

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL
BENCH
CHENNAI**

S.No.	Appeal No.	Appellant	Respondent
1.	E/308/2011	Best Cotton Mills	CCE Salem
2.	E/292/2011	CCE salem	Best Cotton Mills
Arising out of Order-in-Appeal No.21/2011 dt. 23.02.2011 passed by Commissioner of Customs & Central Excise (Appeals) Salem			

Appearance :

Ms. S. Vishnupriya, Advocate
For the Assessee

Shri K.P.Muralidharan, AC (AR)
For the Revenue

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 15.05.2018

FINAL ORDER No. 41502-41503 / 2018

Per Bench

The facts of the case are that M/s.Best Cotton Mills Ltd., (herein after referred to as the assessee) are manufacturers of cotton yarn and fabrics. They clear yarn manufactured by them to their depot. From the depot, yarn is cleared to their Unit-II who converted the yarn into fabrics and sold them to M/s.Best International who in turn convert fabrics into garments

and exported the same. Assessee also sold the yarn from the depot to third parties. Department took the view that assessable value in respect of clearances made from the depot to their sister concern (Unit-II) should be determined under Rule 8 of the Valuation Rules and accordingly, SCN dt. 21.01.2010 was issued to assessee proposing demand of differential duty liability of amount of Rs.7,32,752/- for the period 1.7.2000 to 30.6.2014 along with interest and also imposition of penalties under various provisions of law. Adjudicating authority vide an order dt. 28.04.2010 confirmed amount of Rs.6,15,796/- with interest and also imposed equal penalty under Section 11AC of the Central Excise Act read with Rule 25 of the Rules. In appeal, Commissioner (Appeals) vide an impugned order dt. 23.02.2011 held that valuation of cotton yarn cleared by the assessee to Unit-I for the period from 1.7.2000 upto 12.2.2003 will be governed by the provisions of Rule 4 of the Valuation Rules in view of the decisions of the Larger Bench of Tribunal in *M/s.Ispat Industries Ltd. Vs CCE Raigad – 2007* (209) ELT 185 (Tri.-LB). For the subsequent period however, the lower appellate authority held that valuation has to be determined in accordance with Rule 8 of the Rules and accordingly, upheld the order of the original authority to that extent, with interest liability thereon. The lower appellate authority set aside the penalty imposed by the original authority.

Aggrieved, assessee have preferred Appeal E/308/2011. Revenue is aggrieved by grant of relief for the period upto 12.02.2003 and dropping of penalty by the lower appellate authority and have preferred Appeal E/292/2011.

2. Today when the matter came up for hearing, on behalf of the assessee, Ld. Advocate Ms. Vishnupriya submits that the Commissioner (Appeals) should have applied the ratio laid down by the Larger Bench of the Tribunal in the case of *Ispat Industries* (supra) for the entire period. She also submits that the Board's circular dt. 13.2.2003 will not apply to their case since Rule 8 has no application in this case as there is no captive consumption involved and the assessee also sells yarn from the depot to other individual buyers. She relied on the following case laws :

- (1) *M/s.Ispat Industries Ltd. Vs CCE Raigad* – 2007 (209) ELT 185 (Tri.-LB).
- (2) *Bhavnagar Vs Ultratech Cement Pvt. Ltd.* 2014 (302) ELT 34 (Guj.)
- (3) *ITC Ltd. Vs CCE Salem* (Tri-Chennai) Final Order No.40351-40357 dt. 20.12.2017
- (4) *Eastman Spinning Mills (P) Ltd. Vs CCE Madurai* 2016-TIOL-1070-CESTAT-MAD.

3. We have heard the Ld.A.R Shri K.P. Muralidharan who, while supporting the adjudication to the extent that the lower appellate authority

has confirmed the duty liability, however reiterated the grounds of appeal in respect of dropping of duty liability for the period prior to 13.2.2003 as also dropping of penalty.

4. Heard both sides. We find that the matter is no longer *res integra* and has been set to rest by a catena of decisions including those cited by the Ld. Advocate. The Rule 8 of Central Excise (Valuation) Rules, 2000 will apply only where the entire production of the particular commodity is captively consumed. It has been consistently held by various higher appellate forums that if both the Rules i.e. Rule 4 and Rule 8 of the Valuation Rules are applicable, sequential application of various rules is the only reasonable way to read the rules. Hence Rule 4 in any case would be preferred. It is also not disputed that impugned goods have been sold by the assessee to individual buyers. This being the case, price at which the goods have been sold to unrelated buyers will have to be taken as the basis for valuation and not as per the provisions of Rule 8. This is also the ratio laid down in the case laws cited by the Ld. Advocate. In the event, we find in favour of the assessee. The impugned order to the extent of confirming the duty liability after 13.2.2003 cannot be sustained, hence we set aside that part of the order. We however do not find any infirmity with the rest

of the impugned order. Assessee Appeal E/308/2011 is allowed and Department Appeal E/292/2011 is rejected.

Appeals disposed of on above terms.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Appeal Nos.E/292/2011
E/308/2011

