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

Appeal No.E/173/2012

[Arising out of Order-in-Appeal No.204/2011 dt. 21.11.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

L.G. Balakrishnan & Bros. Ltd. — Appellant

Versus

Commissioner of Central Excise,
Coimbatore — Respondent

Appearance :

Shri D. Santhana Gopalan, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

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

Date of hearing : 24.10.2018
Date of Pronouncement :26.10.2018

FINAL ORDER No. 42684 / 2018

Per Bench

The brief facts of the case are that the appellants contravened provisions of Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Section 4 of the Central Excise Act, 1944 read with Board's Circular No.692/08/2003-CX dt. 13.02.2003, inasmuch as they had transferred the excisable goods manufactured by them to their sister concerns for which transactions, the appellants had discharged duty on 110% of the value arrived in accordance with CAS-4 but not taken into account the increase in the administrative overheads from 12.58% to 15.98%. Hence show cause notice was issued and after due process of law, the original authority confirmed the demand of Rs.41,73,962/- along with interest and also imposition of equal penalty. In appeal, the commissioner (Appeals) upheld the same. Hence this appeal.

2.1 On behalf of the appellant, Ld. Counsel Shri D. Santhana Gopalan argued the matter. He submitted that the appellant is engaged in the manufacture of chains, sprockets etc. During the impugned period, they also stock transferred some quantity of semi-finished chains to their sister units in Waluj and Chakan in Maharashtra on payment of excise duty as per Rule 8 of Valuation Rules. While determining the cost of production, the material cost and other elements were arrived on actuals. However, the administrative overheads are taken based upon the preceding financial year since the overheads for the current year would be available only after finalisation of the balance sheet which takes place in the second half of the subsequent financial year. The administrative overheads for calculating cost of production from 2006 to 2009 are shown below :

Year	**Rate of Actual Overhead**
2005-06	16.35%
2006-07	12.58%
2007-08	15.98%

For the clearances made from 01.04.2007 to 18.10.2007, since the balance sheet for 2006-07 was not completed, the appellant adopted the overheads of 2005-06 viz. 16.35%. During the impugned period i.e. from 19.10.2007 onwards, since the balance sheet for 2006-07 was finalised, the overheads of 12.58% was adopted. He argued that during the year 2006-07 there was reduction in the overheads from 16.35% to 12.58% and they have adopted 12.58% while arriving at the value. The Ld. counsel submitted that even if the appellants had paid the increased duty, the entire exercise is revenue-neutral since the clearances are made to their sister units in Maharashtra. The assessee unit would be able to eligible to take cenvat credit of the duty paid and therefore the entire exercise is revenue-neutral and there is no loss to the Government and no gain to the appellant. He placed reliance on the following decisions :

a. CCE v. Indeos ABS Ltd. [2010 (254) ELT 628 (Guj.)]
b. CCE v. Tenneco RC India Pvt. Ltd. [2015 (323) ELT 299 (Mad.)]
c. Nirlon Ltd. v CCE [2015 (320) ELT 22 (SC)]
d. Kansai Nerloc Paints Ltd. v CCE [2016 (339) ELT 467 (Tri.-Ahmd.)]
e. International Auto Ltd. v CCE [2005 (183) ELT 239 (SC)]
f. Trinity Dic Forgers Ltd. Vs CCE [2017 (348) ELT 276 (Tri.-Mumbai)]

2.3 It is also argued by him that the entire demand is time-barred. The clearances made by the appellants to their own sister units and there was no malafide intention or suppression of facts with intent to evade payment of duty, as the assessee unit should be able to take credit of the duty paid by the appellant.

3. Ld. A.R Shri A. Cletus appeared on behalf of the department and reiterates the findings in the impugned order.

4. Heard both sides.

5. The demand is raised for the reason that the appellants have not adopted the actual overheads for the respective financial years. The main argument put forward by the counsel for the appellant is that entire exercise is revenue-neutral and the demand is also time-barred. Undisputedly, the clearances are made to their own sister units and even if the differential duty is paid by the appellants, the assessee units would be able to take cenvat credit of the same. On these grounds, it can be seen that there is no loss to the Government and no gain to the appellant which discloses revenue-neutral situation. The Hon'ble jurisdictional High Court in the case of *CCE Chennai Vs Tenneco RC India Pvt. Ltd*. (supra) had considered a similar issue and following the decision of the Hon'ble Apex Court in the case of *Nirlon Ltd.* (supra) had observed that entire exercise is revenue-neutral, the appellant could not have achieved any purpose to evade duty and held the issue in favour of the assessee. Following the said decision, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside and the appeal is allowed, with consequential benefits, if any, as per law.

(Order pronounced in court on 26.10.2018)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi, C.S)
Member (Judicial)

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