M/s Gera Enterprises, Faridabad, who consumes the same captively in the production of other goods, the assessable value of these goods sold to M/s Gera Enterprises should be calculated at 110% (of the value charged from M/s Gera Enterprises) in terms of Rules 8 ibid.

5. To counter this finding, Ld. Counsel submits that the impugned order concludes on the basis of an incorrect appreciation of provisions of Rule 9 of the Central Excise Valuation Rules, 2000. He further submits that in Para 2 of show cause notice, it is alleged that "the Noticee had been clearing the finished goods at lesser (assessable) value to M/s Gera Enterprises as compared to other customers." He further submits that the fact that the appellant cleared the impugned goods to M/s Gera Enterprises, as well to others is not in dispute. He further submits that since in the instant case, the impugned goods, as manufactured by the noticee, are sold by him in the open market to un-related person as well as the related persons, the provisions of Rule 9 of Central Excise Valuation Rules 2000 are not attracted here. The provisions of Rule 9 would be invokable where a manufacturer sells his entire production to his related person who consumes the same captively in the production of his own goods which is not the case in the present case.

6. He further submits that the impugned order is not sustainable for another reason also. Under Rule 8 *ibid*, the assessable value would be 110% of the cost of production, whereas in this case, the short levy has been worked out on the basis of 110% of the value charged by the appellant from M/s Gera Enterprises. Further, there is no evidence that the said value is the cost of production of the goods in question. The order is based on erroneous grounds, hence maintainable.

7. Ld. Counsel for the appellant also submits that the show cause notice is barred by limitation as the same was issued on 5.4.2011 for the year 2005-06 to 2009-10 related to the transaction period from March 2006 to 15.3.2011 by invoking the extended period of limitation but there is no suppression or mis-statement of fact or fraud etc. The appellant has been filing monthly returns in form ER-1 showing clearance of goods at appropriate rate of duty on the appropriate value of these goods. He further submits that this issue is no more *res-integra* and has been settled by the Larger Bench of the Tribunal in the case of *Ispat Industries vs. Commissioner of Central Excise, Raigad* reported in 2007 (209) ELT 185 wherein it has been held as under:-

*"The provisions of Rule 8 of Valuation Rules will not apply in a case where some part of the production is cleared to independent buyers."*

8. Ld. Counsel also relied upon the decision of the Tribunal in the case of *Sudershan Castings Pvt. Ltd. & Ors. Vs. CCE-Jammu* vide Final Order No. 60965-60970 of 2017 dated 29<sup>th</sup> May 2017 wherein the identical issue was involved and this Tribunal allowed the appeal of

the assessee by relying upon the larger bench decision in the case of Ispat Industries (supra).

9. On the other hand, Ld. DR reiterated the findings in the impugned order. Ld. DR also cited the following decisions in their supports:-

(i) CCE & ST- Rohtak vs. Merino Panel Product Ltd. 2023 (383) ELT 129 (S.C.)

(II) M/s Birdi Steels vs. Commissioner of Central Excise, Ludhiana 2005 (191) ELT 849 (Tri.-Del.)

10. After considering the submission of both the parties and perusal of material on record, we find that in the present case, the demand has been confirmed by relying upon Rule 8 and 9 of Central Excise Valuation Rules, 2000 whereas it is an admitted fact in the show cause notice that the entire production has not been cleared to a related person M/s Gera Enterprises in this case. In the show cause notice itself it has been stated that the noticee has been clearing the finished goods at lesser (assessable) value to M/s Gera Enterprises as compared to other customers. Once this fact is admitted then applying Rule 9 is not legally sustainable in view of the larger bench decision of the Tribunal in the case Ispat Industries (supra).

11. Besides, this Tribunal in the case of Sudershan Castings Pvt. Ltd. (supra) held that when the goods are sold to related persons as well as to independent buyers, in that case, Rule 9 will not be applicable.

12. As far as the limitation is concerned, we also find that the appellant has been filing the monthly returns regularly and has not concealed any material fact from the department. Therefore, alleging

suppression or fraud to invoke the extended period of limitation is not legally sustainable.

13. Therefore, by relying upon the ratio of the Larger Bench decision in the case Ispat Industries (supra), we hold that the impugned order is not sustainable in law and the same is set-aside by allowing the appeal of the appellant.

*(Pronounced on 31.10.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.