

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Excise Appeal No.42134 of 2013**

(Arising out of Order-in-Appeal No. 317/2013 dated 23.9.2013 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

**M/s. Lakshmi Machine Works Ltd.**

Perianaickenpalayam, SRKV Post  
Coimbatore – 641 020.

**Appellant**

Vs.

**Commissioner of GST & Central Excise**

6/7, A.T.D. Street  
Race Course Road  
Coimbatore 641 018.

**Respondent**

**APPEARANCE:**

Shri M. Saravanan, Consultant for the Appellant  
Smt. Anandalakshmi Ganeshram, Supdt. (AR)

**CORAM**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No.40528/2023

Date of Hearing : 01.06.2023

Date of Decision: 28.06.2023

**Per M. Ajit Kumar,**

This is an appeal filed by M/s. Lakshmi Machine Works Ltd. Coimbatore against Order in Appeal No. 317/2013 dated 23.9.2013 passed by the Commissioner (Appeals), Coimbatore.

2. The facts of the case are that the appellant factory consists of two units, viz. Foundry Division and Machine Tool Division. Prior to 1.9.2001, both these units were holding separate central excise registration certificates. During the period April 1998 to March 2002, the Foundry Division manufactured and cleared rough castings to their sister concern on payment of duty on the assessable value declared in Form Annexure – II under Rule 173C to the Central Excise Department.

It appeared that the value of goods was not determined correctly. The relevant portion of the impugned order is reproduced below:-

*"2. The assessee had filed the price declaration in Annexure – II under Rule 173C for the goods cleared to their sister concern during the period from 1998 – 99 to 2001 – 2002. The prices declared by the assessee on cost basis comprised of the elements viz.*

- (i) Material cost*
- (ii) Labour cost*
- (iii) Overheads and*
- (iv) Profit margin*

*According to the Valuation Rules, the assessee should arrive at the assessable value on cost construction method based on actual production capacity, whereas the assessee had adopted the estimated production capacity which in turn resulted in short payment of duty.*

*3.(i) As per Rule 6(b)(ii) of Valuation Rules, 1975 'when the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production or manufacture of other articles, the value shall be based on the cost of production or manufacture including profits, if any, which the assessee would have normally earned on the sale of such goods'.*

*(ii) As per Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 "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 should be 15% of the cost of production or manufacture of such goods."*

A Show Cause Notice was issued proposing to demand differential duty of Rs.14,44,809/- for the period from 1998 – 99 to 2001 – 02 by invoking first Proviso to Section 11A(1) of the Central Excise Act, 1944 along with interest and penalty. After due process of law, the learned Adjudicating Authority confirmed the demand to the tune of Rs.12,34,678/- along with appropriate interest besides imposing equal penalty for the contravention. Aggrieved by the order, the appellant filed an appeal before Commissioner (Appeals) who rejected the

appeal. Hence the appellants are before us assailing the impugned order.

3. No cross-objection has been filed by respondent-Revenue.

4. We have heard Shri M. Saravanan, learned consultant for the appellant and Smt. Anandalakshmi Ganeshram, learned AR for the Revenue.

5. The learned consultant Shri M. Saravanan has stated that as per the Central Excise Act. 1944, when excisable goods are not sold by the assessee, but are used or consumed by him or on his behalf, in the production or manufacture of other articles, then value shall be as per Rule 6(b)(i) of CVR 1975, on the value of comparable goods produced by the assessee or by any other person. He further stated that Rule 8 is applicable to them only if the entire excisable goods are not sold but are consumed by them or on their behalf in the production or manufacture of other articles, which is not so in their case. They have sales to non-related buyers and hence Rule 6(b)(ii) and Rule 8 of Central Excise Valuation Rules, 1975 will not be applicable in their case. It was mentioned in the statement given by Shri A R Sreenivasan, Manager dated 04/01/2008 under Section 14 of the Central Excise Act that only 30% of the sales of the impugned goods were to their sister units. He further stated that Rule 8 of CVR 2000 was amended by Notification No. 14/2013-CE (NT) dated 22.12.2013 with effect from 1.12.2013, hence they are liable to value the goods as per Rule 8 only after this amendment. He referred to the following judgments in the appellant's favour:-

- a) Rashtriya Ispat Nigam Ltd. Vs. Commissioner of C.Ex., Cus. & S.T. Visakhapatnam -1 - 2019 (366) ELT 856 ( Tri. Hyd)

- b) Max Speciality Ltd. Vs. Commissioner of C.Ex. & S.T. Ludhiana - 2021(375) ELT 420 (Tri. Chan)
- c) Commissioner of Central Excise, Jalandhar Vs Max India Ltd - 2008 (231) ELT 159 ( Tri. Del) Upheld by the Hon'ble Apex Court reported in 2016 (337) ELT A139.
- d) Commissioner of C.Ex. & Service Tax, Raipur Vs. Kingar Agrico Pvt. Ltd. - 2018 (364) ELT 906 (Tri .Del)
- e) Jai Corporation Vs. Commissioner of C. Ex. & Service Tax, Daman - 2015 (317) ELT 353 (Tri. Ahmd)
- f) Ispat Industries Ltd. Vs. Commissioner of C.Ex., Raigad 2007 (209) ELT 185 (Tri LB).

He further stated that as given in their reply to SCN, the unit had a centralized accounting system and a common balance sheet covering all the units and there is no flow of money or sale of materials from unit to another, hence the issue was revenue neutral and since there was no intention to evade payment of duty, penalty could not have been imposed on them. He prayed that the impugned order may be set aside and appeal allowed.

7. The learned AR Smt. Anandalakshmi Ganeshram appearing for Revenue has stated that the issue was whether the assessee has followed the correct valuation procedure to determine the normal price of rough castings cleared to their sister concerns. The contract price under Part – II cannot be taken into account as a comparable price as per Rule 6(b)(i) of CVR 1975 for the goods cleared to their sister unit and the value should be based on the cost of production or manufacture including profit. Initially the appellant had filed declaration in Annexure II on cost construction method. When this was challenged by the department, they have taken shelter under pricing of comparable goods. In case they had they wanted to follow valuation under the comparable goods method they need not have filed a

declaration in Annexure II for arriving at the cost of production using the cost construction method. After the new Valuation Rules came into force in July 2000, Rule 8 of CVR 2000 would be applicable to arrive at the value of goods cleared to their sister unit at 115% of the cost of manufacture of the goods. By paying lesser duty the appellant has wrongly enjoyed financial accommodation. She relied upon the judgment of the hon'ble Tribunal in the case of **Parle Biscuits Pvt Ltd Vs Commissioner of C. Ex. Rohtak**. [2011 (269) ELT 81 (tri-Del.0)]. Since the appellant has willfully evaded duty they are hence liable for demand under the extended period and penalty. Hence, she prayed that the impugned order may be upheld.

8. We have heard both the parties. We find that the issue relates to the valuation of goods cleared by the appellant to their sister units during two continuous periods separated by a change in law. The period up to 30/ 06/2000 as per CVR 1975 and from 01/07/2000 by the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (CVR 2000). The dispute for the first period relates to the valuation of goods under Rule 6(b)(ii) read with Rule 8 as demanded by Revenue and Rule 6(b)(i) as claimed by the appellant. The dispute regarding the second period is the applicability of Rule 8 to the impugned goods under the new CVR 2000 i.e. from 01/07/2000 as per the department, which the appellant has resisted and accepted as applicable only from 1.12.2013, when the amended Rule 8 came into force. They have stated that they have sales to non-related buyers and hence that price should be adopted during the entire period covered by the impugned order.

8.1 Before analyzing the legal position for the two distinct periods covered in the impugned order, Rule 6 of CVR 1975, Rule 8 of CVR 2000, and as amended by Notification No. 14/2013-CE(NT) dated 22.11.2013, which are mentioned in the impugned order as being relevant to the dispute, are reproduced below for a better understanding of the issue.

“Rule 6 - If the value of the excisable goods under assessment cannot be determined under Rule 4 or rule 5 and

(a) where such goods are sold by the assessee in retail, the value shall be based on the retail price of such goods reduced by such amount as is necessary and reasonable in the opinion of the proper officer to arrive at the price at which the assessee would have sold such goods in the course of wholesale trade to a person other than a related person.

Provided that in determining the amount of reduction, due regard shall be had to the nature of the excisable goods, the trade practice in that commodity and other relevant factors

(b) Where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production or manufacture of other articles, the value shall be based

(i) on the value of the comparable goods produced or manufactured by the assessee or by any other assessee.

Provided that in determining the value under this sub clause, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors and in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods.

(ii) If the value cannot be determined under sub clause (i), on the cost of production or manufacture including profits, if any, which the assessee would have normally earned on the sale of such goods.”

Rule 8 of CVR 2000 reads as follows:-

“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 fifteen per cent of the cost of production or manufacture of such goods.”

Rule 8 of CVR 2000 amended vide Notification No. 14/2013-CE (NT)

dated 12.11.2013 reads as under:-

8. Where whole or part of 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 of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods.”

8.2 For the period prior to 01/07/2007: We find that this is a case where the appellant was clearing goods to their sister units and also to un-related buyers. They have mentioned this both in the statement of their Manager recorded by the department and in their reply to the SCN which is also mentioned in para 15 of the impugned order. Para 6 of the impugned order also records that the appellant cleared around 30% of their production to their own units. The said price was not accepted as it was a contract price. Prior to 01/07/2000 the value of goods were notionally determined to be the 'normal price' under section 4 of the Central Excise Act, 1944. It was only after the amendment of the said section in July 2000 that the concept of transaction value came to be the law. It would hence be necessary to first examine Section 4 of the Central Excise, Act 1944, prior to its amendment on 01/07/2000. Relevant portion of the same is reproduced below;

(4) Valuation of excisable goods for purposes of charging of duty of excise.-

(1)Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of this section, be deemed to be—

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:

Provided that—

(i) where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

. . . . . (emphasis added)

As per proviso (i) to Section 4(1)(a), which deals with contract price, where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers. The impugned order notes that the appellant is having sales of the finished goods to unrelated buyers being sold at contract price. In such circumstance the value of the said goods would be the normal price as per Section 4 for each such class of buyer. The question is whether this value which is the 'normal price' for 'each such class of buyer', can also be the 'normal price' for the rough castings cleared on payment of duty to their sister concerns. The appellant is of the view that the comparable value of clearance made to non-related buyers has to be adopted as the value in line with Rule 6(b)(i) of CVR 1975. We find that as per the said Rule, where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production or manufacture of other articles, the value shall be based on the value of the comparable goods produced or manufactured by the assessee or by any other assessee. Since goods cleared as per the provisions of proviso (i) to Section 4(1)(a) are the normal price of comparable goods and the impugned

order does not discuss as to why this price not acceptable except to say that they are contract price, we cannot ignore the contention of the appellant. It is however seen that initially the appellant have filed declaration in Annexure II on cost construction method only and only when this was challenged by the department they have taken shelter underpricing of comparable goods. We find that this change of stand by the appellant is discussed at para 15 of the impugned order. However, after examining the matter the learned Commissioner has stated that this contract price is not the normal price and this cannot be taken into account as comparable price for the goods cleared to their sister concern. He has not distinguished the goods cleared to the appellants sister units from that sold to non-related buyers as being materially or physically or in any other way different so that they are not comparable, nor is it brought out that the contract price to non-related 'class of buyer' was not the sole consideration for the sale. In the absence of this discussion and findings, the contract price has to be treated as the 'normal price', as provided in section 4, which is comparable and applicable in the appellant's case. Its only when the value of the goods cannot be determined under Rule 6(b)(i) that one needs to travel to Rule 6(b)(ii) which is not the case here. Hence we uphold the appellants prayer to adopt the value of goods cleared to their sister unit as per the comparable contract value available on the basis of Rule 6(b)(i) of CVR, 1975.

8.3 For the period from 01/07/2007: the erstwhile Section 4 of the Central Excise Act, was substituted by section 94 of the Finance Act, 2000 (No.10 of 2000), and came into force from 01/07/200. This section contains the provision for determining the 'transaction value'

of the goods for purpose of assessment of duty. The new Valuation Rules i.e. CVR 2000, enables valuation of goods for excise purposes on value charged as per commercial practices by introducing the concept of 'transaction value' rather than determining the value of goods by a notionally determined 'normal price' of the erstwhile section. Changes were also made in the Valuation Rules by the introduction of CVR, 2000 in place of CVR 1975 to reflect the change in laws. However, the appellant is of the view that even after 01/07/2000, Rule 8 is applicable to them only if the entire excisable goods are not sold but are consumed by them or on their behalf in the production or manufacture of other articles, which is not so in their case. They have sales to non-related buyers and hence Rule 8 will not be applicable in their case. Its only after Rule 8 was amended by Notification No. 14/2013-CE (NT) dated 22.12.2013 with effect from 1.12.2013, that they are liable to value the goods as per Rule 8 of CVR 2000.

8.3.1 We find that as per Boards clarification vide Circular F.No. 354/81/2000-TRU dated 30/06/2000, alluded to by the appellant in their reply to the SCN, it was decided as a measure of simplification, to value goods which are captively consumed on cost construction method only as there have been disputes in adopting values of comparable goods. The assessable value of captively consumed goods was to be taken at 115% of the cost of manufacture of goods even if identical or comparable goods are manufactured and sold by the same assessee. Subsequently Board vide Circular 692/08/2003-CX issued from F.No.6/29/2002-CX.I dated 13/02/2003 while referring to the earlier circular dated 30/06/2000, clarified that the cost of production

of captively consumed goods will hence forth be done strictly in accordance with CAS-4.

8.3.2 Rule 8 of CVR 2000 prior to its amendment stated that, 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 fifteen per cent of the cost of production or manufacture of such goods. The phrase 'excisable goods are not sold by the assessee' has been interpreted by the appellant to mean where excisable goods are not at all sold by the assessee. Since they were having sales to non-related buyers for the impugned goods, they are of the opinion that they are liable to adopt the value of comparable goods cleared by them. While the department guided by Circular dated 30/06/2000 held that the value of goods which are captively consumed by clearance to the appellants sister unit should be determined on cost construction method only as per Rule 8 of CVR 2000. It is perhaps to remove this confusion that Rule 8 was subsequently amended to state, 'where whole or part of the excisable goods are not sold' in place of 'where the excisable goods are not sold' and the words 'the value of such goods that are consumed shall be' instead of 'the value shall be'. This being so, in spite of the Boards clarification, we find force in the appellants stand. Words in a statute must be understood as per its plain meaning. There is no room for any intendment. While the department's hands are tied on the basis of Boards circular dt 30/06/2000, it is essential for us to ascertain the correct position of law unencumbered by the Revenue's interpretation. We hence find that its only after Rule 8 of CVR 2000, was amended by Notification No. 14/2013-CE (NT) dated 22.12.2013 with effect from 1.12.2013, that

the appellant will be liable to value the goods cleared to their sister unit as per Rule 8 of CVR 2000, even if they have sold comparable goods to un-related buyers based on the transaction value during the same period.

8.3.3 We conclude that the appellant was eligible to clear rough castings to their sister concern on payment of duty on the assessable value based on comparable prices of goods cleared by them to non-related buyers during the entire period covered by the impugned order.

9. We have examined the Tribunal's judgment in **Parle Biscuits** (supra) cited by Revenue to support their view that the appellant should have adopted the cost construction method based on actual production capacity for clearances to their sister unit. We find that the dispute in the said case was limited to whether the cost of production was to be taken based on the previous financial year or the current financial year and the applicability of Rule 6(b)(ii) / Rule 8 of CVR was not an issue. We find that the legal issues are covered by the decisions of the Hon'ble Tribunal in '**Ispat Industries Ltd. Vs. Commissioner of Central Excise, Raigad** [2007 (209) ELT 353 (Tri. LB)] and **Rashtriya Ispat Nigam Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, Vishakapatnam – I** [2019 (366) ELT 856 (Tri. Hyd.)] cited by the appellant and we concur with the same.

10. Since the appeal is decided in the appellants favor on merits the issues relating to suppression of fact, interest and penalty do not survive.

11. Based on the discussions above we find that the appellant succeeds in their appeal. The impugned order is hence set aside with consequential relief, if any, as per law. The appeal is disposed off accordingly.

(Pronounced in open court on 28.6.2023)

**(M. AJIT KUMAR)**  
Member (Technical)

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)

Rex