CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Excise Appeal No.40781 of 2015

(Arising out of Order-in-Original No.10/2014 dated 30.12.2014 passed by Commissioner of Central Excise, Madurai)

M/s. DSRM Steels Pvt Ltd **.... Appellant**
No.413/1, Karur Road,
Kulathur (PO), Dindigul - 624 005.

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
C.R. Buildings, No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai – 625 002.

AND

Excise Appeal No.41636 of 2016

(Arising out of Order-in-Original No.14/2016 dated 07.06.2016 passed by Commissioner of Central Excise, Madurai)

M/s. Dindugul Steel Rolling Mills (P) Ltd **.... Appellant**
No.413/1, Karur Road,
Kulathur (PO), Dindigul - 624 005.

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
C.R. Buildings, No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai – 625 002.

APPEARANCE :

Shri M. Karthikeyan, Advocate for the Appellant
Ms. O.M. Reena, & Shri. Sanjay Kakkar Authorised Representatives for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40162-40163/2025

DATE OF HEARING: 11.12.2024
DATE OF DECISION:05.02.2025

Per AJAYAN T.V.

These two appeals were taken up for hearing together as the outcome in the Excise Appeal No. E/40781/2015 preferred by the appellant M/s. DSRM Steels Pvt Ltd (DSRM in short) has a bearing on the excise appeal No. E/41636/2016 preferred by M/s. Dindugul Steel Rolling Mills (P) Ltd (DSRMPL in short) and are therefore being decided by this common order. We have heard Learned Counsel Shri. M. Karthikeyan for both the appellants and Smt. O.M. Reena, Authorised Representative (A.R. in short) for the Respondent in the appeal preferred by DSRM and Shri. Sanjay Kakkar, A.R. for the respondent in the appeal preferred by DSRMPL and their contentions are reflected infra with respect to each appeal. We have also perused the records of both the appeals and appeal wise they are dealt as hereinunder.

Appeal No. E/40781/2015

2. The appellant, DSRM, has preferred this appeal assailing the impugned Order in Original No.10/2014 dated 30-12-2014 whereby the adjudicating authority has confirmed the demand of Rs.1,24,89,578/- being the amount of differential duty of excise short paid on the goods sold by the appellant to their related buyer DSRMPL during the period from July 2009 to March 2012 under proviso to Section 11A(1)/Section 11A(4) of the Central Excise Act, 1944 (Act in short), appropriated the said amount paid by the appellant towards the differential duty of excise short paid, demanded the interest of Rs.56,49,437/- under Section 11AB/Section 11AA of the Act on account of delay in payment of the differential duty and imposed a penalty of Rs.1,24,89,578/- under Section 11AC of the Act.

3. Brief facts of this case are that DSRM are engaged in the manufacture of MS Ingots falling under chapter heading 72061010 of the

Central Excise Tariff Act, 1985 (CETA in short) and clear their entire finished goods to their sister unit DSRMPL. The IAD, Hqrs Office, Madurai, during the course of their audit, vide letter C. No. III/1-/318/2010-IA dated 13.09.2010 communicated to DSRM that DSRMPL were holding shares to the extent of 40% of share capital of DSRM with a common management and a common Managing Director, since July 2009, and that as per the provisions of Section 4(3)(b)(i) of the Act read with Section 2(g) of the MRTP Act, 1969 DSRM and DSRMPL were related persons in as much as DSRMPL were holding 40% share of DSRM. DSRM was therefore asked to produce the cost data for determining assessable value of ingots cleared to DSRMPL under CAS-4 method as per CBEC Circular No.692/08/2003-CX dated 13.02.2003. DSRM vide letter dated 24.11.2011 informed that they had appointed a qualified cost accountant in this regard. Thereafter, DSRM on the basis of CAS-4 statement prepared by the Cost Accountant of DSRM, showing the cost of production for determining the assessable value of ingots cleared to DSRMPL for the year 2009-10, paid differential duty of Rs.19,05,558/-, E. Cess Rs.38,111/- and SHE Cess Rs.19,056/- by adjusting Cenvat Account in January 2012 and also paid interest of Rs.6,62,161/- towards interest on the differential duty vide challan dated 01.03.2012 and vide letter dated 09.03.2012 addressed to the Range Officer, Vadamadurai Range furnished the said CAS-4 Statement. The IAD visited the unit on 10.09.2012, collected data for desk review and conducted audit on 14.09.2012 and 15.09.2012, during which they found DSRM was in receipt of Rs.89,52,911.90 by way of cash towards discount on purchases during the year 2009-10 and Rs.75,00,000/- towards discounts and other receipts vide journal no.330 dated 31.03.2011 in the ledger under heading 'slag clearance', during the year 2010-11,for which they were not able to produce supporting documents, though they replied by email on 22.09.2012 that they admitted the said incomes stating that it was by way of price difference and discount crediting the profit and loss account, but it had no nexus with purchases, sales or production. Consequent to the directions of the Commissioner in the Audit monitoring committee meeting held on 30.10.2012, special study of DSRM under Deputy Director (Cost) was ordered and it was conducted on 09.10.2013 and 10.01.2013 and 05.02.2013.

4. In the interregnum, on scrutiny of the CAS-4 statement it was found that the amount of Rs.89,52,911.90 was deducted from the cost of production as discount which was not actually received by them from suppliers and hence DSRM was directed to include the said amount in the cost of production and pay the appropriate differential duty. DSRM paid duty of Rs.4,54,208/- during November 2012 which was confirmed vide letter dated 02.01.2013 of the Range Officer, Vadamadurai Range. Further DSRM was asked to pay the differential duty by calculating the duty liability on each removal of the goods as required under Section 4(1) as they had paid the differential duty earlier by adopting the CAS-4 value on total quantity of goods removed on each month. This lead to DSRM paying the reworked short payment of duty for the year 2009-10 quantified as Rs.1,77,574/- by adjusting the Cenvat account vide voucher No.700 dated 10.01.2013.

5. The special team headed by the Deputy Director(cost) upon noticing that certain items were wrongly deducted from cost of

production, redetermined the CAS-4 value of the steel ingots manufactured during the year 2009-10 as Rs.24,546/- per MT and vide letter C. No. III/10/318/2012-IA dated 14.2.2014 communicated the differential duty further payable worked out as Rs.1,33,029/- which was accepted and paid by DSRM by debiting the Cenvat accouont as per the journal voucher No.821 dated 28.02.2014.

6. The Department was of the view that DSRM's explanation that the income of Rs.75,00,000/- towards discounts and other receipts vide journal no. 330 dated 31.03.2011 in the ledger under heading 'slag clearance', during the year 2010-11 was by way of price difference and discount crediting the profit and loss account and that it had no nexus with purchases, sale or production, was not acceptable. Department further was of the view that DSRM has indulged in improper accounting methods to suppress the cost of production of goods during 2010-11 to the extent of the said amount with an intention to suppress the CAS-4 value similar to their method of accounting for the year 2009-10 and this incorrect method of determination of assessable value on the clearances made to the related buyer would have resulted in short payment of duty if not unearthed by the Department during audit. The Deputy Director (cost) on the basis of audited financial statements of DSRM arrived at a CAS-4 value of Rs.28,203.70 per MT for the year 2010-11 and intimated to DSRM the short payment of duty worked out as Rs.42,39,166/- vide letter C. No. III/10/156/2012-IA dated 16.01.2013 and DSRM paid the same by debiting in the Cenvat account as per the ER-1 return for the month of April 2013.

7. Since DSRM had also failed to furnish CAS-4 statement for the year 2011-12 and pay appropriate duty on the clearances made to the said related buyer, the Deputy Director (Cost), has determined the assessable value of steel ingots as Rs.34,006/ per MT for the year 2011-12 based on the Audited Financial Records submitted by the DSRM. Based on the above CAS-4 value, the short payment of duty payable for the year 2011-12 was worked out as Rs.74,85,600/- and was informed to DSRM vide letter C. No III/10/156/2012-1A dated 14.2.2014 and accepting the quantification of differential duty arrived at by DD(Cost) DSRM paid the same by debiting in the Cenvat account as per the journal voucher No. 822 dated 28.2.2014. Both DSRM and DSRMPL vide letters dated 26.03.2014 addressed to the Range Officer intimated the changes effected in respect of Director/Managing Director of their respective units and informed that the common management of their company and their related person concept has been changed with effect from 01.01.2014.

8. The Respondent, being of the view that DSRM being the related person of DSRMPL have contravened the provisions of Section 4(1)(b) of the Act read with the provisions of Rule 8 & 9 of Central Excise Valuation (determination of price of excisable goods) Rules, 2000 inasmuch as they failed to determine and pay appropriate duty on the goods manufactured and cleared to their related buyer and have also rendered themselves liable for imposition of penalty under Section 11AC of the Act, issued SCN No.04/2014-CE dated 05.08.2014 demanding Rs.1,24,89,578/- being the differential duty of excise short paid on goods sold to their related buyer DSRMPL during the period July 2009 to March 2012 and proposing the appropriation of the said amount that was paid by DSRM together

with a demand of interest of Rs.56,49,437/- and proposing imposition of penalty under Section 11AC in asmuch as they have manipulated their accounts with a view to suppress the cost of manufacture of the goods sold to their related buyer and failed to determine the correct assessable value by furnishing CAS-4 statements for the years 2009-10(from July 2009), 2010-11 and 2011-12 with an intent to evade payment of appropriate duty.

9. DSRM filed a reply dated 16-12-2014, whereby, while conceding that DSRM and DSRMPL are interconnected undertaking, contested the valuation adopted by the Department. It was stated that while they were interconnected undertakings but they are not related in terms of sub-clause (ii) or (iii) or (iv) of Section 4(3)(b) of the Act and thus the provisions of Rule 10(1) of Valuation Rules would not be applicable. Therefore, the only recourse left would be to adopt Rule 10(2) as per which the valuation of the impugned goods sold by DSRM to DSRMP would have to be made under Section 4(1) of the Act as if the two companies are not related and thus recourse have to be taken only to Section 4(1)(a) of CEA and duty is liable to be paid only on the transaction value. It was therefore stated that as such they are not at all liable to pay any differential duty and the differential duty already paid is liable to be refunded. Notwithstanding their submission on merits, DSRM contended that the notice is also not sustainable on limitation as the issue is one of interpretation and therefore the extended period is not invokable and that in any event they had no requirement to undervalue the goods especially when the duty paid by DSRM was always available as Cenvat Credit in the hands of DSRMPL which would only

render the entire demand revenue neutral. It was further stated that since the issue is highly interpretative and complex in nature, no motives could be attributed to them placing reliance on various case laws in support of their contentions. Thereafter, consequent to a personal hearing granted, the adjudicating authority vide the impugned order in original confirmed the entire demand of differential duty under Section 11A (1)/Section 11A (4) of CEA, 1944, appropriated the entire differential duty of Rs.1,24,89,578/- paid towards the demand, while demanding interest of Rs.56,49,437/- under Section 11 AB / Section 11 AA and imposed a penalty of Rs.1,24,89,578/- under Section 11 AC of the Act. Aggrieved by the impugned Order in Original, the appellant is before this Tribunal.

10. The Ld. Counsel Shri. M. Karthikeyan appeared and argued for the appellant. His submissions are as follows:

i. DSRM are engaged in the manufacture of MS ingots falling under Chapter 7206 1010 of the First Schedule to the Central Excise Tariff Act, 1985. The goods manufactured are cleared to DSRMPL who holds 40 percent of shares in the appellant and are having common Managing Director.

ii. That during the period July 2009 till March 2012 they had two directors who were also directors of DSRMPL. It is submitted that having common directors makes two companies interconnected undertakings in terms of Section 4(3)(b)(i) of CEA thereby construing them as related for the limited purpose of applicability of Section 4(1)(b) of the CEA.

iii. that for the transaction covered under Section 4(1)(b) of the CEA, the value shall be determined as provided in the Valuation Rules, more specifically under Rule 10 of the Valuation Rules which deals with Valuation for transaction between related person being interconnected undertaking, the extract of the relevant provision is as below,

10. Where whole or part of the excisable goods are sold by the assessee to or through an inter connected undertaking, the value of such goods shall be determined in the following manner, namely:-

(a) If the undertakings are so connected that they are also related in terms of sub clause on (ii) or (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9

Explanation. In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956

(b) in any other case, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4*."*

iv. That Rule 10(b) of the Valuation Rules carves out an exception stating that even if the entities are related in terms of Section 4(3)(b)(i) of CEA the transaction value should be determined in terms of Section 4(1) of the CEA deeming the entities as unrelated. The respondent had incorrectly demanded duty by determining the value as per the provisions of Rule 8 and Rule 9 of Valuation Rules which deals with captive consumption and sale through persons except interconnected undertakings respectively. In this regard the appellant placed reliance on the CBEC Circular in F.no. 354/81/2000-

TRU dated 30-06-2000 wherein the CBEC had affirmed the above contention, the extract of the same is as below:-

*24 ……………….However, a provision has been made in the new valuation rules that even **if the assessee and the buyer are inter-connected undertakings, the transaction value will be "rejected" only when they are "related" in the sense of any of Clauses (ii), (iii) or (iv) of sub-section 4(3)(b) or the buyer is a holding company or a subsidiary company of the assessee**. In other words, while dealing with transactions between inter-connected undertakings, if the relationship as described in Clauses (ii), (iii) or (iv) does not exist and the buyer is also not a holding company or a subsidiary company, then for assessment purposes, they will not be considered related…………*

v. Further in support of the above said contention the appellant wishes to place their reliance on the following decisions:

a) M/s. Khyati Ispat Private Limited Versus Principal Commissioner, Central Tax & Central Excise, Raipur as reported in 2022 (3) TMI 399 CESTAT New Delhi

b) Mahendra Sponge & Power Ltd Versus Principal Commissioner of Central Excise as reported in 2022 (8) TMI 1250-CESTAT New Delhi

c) M/s. Ewac Alloys Ltd & M/s. Larsen Toubro Ltd Versus Commissioner of Central Excise, Mumbai as reported 2022 (2) TMI 952-CESTAT Mumbal.

d) C.C.E & ST. Silvasa Versus Sterling Generators Pvt Ltd as reported in 2023 (11) TMI 609-CESTAT Ahmedabad

vi. That since the demand of duty itself is not sustainable in the light of the submissions made the demand of interest and penalty are not sustainable.

11. The Ld. Counsel Shri. M. Karthikeyan also submitted that even if the demands were held to be unsustainable, DSRM would not and cannot claim refund, having passed on the same to DSRMPL while selling the MS ingots to DSRMPL and since DSRMPL too have used these goods to manufacture its final products sold to its customers, the incidence of duty thus has been passed on down the chain of consequent sales.

12. The Learned Authorised Representative Smt. O.M. Reena draws attention to para 17 and 19 of the impugned order in original and submits that DSRM and DSRMPL are related persons in as much as DSRM and DSRMPL are owned and controlled by the same management in terms of Section 2(g)(vi) of the Monopolies & Restrictive Trade Practices Act, 1969 and it is an admitted fact that DSRM and DSRMPL are interconnected undertakings. It is her submission that as per Section 4, interconnected undertakings are related persons and DSRM has paid differential duty based on CAS-4 valuation as pointed out by audit without protest for the Financial year 2009-10 and for further subsequent financial years also. She submits that the related person DSRMPL does not sell the ingots but consumes the same in manufacture of final products and further there is no normal price as the entire production is sold to the related person and therefore adoption of CAS-4 method of valuation for determining the transaction value cannot be faulted in this case. Learned A.R. therefore contends that the Appeal should be dismissed as devoid of merits.

13. In addition to the submissions made in the appeal paper book, the Counsel for the appellant filed additional submissions on the issue of invocation of extended period contending that in the SCN dated

05.08.2014, under para 11, extended period was invoked for the reason of wrong method of calculation adopted whereas the impugned order under para 23 records a finding that the appellant has indulged in deceitful action by manipulating financial accounts to reduce the cost of production and thereby adopted a lesser value for payment of duty. That since as submitted, in terms of clause (b) of Rule 10 the value is required to be determined as if the parties are not related and on the basis of transaction value, the above allegations to invoke extended period is not at all sustainable. That the issue is highly interpretative in nature and pertains to interpretation of the provision contained Section 4 and the valuation rules and therefore extended period is not invokable. That even presuming without admitting that the appellant ought to have paid duty on the basis of cost of production only, even then when the department was aware of such proposition and had vide their letter dated 13.09.2010 informed the appellant about the same and required the appellant to provide the CAS-4 workings, there is no substance in the SCN invoking extended period for the reason that the cost has not been properly determined in the CAS-4 submitted by the appellant and that it is only consequent to the audit/special audit the enhanced cost has been redetermined. That therefore the allegation that there is short payment of duty from July 2009 to March 2012 on the grounds that accounts were manipulated to suppress actual cost of manufactured goods with an intent to evade payment of duty is totally unsustainable.

Appeal No. E/41636/2016

14. DSRMPL is the appellant herein who is aggrieved by the impugned OIO 14/2016 dated 07-06-2016 whereby the Adjudicating Authority has

confirmed the demand of an amount of Rs.1,17,24,765/- being the credit of additional duty wrongly taken and utilized during April 2014 and November 2014 under Rule 14 of CCR read with Section 11A(1)(a) of the Act along with demand of appropriate interest under Rule 14 of CCR read with Section 11AA of the Act and imposed equivalent penalty under Rule 15(1) of CCR.

15. Facts briefly are that DSRMPL who received raw material M.S. Ingots during the period July 2009 to March 2012 from DSRM had taken credit on supplementary invoices issued by DSRM against whom charges of suppression, wilful misstatement etc. have been confirmed by invoking extended period of limitation vide OIO 10/2014 dated 30.1.2.2014 and thus the supplementary invoices based on which DSRMPL had taken cenvat credit are not valid documents for the purpose of Cenvat Credit in terms of Rule 9(1)(b) as per which cenvat credit can be taken on the basis of supplementary invoices except when the amount of duty become payable on account of fraud, misstatement or suppression on the part of the supplier of the inputs. DSRMPL was issued an SCN 04/2015-CE dated 16.04.2015 proposing denial of cenvat credit taken on supplementary invoices issued by DSRM on the ground that these were not valid documents in terms of Rule 9(1)(b), to which the appellant DSRMPL filed a reply and pursuant to due process of law the impugned OIO confirming the demands as stated supra was issued. Aggrieved by the impugned OIO DSRMPL is before this Tribunal.

16. The learned Counsel Shri. M. Karthikeyan appearing for DSRMPL contended that the SCN dated 05.08.2014 issued to DSRM Steels stood

adjudicated by the impugned OIO which is the subject matter of the appeal E/40781/2015 that was contested and heard on 11.12.2024 and the demand therein is unsustainable as argued. That of the Rs.1,24,89,578/- that was confirmed invoking extended period against DSRM steels in the OIO dated 30.12.2014 impugned in appeal E/40781/2015, there was also a proposal to appropriate the said amount paid by DSRM Steels. That DSRM Steels had, out of the said amount of Rs.1,24,89,578/-, issued two supplementary invoices to DSRMPL the appellant herein and the appellant had availed cenvat credit of Rs.1,17,24,675/- on the said invoices during April 2014 and November 2014 prior to the adjudication of the SCN dated 05.08.2014 issued to DSRM and the said SCN was adjudicated only vide the OIO dated 30.12.2014. That since the impugned OIO dated 30.12.2014 itself is unsustainable on merits and on limitation the denial of the credit taken by the appellant on the basis of supplementary invoice is not sustainable as the vice of Rule 9(1)(b) of CCR does not get attracted in these proceedings. That, if the demand against DSRM steels is held not sustainable either on merits or on limitation, the question of denying the credit in this proceeding does not arise at all. The learned counsel places reliance on the decisions in ALF Engineering Pvt Ltd, 2024 (11) TMI 1278-CESTAT MUMBAI and M/s. Hindustan Unilever Limited, 2024 (11) TMI 712-CESTAT BANGALORE in this regard. Shri. M. Karthikeyan further submits that since the demand of duty itself is not sustainable in the light of the submissions made the demand of interest and penalty are not sustainable. The Ld. Counsel prayed that the appeal may be allowed.

17. The Learned A.R. Shri. Sanjay Kakkar vehemently opposed the contentions of the learned counsel for the appellant. Learned A.R. submits that the adjudicating authority has rightly invoked the extended period of limitation in OIO No.10/2014 dated 30.12.2014 as DSRM had manipulated financial accounts by reducing the cost of production and adopting a lesser value for payment of duty which has been found to be a deceitful action that justified invoking the extended period. That the contentions of DSRMPL, the appellant herein, that they had taken cenvat credit when the proceedings initiated against their supplier was pending and therefore the subject supplementary invoices are valid documents is unacceptable since the supplier had accepted the redetermination of assessable value and paid the differential duty amount and it is immaterial whether the same was paid before the determination happened through an adjudicating order. That the contention of the DSRMPL that the words "became recoverable" would mean only consequent to adjudication proceedings is an exercise of hair splitting and no credence need be given for such attempts. He places reliance on the decisions in Supreme Petrochem Ltd v Commr of Central tax and Central Excise Chennai [2018 (6) TMI 565] upheld by Hon'ble High Court of Madras ,2019 (28) GSTL 564 (Mad) and Nova Iron & Steel Ltd v Commissioner of GST, Central Excise & Customs, 2019 (5) TMI 1244-CESTAT New Delhi. The Learned A.R. submits that the appeal be dismissed.

18. We have heard both sides on both the appeals and perused the records before us. Our consideration of the aforementioned appeal preferred by DSRM which is taken up first for discussion, is as under:

19. The fact not in dispute is that DSRM and DSRMPL are related in terms of Section 4(3)(b)(i) in that they are interconnected undertakings. The revenue has in the impugned SCN dated 05.08.2014, further narrowed down the manner in which they are interconnected and pegged it as attracting the definition under Section 2(g)(vi) of the Monopolies & Restrictive Trade Practices Act, 1969 (MRTP Act in short). Section 2(g) of the MRTP Act defines that: "Inter-connected Undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner namely:-

(i)…..

(vi) If the undertakings are owned or controlled by the same person or by the same Group.

20. Incidentally, it is seen that the definition of "inter-connected undertakings" as provided in the Explanation to Section 4(3)(b) has been substituted with effect from 28-05-2012 and has incorporated the aforementioned definition in Section 2(g)(vi) of the Monopolies & Restrictive Trade Practices Act, 1969 in sub-clause (F).

21. While both Respondent and Appellant are ad idem that DSRM and DSRMPL are related, the dispute is on what is the value to be adopted for charging duty of excise when DSRM clears MS ingots to DSRMPL.

22. Section 4(1) of the Act, stipulates that where under this Act the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as prescribed.

23. By virtue of being related in that DSRM and DSRMPL are inter-connected undertakings, the transaction is straight away out of the ambit of Section 4(1)(a) and in terms of Section 4(1)(b), the value of the goods sold by DSRM to DSRMPL would then have to be determined in such manner as may be prescribed.

24. In exercise of the powers conferred by Section 37 of the Act, the Central Government has made the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (Valuation Rules in short) and in the impugned OIO, the Adjudicating Authority, has while narrating the allegation made in the SCN, reproduced Rule 8 and 9 of the Valuation Rules and has stated in paragraph 6 that as per the above provisions, the value of the goods sold to a related buyer who consumes such goods in the production shall be one hundred and ten percent of the cost of production or manufacture of such goods and that in view of the above legal provisions, ,the assessable value of MS ingots cleared to DSRMPL has to be arrived at only by adopting CAS-4 method.

25. DSRM, upon being put to notice of the aforesaid allegation in the SCN, has contested the same. It is their stand that since the SCN allegation of their being related is only as an inter-connected undertaking in terms of clause (i) of Section 4(3)(b) and not in terms of clause (ii), (iii) or (iv) of the said section, Rule 10 as well as Rule 9 of the valuation rules are not applicable and consequently, Rule 8 is also not applicable.

26. For better appreciation of the competing provisions, the aforesaid Rule 8, 9 and 10 of the Valuation Rules as was prevailing for the relevant period is reproduced as 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 percent of the cost of production or manufacture of such goods.*
>
> *Rule 9. When the assessee so arranges that the excisable goods are not sold by the assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:*
>
> *Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.*

Rule 10. When the assessee so arranges that the excisable goods are not sold by him except to or through an interconnected undertaking, the value of goods shall be determined in the following manner, namely :-

(a) If the undertakings are so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9.

Explanation. - In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956).

(b) in any other case, the value shall be determined as if they are not related persons for the purpose of subsection (1) of section 4.

27. On a plain reading of the said Rule 10, it would be clear that the provisions of Rule 10 would govern transactions between undertakings which were "inter-connected undertaking" and in terms of Rule 10(a) ibid, the inter-connected undertakings should be so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of Section 4(3)(b) of CEA to attract determination of the value in the manner prescribed in rule 9. DSRM had contended that from the shareholding patterns it would be amply clear that they are not holding and subsidiary companies and given that they are not covered under the aforementioned sub-clauses, the provisions of Rule 10(a) ibid would not be applicable and that the only recourse left to be taken is the valuation of their goods cleared to DSRMPL under Rule 10(b) ibid which in other words means that the value shall be determined as if they are not related persons for the purpose of sub-section (1) of Section 4. While the contention of DSRM that from the shareholding patterns it would be evident that DSRM and DSRMPL are

not holding and subsidiary companies, is not seen controverted in the OIO, it is seen that the adjudicating authority has brushed aside the contention of the appellant that the value has to be determined in accordance with Rule 10 of the valuation rules stating that it is unsustainable since DSRM had adopted the CAS-4 valuation for paying differential duty during 2009-10. DSRM also has contended that their aforementioned contentions are in consonance with the contemporaneous exposition in Board's Circular in F.No. 354/81/2000 - TRU dated 30-06-2000, wherein it has been stated as under:

> " *24………. However, a provision has been made in the new valuation rules that even if the assessee and the buyer are inter-connected undertakings, the transaction value will be "rejected" only when they are "related" in the sense of any of clauses (ii), (iii) or (iv) of sub-section 4(3)(b) or the buyer is a holding company or a subsidiary company of the assessee. In other words, while dealing with transactions between inter-connected undertakings, if the relationship as described in clauses (ii), (iii) or (iv) does not exist and the buyer is also not a holding company or a subsidiary company, then for assessment purposes, they will not be considered related….*

28. We are unable to concur with the aforesaid finding of the adjudicating authority that the appellant's contention that the value has to be determined in accordance with Rule 10 of the valuation rules is unsustainable since the appellant themselves have adopted the CAS-4 valuation for paying differential duty during 2009-10, since he has failed to appreciate that the appellant has adopted the CAS-4 valuation only in compliance of the Department's directions vide its letter dated 13.09.2010 as has been admitted in the SCN. That doesn't take away

the appellant's right to contest the SCN on its merits when it is issued proposing to visit the appellant with penal and financial consequences. We find that the appellant's contentions on the inapplicability of Rule 10(a) are in line with the manner in which the Rule has to be appreciated. Further, as is also evident from the Board's circular reproduced supra, while dealing with transactions between inter-connected undertakings, if the relationship as described in clauses (ii), (iii) or (iv) does not exist and the buyer is also not a holding company or a subsidiary company, then for assessment purposes, they will not be considered related. We notice that the SCN, save for stating that DSRM and DSRMPL are inter-connected undertakings and are related persons in as much as DSRM and DSRMPL are owned and controlled by the same management in terms of 2(g)(vi) of the MRTP Act, 1969, duly reproducing Section 4(1) , Section 4(3(b) as well as Rule 8 and Rule 9 of the valuation rules, has neither invoked Rule 10 nor put the appellant to notice as to why the transaction value being adopted by the appellant in their clearance to DSRMPL is unacceptable. We also find that the legal provisions of Rule 8 and Rule 9 sought to be relied on in the SCN and which reliance has been taken note of by the adjudicating authority in the impugned OIO, is contrary to the interpretation of the said provisions by the Honourable Apex Court in ***CCE, Pune v.M/s. Mahindra Ugine Steel Co Ltd, 2015-TIOL-53-SC-CX***, wherein it has been held as under:

> *"Learned counsel for the appellant, however, referred to Rule 9 and submitted that the proviso to the said Rule would attract the applicability of Rule 8 in the present case. In order to appreciate this argument, we take note of Rule 9 which is reproduced below:*

"RULE 9: When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8."

In order to attract this rule, first requirement is that the assessee sells the excisable goods to or through a person who is related in the manner stated in S.4 (3)(b) of the Act. There are four eventualities provided in sub-clause (i) to (iv) which such a person can be related.

Sec.4 (3)(b): persons shall be deemed to be "related" if--

> *(i) they are inter-connected undertakings;*
>
> *(ii) they are relatives;*
>
> *(iii) amongst them the buyer is a relative and distributor of the assessee, or a sub-distributor of such distributor; or*
>
> *(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.*

However Rule 9 mentions relationship that is visualised in sub-clauses (ii) to (iv) only and excludes clause (i).

Thus, this Rule would be applicable only in those cases that assessee is related in the manner specified in either of sub-clause (ii), (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act and not in those cases where the person is related in the manner as stated in clause (i) *thereof. In those cases where Rule 9 is applicable, for the purpose of valuation, normal transaction value at which such goods are sold by the related person, is to be taken as the value of the goods. Proviso becomes applicable only when goods are not sold by the related person at all and used or consumed for home production. As there is no sale transaction by the related person, question of value thereof will not be available and therefore, to arrive at the value in such a situation one has to fall back on Rule 8.*

However, if main Rule 9 is not attracted, question of applicability of proviso thereto does not arise."

29. The Apex Court has gone on to hold that the relationship of persons being deemed to be related if they are inter-connected undertakings as stated in sub-clause (i) of Section 4(3)(b), is a relationship which is excluded from Rule 9 as sub-clause (i) is conspicuously absent therefrom and therefore from whatever angle the matter is looked at, Rule 8 will not apply. We are of the view that since it is an admitted fact that DSRM and DSRML are treated as related only on the ground of being inter-connected undertakings as stated in sub-clause (i) of Section 4(3)(b), the legal premise based on Rule 9 and Rule 8 that has been invoked in the SCN to foist the requirement of adherence to CAS-4 valuation by DSRM thus stands demolished in light of the ratio laid down by the Honourable Supreme Court while interpreting these rules in ***CCE, Pune v. M/s. Mahindra Ugine Steel Co Ltd, 2015-TIOL-53-SC-CX*** as reproduced supra.

30. SCN cannot be issued on a wing and a prayer. The assessee ought to be put to notice of the relevant statutory provisions applicable for the

period, detailing how and why the said provisions stood attracted, along with evidence substantiating the department's contentions/allegations, which would than be the foundation that establishes a tenable demand. In the absence of invoking of Rule 10 as well as any allegation/evidence in the SCN or finding in OIO, that DSRM and DSRMPL being inter-connected undertakings are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act or that DSRMPL as the buyer is a holding company or subsidiary company of DSRM, that would warrant invoking of Rule 9, as well as our findings that the legal basis premised on the application of Rule 9 and Rule 8 for demanding differential duty based on the CAS-4 valuations as stated in the SCN and noticed in the impugned OIO, is incorrect and untenable given the ratio of the Honourable Supreme Court in the case of ***CCE, Pune v. M/s. Mahindra Ugine Steel Co Ltd, 2015-TIOL-53-SC-CX***, we find that the demand of differential duty of Rs.1,24,89,578/- as made in the impugned order in original 10/2014 dated 30.12.2014 cannot sustain on merits and is liable to be set aside.

31. We are also of the view that even otherwise the impugned order in original 10/2014 dated 30.12.2014 is also barred by limitation. Admittedly the appellant has adhered to the instructions of the Department as communicated to the appellant vide letter C. No. III/1-318/2010-IA dated 13.09.2010 in appointing a qualified Cost Accountant and adopting CAS-4 valuation. Even thereafter, consequent to the visits of the audit department as and when the appellant has been communicated the CAS-4 valuation which is to be adopted according to the Department, the appellant has implicitly complied with the same. That the appellant, despite having views to the contrary as was communicated by the appellant to the department, had chosen to buy peace by adhering to the CAS-4 valuation provided by the Department, shows that there were interpretational issues involved. Given these

circumstances, we are of the view that the demand is also barred by limitation.

32. In view of the foregoing facts borne out from the records and the discussions and findings stated above, we find that the appellant DSRM succeeds in its Appeal registered under Appeal No. E/40781/2015 on merits as well as on its plea against invocation of extended period of limitation. The demand made in the impugned order in original 10/2014 dated 30.12.2014 being untenable, the demand of consequential interest and the penalty imposed also do not sustain. Hence the impugned order in original is set aside and the appeal is allowed with consequential relief, if any, in law.

33. In the light of our findings that the appellant DSRM succeeds in its Appeal registered under Appeal No. E/40781/2015 on merits as well as on its plea against invocation of extended period of limitation, the demand made on DSRMPL vide the impugned order in original No.14/2016 dated 07.06.2016, against which the appellant DSRMPL has preferred the instant appeal No. E/41636/2016, cannot sustain for the reason that ineligibility of credit taken on supplementary invoices issued by DSRM hinged on the invalidity attached to the said invoices on the grounds that the charges against DSRM of suppression, wilful misstatement etc. have been confirmed by invoking extended period of limitation vide OIO 10/2014 dated 30.12.2014 and thus the supplementary invoices based on which DSRMPL had taken cenvat credit are not valid documents for the purpose of Cenvat Credit in terms of Rule 9(1)(b). In view of our findings in Appeal No. E/40781/2015 supra that

the impugned order in original 10/2014 dated 30.12.2014 is untenable both on merits and limitation and thus the demand confirmed by the said order in original 10/2014 dated 30.12.2014 cannot sustain, consequently the invalidity attached to the supplementary invoices issued by DSRM to DSRMPL, which is the subject matter of the instant appeal preferred by DSRMPL stands effaced ab initio, thereby rendering the supplementary invoices based on which DSRMPL had taken cenvat credit as valid documents for the purpose of Cenvat Credit in terms of Rule 9(1)(b). In light of our findings above, the case laws relied upon by the learned AR are inapplicable. Therefore, the demand made on DSRMPL vide the impugned order in original No.14/2016 dated 07.06.2016 consequently being untenable, the demand of consequential interest and the penalty imposed also do not sustain. Hence the impugned order in original No.14/2016 dated 07.06.2016 is set aside and the appeal preferred by DSRMPL is allowed with consequential relief, if any, in law. Thus, both the appeals that were heard are allowed with consequential relief, if any, in law.

(Order pronounced in the open court on 05.02.2025)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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