**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

**DIVISON BENCH**
**COURT NO.1**
**Appeal No. E/939-941/2011**

[Arising out of the Order-in-Appeal No. 01-02/BK/GGN/2011 dated 06.01.2011 passed by the CCE (Appeals), Delhi-III, Gurgaon]

Date of Hearing/Decision: 16.03.2018

For Approval & signature:

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

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**M/s Henkel Teroson India Ltd.**
**Shri. Ramaswamy Desikan**
**Shri. Vidhan Choubey** **Appellants**

**Vs.**

**CCE, Delhi-III** **Respondent**

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**Appearance**

Shri. B.L.Narasimhan, Advocate- for the appellant
Shri. Atul Handa, AR- for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

**FINAL ORDER NO: 62216-62218 / 2018**

**Per Ashok Jindal:**

The appellants are in appeal against the impugned order demanding duty on account of under valuation of the goods cleared to their sister unit in terms of Rule 8 of the Central Excise (Determination of the price of excisable goods) Valuation Rules, 2000.

2. The facts of the case are that the appellant is manufacturer of excisable goods. The appellant sold these goods to OEM suppliers, SPC of said OEM's, stock transferred to depot for sale therefrom and also stock transferred to its sister units, on payment of duty. The appellant adopted

value of goods sold to OEMs as the assessable value of goods stock transferred to their sister units for payment of duty. The sister unit captively used these goods in the manufacture of final products which were cleared on payment of duty. The case of the Revenue is that as valuation of good stock transferred to sister units for captive consumption is to be in terms of Rule 8 of the Central Excise (Determination of the price of excisable goods) Valuation Rules, 2000 i.e. they have to pay duty on 110% of the cost of production of such goods, therefore, the show cause notice issued to the appellant to demand duty for the period February' 2004 to December' 2008 by issuance of the show cause notice dated 20.02.2009. The matter was adjudicated, demand of duty was confirmed along with interest and various penalties were imposed on all the appellants. Against the said order, the appellants are before us.

3. The ld. Counsel for the appellants submits that the provisions of Rule 8 of Valuation Rules, 2000 are not applicable to the facts of this case as the appellant are clearing goods to sister unit as well as to independent buyers on the same price, therefore, the Valuation Rules 8 is not applicable. He further submitted that the whole exercise is Revenue neutral, therefore, demand is not sustainable. He also submitted that the major of the demand is barred by limitation.

4. Heard the parties and considered the submissions.

5. We find that it is facts on record that the appellant is clearing goods to their sister unit as well as to independent buyers on the same price. The provisions of Rule 8 of Valuation Rules, 2000 are extracted herein below;

> " *Rule 8. 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."*

6. The said provision is applicable when the goods are not sold by the assessee then the provisions of Rule 8 of the Central Excise (Determination of the price of excisable goods) Valuation Rules, 2000 are applicable but it is facts on record that the appellant sold the goods to the independent buyers as well as transferred the goods to their sister unit. In that circumstances, we hold that the provisions of Rule 8 of Valuation Rules, 2000 are not applicable to the facts of this case. Therefore, the proceedings against the appellants are not sustainable. In that circumstances, we do not find any merit in the impugned order, the same is set aside.

In result, the appeals filed by the appellants are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

**Anil G. Shakkarwar**
**Member (Technical)**

**Ashok Jindal**
**Member (Judicial)**

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