Excise Appeal No.41271 of 2015
Excise Appeal No.40083 of 2018
Excise Appeal No.42215 of 2018
Excise Appeal No.40646 of 2019

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI**

COURT HALL No.III

EXCISE APPEAL No.41271 OF 2015

(Arising out of Order-in-Original No.2/2015 (Commr.) dated 16.03.2015 passed by Commissioner of Customs, Central Excise and Service Tax, 6/7, ATD Street, Race Course, Coimbatore 641 018)

M/s. Lakshmi Machine Works Ltd. **... Appellant**
Foundry Division,
Arasur Village,
COIMBATORE 641 407.

Versus

The Principal Commissioner of GST & Central Excise, **...Respondent**
Coimbatore Commissionerate
6/7, A.T.D. Street,
Race Course,
COIMBATORE 641 018.

WITH

EXCISE APPEAL No.40083 OF 2018

(Arising out of Order-in-Appeal CMB-CEX-000-APP-262-17 dated 09.10.2017 passed by Commissioner of GST & Central Excise (Appeals), 6/7, ATD Street, Race Course, Coimbatore 641 018)

M/s. Lakshmi Machine Works Ltd. **... Appellant**
(Foundry Division),
Arasur Village,
COIMBATORE 641 407.

Versus

The Principal Commissioner of GST & Central Excise, **...Respondent**
Coimbatore Commissionerate
6/7, A.T.D. Street,
Race Course,
COIMBATORE 641 018.

WITH

EXCISE APPEAL No.42215 OF 2018

(Arising out of Order-in-Appeal CMB-CEX-000-APP-127-18 dated 28.05.2018 passed by Commissioner of GST & Central Excise (Appeals), 6/7, ATD Street, Race Course, Coimbatore 641 018)

M/s. Lakshmi Machine Works Ltd. **... Appellant**
(Foundry Division),
Arasur Village,
COIMBATORE 641 407.

Versus

The Principal Commissioner of GST & Central Excise, **...Respondent**
Coimbatore Commissionerate
6/7, A.T.D. Street,
Race Course,
COIMBATORE 641 018.

AND

EXCISE APPEAL No.40646 OF 2019

(Arising out of Order-in-Appeal CMB-CEX-000-APP-025-19 dated 18.01.2019 passed by Commissioner of GST & Central Excise (Appeals), 6/7, ATD Street, Race Course, Coimbatore 641 018)

M/s. Lakshmi Machine Works Ltd. **... Appellant**
(Foundry Division),
Arasur Village,
COIMBATORE 641 407.

Versus

The Principal Commissioner of GST & Central Excise, **...Respondent**
Coimbatore Commissionerate
6/7, A.T.D. Street,
Race Course,
COIMBATORE 641 018.

APPEARANCE :

Mr. M. Saravanan, Consultant
For the Appellant

Mr. S. Balakumar, Assistant Commissioner (A.R)
For the Respondent

CORAM :

Hon'ble Ms. SULEKHA BEEVI, Member (Judicial)
Hon'ble Mr. M. AJIT KUMAR, Member (Technical)

Date of Hearing : 05.06.2023
Date of Decision :16.06.2023

FINAL ORDER No.40444-40447/2023

ORDER : Per Ms. Sulekha Beevi, C.S.

The issue involved in all these appeals being the same they were heard together and are disposed of by this common order.

1. The appellant, M/s. Lakshmi Machine Works, Foundry Division is engaged in manufacture of Iron castings and are registered with the Central Excise Department. They cleared the Iron castings (finished products) on stock transfer basis, on payment of duty, to their sister units for further use in the manufacture of textile machinery. These Iron castings are in the nature of semi-finished goods which are subsequently consumed captively in the manufacture of textile machinery which is cleared on payment of duty. The assessable value adopted for payment of duty on Iron castings cleared to the sister unit is based on the cost of production declared by the appellant.

2. When the excisable gods (Iron castings in this case) are not sold by an assessee, but is captively consumed or used on their behalf in the manufacture of other products, the valuation of the goods for payment of central excise duty has to be made under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

3. As per the provisions of Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where the excisable goods are not sold by an assessee, but are used for consumption by him or on his behalf in the manufacture of other articles, the value shall be 110% of the cost of manufacture of such goods.

4. In terms of the above, the Government of India, Ministry of Finance and Company Affairs, Department of Revenue, New Delhi, vide Circular No.692/8/2003-CX dated 13.2.2003, has clarified that the cost of production of captively consumed goods should be done strictly in accordance with CAS-4 (Cost Accounting Standard-4) issued by the Institute of Cost and Works Accountants of India.

5. On verification of accounts and details produced by assessee it appeared that there was short payment of duty due to non-inclusion of certain elements in the cost of production of captively consumed goods (Iron castings).

6. Show cause notice was issued for different periods from 2008-09 to 2012-2013 for non-inclusion of the following expenses:

a) Machine Shop Expenses

b) Notional Power Cost Expenses

c) Material Transfer Expenses

d) Deferred Revenue Expenses

e) Administrative Overheads and

f) Abnormal Idle Capacity

7. The original authority confirmed the demands for the period 2008 to 2013 along with interest and imposed penalty. For the subsequent periods 2013-14 to 2015-16, the department had issued Statement of Demands (SOD) proposing to demand duty by including all the above expenses in the cost of production except material transfer, as there was no such expenses incurred in these years. The adjudicating authority confirmed the demands for the period 2013-14 and 2014-15 along with interest and imposed penalty. For the period 2015-16, the adjudicating authority dropped the demand on machine shop expenses and notional power cost expenses by relying on the order passed by Commissioner (Appeals) vide OIA dt. 09.10.2017 for the year 2013-14 in the appellant's own case. The demand in respect of other heads were confirmed with interest and penalties. Aggrieved by such orders of confirmation of demands the appellant is now before the Tribunal.

8. The Ld. Consultant Sri M. Saravanan appeared and argued for the appellant. The details of the appeal discussed in this order are furnished as under :

Excise Appeal No.41271 of 2015
Excise Appeal No.40083 of 2018
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Excise Appeal No.40646 of 2019

		E/41271/2105 [1]	**E/40083/2018 [2]**	**E/42215/2018 [3]**	**E/40646/2019 [4]**
S.No.	**Particulars**	**2008-2013**	**2013-2014**	**2014-2015**	**2015-2016**
1	Show Cause Notice No. / Statement of Demand No and date	SCN 13/2014 Dated 27.08.2014	SOD 20/2015 dated 03.11.2015	SOD 05/2016 dated 27.10.2016	SOD 02/2017 dated 14.11.2017
2	Order-in-Original No. and date	O-in-O 2/2015 Commr dated 16.03.2015	O-in-O 24/2016 C.Ex[ADC] dated 23.12.2016	O-in-O 14/2017 C.Ex[JC] dated 29.11.2017	O-in-O 08/2018 C.Ex[JC] dated 31.05.2018
3	Order Passed by	Commissioner	Additional Commissioner	Joint Commissioner	Joint Commissioner
4	Demand - Duty	Rs.5,05,59,795/-	Rs.1,36,85,055/-	Rs.1,27,62,476/-	Rs.88,08,815/-
5	Penalty	Rs.5,05,59,795 Sec 11AC	Rs.13,68,850 Rule 25 CER 2002	Rs.13,00,000 Rule 25 CER 2002	Rs.13,00,000 Rule 25 CER 2002
6	Order-in-Appeal No. and date	Not Applicable	OIA 262-17 dated 09.10.2017 (dropped part of the demand)	OIA 127-18 dated 28.05.2018 (dropped part of the demand)	OIA 025-19 dated 18.01.2019
	Demand in Dispute				
7	Duty	Rs.5,05,59,795/-	Rs.81,13,199/-	Rs.58,31,760/-	Rs.88,08,8815/-
8	Interest	Not quantified	Not quantified	Not quantified	Not quantified
9	Penalty	5,05,59,795/- u/s 11AC	13,68,850/- u/r 25	Remanded for re-quantification	13,00.000/- u/r 25

		E/41271/2105	**E/40083/2018**	**E/42215/2018**	**E/40646/2019**
Sl. No	**Period**	**2008-09 to 2012-13**	**2013-2014**	**2014-2015**	**2015-2016**
1	Machine Shop expenses	Demand Confirmed	Set aside by Comm (A)	Set aside by Comm (A)	Demand Dropped by JC
2	Notional Power Cost expenses	Demand Confirmed	Set aside by Comm (A)	Set aside by Comm (A)	Demand Dropped by JC
3	Material Transfer expense	Demand Confirmed	No Material Transfer	No Material Transfer	No Material Transfer
4	Deferred Revenue expenses	Demand Confirmed	Confirmed By Comm (A)	**Remanded by Comm (A).** **Dropped in Denova OIO dated 28.2.2022**	Confirmed By Comm (A)
5	Administrative Overheads	Demand Confirmed	Confirmed By Comm (A)	Confirmed By Comm (A)	Confirmed By Comm (A)
6	Abnormal Ideal Capacity cost	Demand Confirmed	Confirmed By Comm (A)	Confirmed By Comm (A)	Confirmed By Comm (A)

		E/41271/2105	E/40083/2018	E/42215/2018	E/40646/2019
Sl. No	**Period**	**2008-09 to 2012-13**	**2013-2014**	**2014-2015**	**2015-2016**
1	Machine Shop expenses	92,85,350	0	0	0
2	Notional Power Cost expenses	41,21,744	0	0	0
3	Material Transfer expenses	20,13,601	0	0	0
4	Deferred Revenue expenses	57,62,968	21,25,087	0	44,67,738
5	Administrative Overheads	22,37,316	6,32,243	7,81,580	9,16,256
6	Abnormal Ideal Capacity cost	2,71,38,816	58,57,869	50,50,180	34,24,820
	Total	**5,05,59,795**	**81,13,199**	**58,31,760**	**88,08,815**

9. The Ld. Consultant submitted that the appellant is the Foundry Division and the rough castings manufactured by them are transferred to their own sister units, on payment of duty, for manufacture of finished products. The appellant adopted assessable value based on the cost of production, which is disputed by the department. The appellant's claim of exclusion of certain expenses to arrive at the cost of production has been rejected by the department. Thus, it is alleged that there is short payment of duty.

10. It is submitted by the Ld. Consultant that with regard to the first and second issue, Machine shop expenses and Notional power cost price expenses, the Commissioner (Appeals) set aside the demand for the year 2013-14 and held that these expenses are not to be included in the cost of production. Further for the period 2014-15, also the Commissioner (Appeals) vide OIA dt. 28.05.2018 has set aside the demands on these two heads. Again for the period 2014-15, the adjudicating authority itself has dropped the demand relying upon the above orders passed by Commissioner (Appeals). The Ld. Consultant submitted that as for now only the demands for the period 2008-2013 stands confirmed as per the order passed by Commissioner vide OIO dated 16.03.2015. The demand for the said period also may be set aside.

11. The third issue is the demand for including material transfer expenses which is only for the period 2008-2009. The department has rejected the claim of the appellant that these expenses are not to be included in the cost of production alleging that excise duty has not been paid on these items when cleared to the sister units. The Ld. Consultant adverted to the list of materials transferred as shown in the report filed by the Dy. Director (cost) of the Department.

Expenses	2008-09	2009-10	2011-12	2013-14	2014-15
Waste & Scrap	15509313	1148154	549569	1877670	2388433
Material transfer	14438300	0	0	0	0

It is explained by the Ld. Consultant that when materials were purchased on payment of duty, the appellant has paid duty while making the clearances. In the case of non-duty items, there is no requirement to pay duty at the time of clearance to sister unit as there is no duty liability on such items. As the appellant has paid duty on dutiable materials transferred, the same need not be included in the cost of production. That therefore the demand may be set aside.

12. In regard to the deferred revenue expenses the Ld. Consultant submitted that the Commissioner (Appeals) vide OIA dt. 18.01.2019 in para 8 has held that the appellant did not produce necessary documents to support the contention that these are not includable in the cost of production. The Ld. Consultant explained that the deferred Revenue expenses were incurred towards purchase of spares / components of machinery during their maintenance. As per the Accounting standards issued by the Chartered Accountants of India replacement of parts and accessories of the capital goods is treated as revenue expenses and as such is shown as an expense in their P&L account. However, as per the Cost Accounting standards, they are treated as deferred revenue expenses. This is because the total expenses incurred for repair & maintenance cannot be taken as cost of production in the same financial year as the parts / spares used for repair has an estimated life of more than one year. The cost of such items has to be therefore apportioned over a period of 10 years. In other words, the expenses are to be deferred over a period of 10 years and in each year only the proportionate

amount has to be added to the cost. So every year, the deferred amount of each year @ 10% for the period 2008-2009 was added. It is submitted that the adjudicating authority vide OIO dt. 28.02.2002 has correctly analyzed the issue, appreciated the contentions of the appellant and dropped the demand for the period 2014-2015. The Ld. Consultant prayed that the demand for other periods in respect of deferred revenue may be set aside.

13. The demand raised in respect of 'administrative overheads' was countered by the Ld. Consultant by referring to the discussion made by the Commissioner (Appeals) in para 20.3.1 of OIA dt. 09.10.2017. The appellant has explained before the authorities that these expenses are incurred for non-manufacturing activities and therefore are not includable in the cost of production. It is submitted that expenses in the nature of printing and stationary, postage, telegram and telephone, travelling expenses and maintenance of vehicles, licence and taxes, legal and professional charges, security expenses fall under 'administrative overheads'. The department has confirmed the demand so as to include such expenses in the cost of production alleging that the appellant has availed cenvat credit on these expenses as being in the nature of input services. It is urged by the appellant that the provisions of availing cenvat credit is contained in the Cenvat Credit Rules, 2004. The appellant has availed credit as per the CCR, 2004 and for this reason it cannot be said that such expenses are to be included in the cost of production. The Ld. Consultant referred to para 5.7 of the CAS-4 and submitted that only such administrative

heads in relation to production activities are to be included in the cost of production.

14.1 The demand in regard to abnormal idle capacity has been confirmed by the department. Abnormal idle capacity is the difference between practical and normal capacity or actual utilization whichever is higher. Para 5.17 of CAS-4 reads as under:

> "Abnormal and non-recurring cost arising due to unusual or unexpected occurrence of events, such as heavy breakdown of plants, accidents, market condition restricting sales below normal level, abnormal idle capacity, abnormal process loss, abnormal scrap and wastage, payments like VRS, retrenchment compensation, lay off wages etc. The abnormal cost shall not form part of the cost of production."

14.2 It is submitted that the year wise actual production would show that the production was much lower than practical and achievable capacity for the disputed period. The year wise details is furnished as below :

Year	Actual Production (in tonnes)	Capacity	Capacity Utilisation (in %)	Abnormal Ideal Capacity (in %)
2008-2009	4455.223	12000	37.13%	62.87%
2009-2010	1903.880	12000	15.87%	84.13%
2010-2011	6027.800	12000	50.23%	49.77%
2011-2012	7907.070	12000	65.89%	34.11%
2012-2013	9959.470	18000	55.33%	44.67%
2013-2014	12.27	18000	67.93%	32.07%
2014-2015	12.983	18000	72.13%	27.87%
2015-2016	14.812	18000	82.29%	17.71%

14.3 It is argued by the Ld. Consultant that the table would show in the initial years, the factory was closed for few months. Slowly, appellant received orders. Due to lack of orders, the idle capacity shown in the table has to be considered as abnormal idle capacity and not to be included in the cost of production.

14.4 The Ld. Consultant relied on the judgments in the case of *ITC Ltd. Vs CCE Chennai* - 2015 (315) ELT 143 (Tri.-Chennai) to argue that abnormal idle capacity due to lack of orders also is not includable in the cost of production.

15. The Ld. Consultant submitted that the entire issue is revenue neutral. The demand is on account of valuation of goods that are transferred to their sister units. The duty paid by appellant would be eligible for credit for their sister units. In the case of *Aglo French Textiles Vs CCE Puducherry* - 2018 (360) ELT 1016 (Tri.-Chennai) the Tribunal set aside the demand on the ground of being revenue neutral. This decision was upheld by Apex Court as reported in 2018 (360) ELT A301 (SC). The decision in the case of *Hyundai Motor India Ltd. Vs CCE & ST, LTU*, *Chennai* – 2019 (29) GSTL 453 (Tri.-Chennai) was also relied. The said decision has also been upheld by the Apex Court as reported in 2020 (32) GSTL J154 (SC).

16. The Ld. Consultant has put forward arguments on the ground of limitation. The following table was furnished to argue that the entire demand is raised invoking the extended period of limitation :

Sl.No	Year	Return Due date	One year time limit	SCN Date
1	2008-09	10.4.2009	10.4.2010	27.8.2015
	2009-10	10.4.2010	10.4.2011	27.8.2015
	2010-11	10.4.2011	10.4.2012	27.8.2015
	2011-12	10.4.2012	10.4.2013	27.8.2015
	2012-13	10.4.2013	10.4.2014	27.8.2015
2	2013-14	10.4.2014	10.4.2015	03.11.2015
3	2014-15	10.4.2015	10.4.2016	27.10.2016
4	2015-16	10.4.2016	10.4.2017	14.11.2017

17. It is pointed out that period of limitation was increased from one year to 2 years w.e.f. 16.05.2016 by amendment. The last period of dispute in the above table is 2015-16, which is before the amendment. Hence the limitation prior to amendment would apply.

17.1 The Ld. Consultant argued that the Hon'ble High Court of Madras in the case of *Commissioner of GST, Salem Vs. JSW Steels Ltd.* considered the applicability of extended period of limitation in CMA 2/2020 dated 9.9.2020 in a similar issue and held that extended period is not invokable when the department was aware of the transactions from the earlier communications.

17.2 The adjudicating authority in para 31.2, page 33 of OIO dated 23.12.2016 [2013-14] have categorically held that suppression of facts with an intent to evade payment of duty is not involved in this SOD as notice was issued for the earlier period on the same issue. Same findings are recorded in other orders passed by adjudicating authority. Hence the adjudicating authority himself admits that extended period is not invokable.

17.3 However, both the lower authorities had taken the due date for filling ER 4 as the relevant date and computed the limitation period from this date and held that SOD was issued within the one year time limit. This finding is contrary to the Section 11A and clearly unsustainable as the return referred to in Section11A is ER1 return only. Sub Rule (2) was introduced by Notification no 34/2004 C.E (N.T) dated 1.11.2004 to the effect that assessee has to submit Annual Financial Information Statement in form ER4 by 30th day of November of the succeeding year. Then a proviso was introduced to clause (a) of sub-rule (2) of Rule 12 by Notification No.20/2010-CE [N.T] dated 18.05.2010 to the effect that assessee who has paid total duty Rs.10,00,000/- or more in the preceding financial year has to file Annual Financial Information Statement electronically. Thereafter, by notification No. 8/2016-CE (NT) dated 1.3.2016 for the word "Annual Financial Information Statement" in clause (a) and (b) of sub rule (2) of Rule 12, the word "Annual Return" was substituted. Hence it is clear that during the period of dispute ER4 is not a return as held by the lower authorities as it is only an Annual Financial Information Statement. Therefore, the due date for filing the ER4 cannot be taken for the purpose of computing period of limitation.

17.4 As per sub-rule (3) of Rule 12, proper officer on the basis of information contained in the return filed by the assessee under sub-rule (1) and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the

assessee on the goods removed, in the manner to be prescribed by the Board. Sub-rule (1) prescribes for filing of monthly Return [ER1] on the goods removed. This return is to be filed within 10 days after the close of the month. Therefore, date of filing ER1 return is to be taken for computing the period of limitation and not ER4 as held by the lower authorities.

17.5 There is no evidence put forward by the department that there was any positive act on the part of the assessee to suppress facts with intent to evade payment of duty. All the SCNs were issued beyond the one year time limit in all these appeals. That the notices may be set aside as time barred.

18. The Ld. Consultant requested that demands may be set aside on merits as well as on limitation and allow all the appeals.

19. The Ld. A.R Sri M. Ambe supported the findings in the impugned order and also referred to para 1 of the CAS-4. It is submitted by the Ld. A.R that the appellant failed to file CAS-4 and also discharge the duty as per CAS-4. The Deputy Director (Cost) of the Department was deputed to verify the correctness of the value adopted for the clearances effected to their sister unit. Based on such report and scrutiny of accounts of the appellant it was found that the appellant has not included certain expenses while arriving the assessable value of the goods stock transferred. The demands have been confirmed on expenses which have to be

included in the cost of production in terms of CAS-4, and therefore is legal and proper. The Ld. A.R prayed that the appeal may be dismissed.

20. Heard both sides.

21. The main issue that arises for consideration is whether the following expenses have to be included in the cost of production to arrive at the assessable value of goods (Iron castings) for paying excise duty while clearing them to their sister units The expenses under dispute in these appeals are as under :

a) Machine Shop Expenses

b) Notional Power Cost Expenses

c) Material Transfer Expenses

d) Deferred Revenue Expenses

e) Administrative Overheads and

f) Abnormal Idle Capacity

22. **Machine shop expenses:**
and
Notional Power cost expenses:

The Commissioner (Appeals) vide OIA No.262/2017 dt. 09.10.2017 has set aside the demand for the period 2013-2014. So also for the period 2014-2015, the demand in respect of machine shop expenses and notional power cost expenses has been set aside by the Commissioner (Appeals) vide OIA No.295/2018 dt. 28.05.2018. Later, for the period 2015-2016 the demand raised in the SCN on these two expenses has been

dropped by the adjudicating authority vide OIO 8/2018 dt.31.05.2018. It is not submitted that the department has filed any appeal against these issues. The department having accepted the view that machine shop expenses and notional power cost are not to be included in the cost of production for the period from 2013-14, 2014-15 and 2015-16, we are of the view that the demand confirmed for the period 2008-2013 in E/41271/2015 on Machine Shop expenses and Notional power cost requires to be set aside, which we hereby do.

23. **Material transfer expenses :**

The demand has been confirmed for the period 2008-2009 (E/41271/2015). It is submitted by the Ld. Consultant that this issue pertains to only the above period and thereafter the issue has not been raised in subsequent SCNs. In the SCN dt. 27.08.2014 pertaining to the period 2008-2013 the allegation raised is as under:

Scrap & Wastes

Expenses	2008-09	2009-10	2011-12	2013-14	2014-15
Waste & Scrap	15509313	1148154	549569	1877670	2388433
Material transfer	14438300	0	0	0	0

It is noted in the SCN, that the appellant has not produced any document to establish that the expenses need not be included in the cost of production. It is also stated that such material transfer is not reflected in P&L account of the year 2008-09.

From the above table, it can be seen that the issue of non-inclusion of material transfer expenses pertains to a single financial year (2008-09).

24. The Ld. Consultant has explained that the cost of raw material has been included in the cost of production. Part of the raw material was cleared as such and therefore needs to be excluded. Further that some of the items are non-duty items for which duty need not be paid when transferred to the sister unit. In page 4 of OIO dt. 16.03.2015 for the period 2008 to 2013 the adjudicating authority has held that the exclusion of Rs.14438300/- (2008-09) towards material transfer does not appear to be correct. It is also submitted by the Ld. Consultant that cost of these items have to be excluded as such items do not form part of the final product. We have perused the list furnished along with the documents. The list is very long and detailed scrutiny is required to verify what are the items cleared as such and what are the non-duty paid items, if at all the contention of the appellant is to be considered. We therefore are of the considered opinion that this issue of material transfer of Rs.14438300/- requires to be remanded to the adjudicating authority.

25. **Deferred Revenue Expenses:**

For the period 2014-2015 the Commissioner (Appeals) vide OIA No.127/2018 dated 28.05.2018 has remanded this issue to the adjudicating authority for *de novo* consideration. In such *de novo* order No.103/2022 dated 28.12.2022 the adjudicating authority

has dropped the demand. The Ld. Consultant has explained the nature and accounting pattern of this expenses. It is submitted by the Ld. Consultant that as per the accounting standards, replacement of parts and accessories of the capital goods is treated as revenue expenses and is shown as expenses in P&L account. However, as per the Cost Accounting Standards, they are treated as deferred expenses.

25.1 On perusal of the Cost Audit Report dt. 30.03.2013 the Dy. Director of Cost has stated that the practice adopted by the appellant is in order but requires reconcilation. The relevant part of the report reads as under :

> "8. They had deducted an amount of Rs.9668400 stating that those are deferred revenue expenses of repairs & maintenance. It was stated that they charge certain capital goods spares, components, etc., to Profit & Loss account as revenue expenditure whereas they were treated as deferred revenue expenses in Cost Accounting as per CAS4. It may please be noted that as per Chapter 7 of GACAP (generally accepted cost accounting principles) issued by the Institute of Cost Accountants of India Calcutta, this was in order. However, it should be reconciled with financial records and the reconciliation statement submitted to the department along with CAS4."

25.2 The observation of the adjudicating authority who dropped the demand for the year 2014-15 vide OIO No.3/2022 dt. 28.02.2022 is as under :

> "10. The issue involved is that during 2014-15, on comparing the P&L account with that of CAS 4 statement, 'the assessees' had not included *inter-alia*, Rs.79,96,539/- being the Deferred Revenue Expenses, in the CAS 4 while computing the cost of production. It appeared that this has resulted in contravention of Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 and resultant short payment of duty. These deferred revenue expense were incurred towards purchase of spares / components of machinery during their maintenance. It is

the contention of 'the assessees' that as per the Accounting Standards issued by the Chartered Accountants of India, replacement of parts and accessories of the capital goods is treated as revenue expenses and as such, it is shown as an expanse in their P&L account; however as per the Cost Accounting Standards they are treated as deferred revenue expenses; as the spares / components have a life of ten years, the said expenses are absorbed as cost over the life time of the spares / components; as such, the cost of such items has to be apportioned over a period f 10 years and that only 10% of Rs.79,96,539/- are to be included in computation of cost of production for the year 2014-15, which they claim as already done. 'The assessees' also state that adopting the said practice, they had included in the cost of production for 2014-15, the 10% of deferred revenue expenses incurred during the previous years also; as the Unit was started in 2008, 10% of the deferred revenue expense incurred during the period from 2008-09 to 2014-15 totaling to Rs.99,18,014/- were already included in the cost of production for the year 2014-15. In short, it is their contention that the entire deferred revenue expenses incurred during 2014-15 is not to be added in the cost of production for 2014-15, rather, only the cumulative depreciation on the deferred revenue expenses has to be added to the cost of production for 2014-15.

11. …. …. In view of the above, even though the deferred revenue expenditure is excludible in principle from the cost of production, I have been directed to decide the excludability of the deferred revenue expenditure of Rs.79,96,539/-, based on the documents produced by 'the assessees'.

… … ….

…. … ….

14. However, as the expenses are deferred in nature and as observed by Deputy Director (Cost), it is imperative that the said expenses have to be included in the cost of production proportionately over the lifetime of the spares / components. It is the claim of 'the assessees' that as the lifetime of the spares / components are 10 years, they have already included ten percent of the deferred revenue expenses 9termed as depreciation on deferred revenue xpenses0 of Rs.79,96,539/- in the cost of production for 2014-15, which forms part in the cumulative depreciation of Rs.99,18,014/-. The Annexure 4 to their letter dated 17.09.21 specifies the cumulative depreciation on deferred revenue expenses for the period from 2008-09 to 2014-15, which they claim as already included in the cost of production of the respective years. The year-wise break-up for Rs.99,18,014/- is

also furnished by the assesses in their letter dated 17.09.21, which is reproduced in para 7 above. From the same, I find that 10% of Rs.79,96,539/-, that is Rs.7,99,654/- is already included in the cumulative depreciation of Rs.99,18,014/-. Further, the fact of inclusion of the said Rs.99,18,014/- in the cost of production for the year 2014-15 is specifically acknowledged in Annexure I to the SOD itself, by way of reduction from the expenses which were not included in the cost of production. In view of the foregoing facts, I hold that the assessees have already included the depreciation on the deferred revenue expenditure of Rs.79,96,539/- amounting to Rs.7,99,654/- in the cost of production for 2014-15 and as such the demand of duty on the deferred revenue expenses of Rs.79,96,539/- does not survive.

15. Further, the assessees have repeatedly argued that the Department have demanded duty without taking into account the inclusion of cumulative depreciation of Rs.99,18,014/- in the cost of production for the year 2014-15. As this is the SOD under consideration, I refer to the Show Cause Notice Sl.No.13/2014 (Commr) dated 27.08.2014. The Show Cause Notice covered the period from 2008-09 to 2012-13. From Annexure I and Annexure II thereto, I find that the Show Cause Notice was issued *inter-alia*, only for non-inclusion of the 'Abnormal and Non-recurring Cost', which is arrived at after reducing the Depreciation on Deferred Revenue Expenses from the Deferred Revenue Expenses. For example for the year 2008-09, the Deferred Revenue Expenses amounted to Rs.1,79,85,794/- and the Depreciation on Deferred Revenue Expenses amounted to Rs.17,98,579/-. So, the Show Cause Notice had alleged that the difference of Rs.1,61,87,215/- was not included in the cost of production for 2008-09. For the year 2009-10, the Deferred Revenue Expenses amounted to Rs.52,40,619/- and the Depreciation on Deferred Revenue Expenses amounted to Rs.23,22,641/-. So, the Show Cause Notice had alleged that the difference of Rs.29,17,978/- was not included in the cost of production for 2009-10. Similar is the case for the period from 2010-11 to 2012-13. Whereas, in the SOD under consideration, unlike the Show Cause Notice, it is alleged that the entire deferred revenue expenses of Rs.7,96,539/- without reducing therefrom the depreciation on deferred revenue expenses amounting to Rs.99,18,014/-, was not included in the cost of production. Had the cumulative depreciation of Rs.99,18,014/- was reduced from the deferred revenue expenses of Rs.79,96,539/- as reflected in Annexure I of the SOD and as was done in the Show Cause Notice for the period from 2008-09 to 2012-13, again there exists no cost which escaped inclusion in the cost of production. On this ground also, the demand fails."

25.3 While arguing the issue on deferred Revenue expenses, the Ld. Consultant has referred to the figures in para (j) of the above

OIO. It was urged that the appellant had included depreciation on the deferred revenue expenses (Rs.99,18,014), but the department had failed to take note of this fact. Thus, it was argued that the appellant having included the depreciation on deferred revenue expenses (Rs.99,18,014), demand of duty again alleging that the deferred expenses (Rs.79,96,539/-) has to be included is not correct. It was submitted that both depreciation on deferred revenue expenses and deferred revenue expenses are not to be included in the cost of production.

25.4 On perusal of the SCNs it is seen that for the period 2008-09 the SCN has alleged only the difference of deferred revenue expenses and depreciation on deferred revenue expenses to be included. It is the same for the periods upto 2012-2013. The relevant part of the SCN would make it more clear :

Expenses-Item	2008-09	2009-10	2010-11	2011-12	2012-13
Deferred Revenue Exp. - Maintenance	17985794	5240619	13323380	16668958	10885814
Less: Depreciation on Deferred Rev. Exp.	-1798579	-2322641	-3654979	-5287710	-6643500
Net Expenses	16187215	2917978	9668401	11381248	4242314

The contention of the appellant that duty on the entire deferred revenue expenses has been proposed and confirmed is factually

wrong. Indeed, in the SCN issued for the year 2014-2015 the demand was wrongly raised which has been set aside by the adjudicating authority as stated above. For the year 2015-2016 also, the demand has been confirmed observing that the appellant has not furnished documents for reconciliation of the depreciation on deferred revenue expenses.

25.5 On perusal of OIO for the year 2014-2015, it is seen that the appellant had furnished documents which were scrutinized and the demand was dropped by adjudicating authority in *de novo* proceedings. The appellant has to therefore produce documents to reconcile the demand on such expenses. We therefore are of the view that this issue for the period 2008-2013, 2013-14 and 2015-16 (except 2014-15) has to be remanded to the adjudicating authority for *de novo* consideration.

26. **Administrative Overheads :**

Ld. Consultant has submitted that the expenses incurred in the nature of Printing and Stationary, Postage, Telegrams and Telephones, Travelling expenses & Maintenance of vehicles, License and Taxes, Legal and Professional charges etc. have been ordered to be included in the cost of production. It is submitted that these are non-manufacturing activities and as per para 5.7 of the CAS-4 such expenses do not require to be included in the value for the purpose of discharging duty. For ease of reference, para 5.7 pf CAS-4 is reproduced :

"5.7 Administrative Overheads

Administrative overheads needs to be analysed in relation to production activities and other activities. Administrative overheads in relation to production activities shall be included in the cost of production. Administrative overheads in relation to activities other than manufacturing activities e.g. marketing, projects management, corporate office expenses etc. shall be excluded from the cost of production."

27. From the above, it can be seen that such expenses which are not in relation to the manufacturing activity and in the nature of marketing, projects management, corporate office expenses have to be excluded. The various expenses under dispute are printing, stationary, telegram, telephone etc. These are nothing but in the nature of corporate office expenses. Every manufacturing unit will require such expenses which are usually incurred in the day to day administration of the unit. The department has denied exclusion of such expenses for the reason that the appellant has availed credit on such expenses. It has to be understood that credit is availed on the basis of the law contained in CCR 2004. If the activity falls within the definition of "input services", the manufacturer will be eligible to avail credit. Repair and Maintenance of office works, courier services, marketing and promotion services etc. are eligible for credit. However, para 5.7 of CAS-4 states that expenses in the nature of marketing and corporate office expenses are not to be included. This means that expenses under 'administrative overheads' which are directly and exclusively used for manufacturing activity only have to be included in the cost of production. For this reason, we are of the considered view that the demand raised by including

the administrative overheads in the assessable value cannot sustain and requires to be set aside, which we hereby do.

28. **Abnormal Idle Capacity**

Para 5.17 of CAS-4 deals with Abnormal Idle Capacity which reads as under:

> "Abnormal and non-recurring cost arising due to unusual or unexpected occurrence of events, such as heavy breakdown of plants, accidents, market condition restricting sales below normal level, abnormal idle capacity, abnormal process loss, abnormal scrap and wastage, payments like VRS, retrenchment compensation, lay off wages etc. The abnormal cost shall not form part of the cost of production."
>
> *Chapter 6 of GACAP defines –*
>
> *"Abnormal Idle Capacity'* is the difference between Practical Capacity and Normal Capacity or Actual Capacity Utilization whichever is higher*"*
>
> '*Practical or Achievable Capacity*' is the maximum productive capacity of a plant reduced by the predictable and unavoidable factors of interruption pertaining to internal causes."
>
> '*Normal Capacity'* is the production achieved or achievable on an average over a number of periods or seasons under normal circumstances taking into account the loss of capacity resulting from planned maintenance".
>
> *'Actual Capacity Utilization'* is the volume of production achieved in relation to Installed Capacity"

29. Ld. Consultant has submitted that appellant was not able to get sufficient orders from customers and also that the unit was closed for few months. The table has been furnished by the Ld. Consultant for appellant to contend that the unit was not functioning in its practical and annual capacity due to various reasons. The department has denied exclusion claimed by the appellant under abnormal idle capacity alleging that such

exclusion can be granted only if abnormal and non-recurring cost arises on unusual and unexpectable events. The decision in the case of *ITC Ltd.* (supra) has also been relied. In the said case the Tribunal in paras 7.3 & 7.4 observed as under :

> **"7.3** It is seen that the "abnormal and non-recurring cost" includes abnormal idle capacity, which shall not form part of the cost of the production. Para 4.8 of CAS-2, the difference between practical capacity and normal capacity or actual capacity utilization whichever is higher, would be abnormal idle capacity. The 'practical or achievable capacity' as referred in clause 4.3 of CAS-2 indicated internal factors and external factors. The internal factors would include the causes internal to the plant. External factors include lack of orders, which does not consider in respect of practical capacity. It is clear that the claim of the appellant of causing reduction in production for lack of orders is the external factor as mentioned in "practical or achievable capacity". "Normal capacity" as referred in clause 4.4 and 7 of CAS-2, is determined after adjustment of external factors with practical capacity. Therefore, abnormal idle capacity as per clause 4.8 would be determined on practical capacity minus normal capacity or actual capacity utilization which is higher. It is already stated that the normal capacity is determined after adjustment of external factors which includes lack of orders. So "abnormal and non-recurring cost" arising due to unusual or unexpected occurrence for keeping the machines idle for want of job/order would require to be considered for arriving at the cost of production.
>
> **7.4** The allegation in the show cause notice proceeded on the basis that the abnormal idle capacity would not include lack of orders as claimed by the appellant. We have already held that the "abnormal idle capacity" would cover external factors including lack of orders. So the finding of the adjudicating authority that the appellant have not proved the idle capacity as arising due to any abnormal reason is not sustainable. Accordingly, the unabsorbed overheads referable to abnormal idle capacity for lack of order shall not form part of the cost of production and the demand of duty is not sustainable."

30. The table furnished by the appellant establishes that the actual production during the disputed period is much less than the capacity. It is also seen that for a few months the unit was

closed. The authorities below have not considered these facts. After appreciating the provisions of CAS-4 as well as decision in *ITC Ltd.* (supra), we are of the view that the abnormal idle capacity claimed by the appellant has to be considered. We hold that the demand raised by not considering the claim of abnormal idle capacity cannot sustain and requires to be set aside, which we hereby do.

31. The Ld. Consultant has put forward arguments alleging that special audit was conducted without any authority. As per Section 14A of the Central Excise Act, 1944, any Central Excise Officer not below the rank of Assistant Commissioner or Deputy Commissioner, if a any stage of enquiry, investigation or any other proceedings is of the opinion that the value has not been correctly declared or determined by a manufacturer, he may with the approval of the Chief Commissioner of Central Excise direct such manufacturer to get his accounts audited by a Cost Accountant or a Chartered Accountant nominated by the Chief Commissioner of Central Excise in this behalf.

32. It is submitted by the Ld. Consultant that in the present case the Commissioner of Central Excise has directed the Deputy Director (Cost), Trichy to conduct the cost audit and this is not done with the approval of the Chief Commissioner. So also, the audit was conducted on account of audit point raised by Audit Group No.3. There was no enquiry or

investigation by Assistant or Deputy Commissioner of Central Excise or any proceedings before Assistant or Deputy Commissioner of Central Excise. Therefore, the cost audit report called for is not as contemplated in Section 14A warranting for cost audit. So also, as per the cost audit report dated 30.03.2013, the approval was given by the Commissioner of Central Excise and not by the Chief Commissioner. Further, the audit was conducted by the department person i.e. Deputy Director (Cost) along with Superintendent (Audit) and not independently and thus have not followed the principles of natural justice of being heard. Thus, it is submitted by the Ld. Consultant that cost audit report is vitiated for not following the principles of natural justice. To support this contention, the following decisions were relied :

(i) Berger Pains India Ltd. Vs CCE Calcutta II - 2017 (345) ELT 88 (Cal.)

(ii) Larsen and Toubro Ltd. Vs Commissioner of VAT – 2014 (309) ELT 254 (Del.)

(iii) Sahara India (Firm) Vs CIT Central Excise I – 2008 (226) ELT 22 (SC)

(iv) VBC Industries Ltd. Vs CCE Visakapatanam - 2017 (345) ELT 681 (Tri.-Hyd.)

33. The decision of the Hon'ble Apex Court in the case of *Sahara India (Firm)* was relied to argue that since order under Section 142 (2A) does entail civil consequences, the rule *audi alteram partem* is required to be observed.

34. We have considered the arguments of Ld. Consultant in this regard carefully. It is to be noted that prior to issuance of show cause notice, the appellant was directed to file CAS-4 with the Department to verify the correctness of the value adopted in respect of goods cleared to their sister unit on stock transfer basis. However, the appellant had claimed that they would follow dynamic costing on the lines of CAS-4. It was in this background that Dy. Director (Cost) of the Department was deputed to verify the correctness of the value adopted with reference to CAS-4. So the contention of the appellant that there is violation of principles of natural justice is without basis.

35. Further, in the letter dated July 21, 2009 issued to the Superintendent of Central Excise (Audit), Coimbatore, the appellant has stated as under :

> "You have enquired us about submission of CAS4 statement for the goods cleared by us to our own units. You have also informed us that cost construction is to be done strictly in accordance with CAS4.
>
> In this regard we would like to inform you that a similar issue was raised earlier and we have given a reply clarifying our stand.
>
> Please note we have got advanced system of cost management and methods. In fact, we have been awarded No.1 unit in India with regard to cost management by the Ministry of Company Affairs.
>
> We adopt a most advanced Activity Based Costing system wherein the cost of a product is determined as and when the costs of the ingredients vary. This has been accepted by all statutory departments. As far as the Central Excise is concerned we workout 110% of such cost and pay excise duty on such cost for out inter u nit transfers which has more perfection than the CAS4. In fact, the

cost as per Activity Based Costing is higher than the CAS4 statement for a particular item.

We have, several times earlier have told the authorities concerned that we are ready to share our computer system with the department and in fact we have given in writing also. This possibility is also to be considered. Moreover, the duty paid at one unit is available as Cenvat credit at other units and we have a consolidated balance sheet for all the units of LMW. If such be the situation the department should come forward and accept our Activity Based Costing system."

From the above letter, it is seen that appellant had failed to furnish CAS4 statement before the department. However complex may be the manufacturing activity of the appellant, they cannot deviate from the provisions of law and principles laid by the Department for calculation of assessable value when goods are cleared to sister units on stock transfer basis. The department therefore cannot be found fault for deputing a person to verify the correctness of the value adopted by the appellant for discharging duty when goods are stock transferred to their sister units. We find no merit in the argument put forward by the appellant on this ground. The decisions relied by the Ld. Consultant are not applicable to the situations or the facts of the present case and hence distinguished.

36. The appellant has put forward the argument on the ground of revenue-neutral. It is correct that the appellant will be eligible to avail credit on the duty paid on the goods cleared by the appellant's foundry division. Eligibility of credit

by the appellant's other unit does not take away the responsibility of the appellant to pay duty. Further, the issue which is recurring in these appeals involves valuation of the goods cleared from their unit to sister units on various heads that are claimed to be not includable in the cost of production by the appellant. The issue being of recurrent nature needs to be addressed so that there is no revenue loss in future clearances made by the appellant to the sister units and so the argument of revenue neutrality cannot be accepted on the basis of the facts of this case.

37. Ld. Consultant has argued on the ground of limitation also. We have decided to remand the matter in respect of issue on (1) Material Transfer Expenses (2) Deferred Revenue Expenses to the adjudicating authority for *de novo* consideration. The other issues addressed in these appeals have been held in favour of the appellant. The issue with regard to Material Transfer Expenses and Deferred Revenue Expenses involve verification of list of the items that have been transferred to the sister unit and reconciliation of accounts (DFE). This itself shows that the appellant has not furnished full details to the department. They had deviated from filing CAS-4 statements and had adopted their own method contending that the filing of CAS-4 would be humungous due to volume of materials, clearances involved.

We are not therefore able to persuade ourselves to hold that the SCNs are time barred.

38. From the foregoing, we order the following :

(1) The issue in regard to demand, interest and penalty raised in respect of Material Transfer Expenses and Deferred Revenue Expenses is remanded to the adjudicating authority for *de novo* consideration.

(2) The demand in respect of Machine Shop Expenses, Notional Power Cost Expenses, Administrative Overheads and Abnormal Idle Capacity is set aside. The impugned orders are modified accordingly.

The appeals are disposed of in above terms.

(Pronounced in open court on 16.06.2023)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Sd/-
(SULEKHA BEEVI, C.S.)
Member (Judicial)

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