CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

EXICSE APPEAL NO. 51538 OF 2019
WITH
EXCISE CROSS NO. 50746 OF 2019

[Arising out Order-in-Appeal No. 296-73 (SM)CE/JPR/2019 dated 30.03.2019 passed by the Commissioner (Appeals) Central Excise & CGST, Jaipur]

COMMISSIONER OF CENTRAL EXCISE AND CENTRAL GOODS AND SERVICE TAX-JAIPUR I **......APPELLANT**
NCR Building, Statue Circle,
C-Scheme, Jaipur, Rajasthan-302005

Vs.

NATIONAL ENGINEERING INDUSTRIES LTD **.....RESPONDENT**
(N.E.I), Gunsi-Newai, Distt.–Tonk
Rajasthan

Appearance:
Present for the Appellant :Shri S.K. Ray, Authorised Representative
Present for the Respondent: Shri A.K. Prasad and Ms. Surbhi Sinha, Advocates

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59973 /2024

DATE OF HEARING/DECISION : 09/12/2024

P.V. SUBBA RAO:

1. Revenue filed this appeal to assail the Order-in-Appeal dated 30.03.2019 passed by the Commissioner (Appeals)[1] whereby he allowed the appeal filed by the respondent and set aside the Order-in-Original dated 01.12.2017 passed by the

1 Impugned order

Additional Commissioner. The Cross Objection No. 50746 of 2019 is filed by the respondent praying that the appeal filed by the Revenue may be dismissed. No other prayer has been made in the Memo of Cross Objection.

2. The facts which led to the issue of the impugned order are that M/s National Engineering Industries Limited, Rajasthan[2] manufactured ball bearings during the relevant period and was registered with the central excise department and it was paying central excise duty. During the period January, 2017 to March, 2016 it procured inner and outer rings of ball bearings from its own factory (sister unit) at Khatipura, Jaipur. It also imported some raw-materials. After manufacturing ball bearings, the respondent cleared them to its factory at Manesar, Gurgaon where they were captively consumed to manufacture finished goods which were then sold. As the respondent had manufactured goods and supplied to its own sister unit which captively consumed them, it paid excise duty on the clearances at 110% of the cost of production as per Rule 9 read with Rule 8 of Central Excise Valuation Rules, 2000[3]. The cost of production for the purpose was determined on the basis of CAS-4 certificate prepared by the cost accountant.

3. On verification of records, department found that the value on which the respondent had cleared the goods was lower than the cost of materials which the respondent had procured and,

---

2 Respondent
3 Valuation Rules

therefore, a show cause notice was issued proposing recovery of differential duty under section 11A (4) of the Central Excise Act, 1944[4] along with interest under section 11AA of the Act. It was also proposed to impose penalty of an amount equal of duty under section 11AC(i)(c) of the Act. The respondent resisted the proposals in the show cause notice which were, however, confirmed by the Additional Commissioner in his order dated 01.12.2017. The Additional Commissioner not only confirmed duty of Rs. 1,96,66,620/- with interest but also imposed penalty under section 11AC of the Act.

4. Aggrieved, the appellant appealed to the Commissioner (Appeals) on the following grounds:

(i) The cost of production was calculated as per the CAS-4 certificate issued by the cost auditor which is binding on both the assessee and the Revenue. Ministry of Finance Circular No. 6/20/2 and Circular No. 692/08/2003 dated 13.02.2003 categorically directed that the cost of production for captively consumed goods shall be done strictly in accordance with the CAS-4.

(ii) While computing the value of raw materials in the CAS-4, the cost of materials was determined on the basis of average cost of raw-material which is the standard method as per the Institute of Costs and

---

4 The Act

Works Audit(ICWA). Therefore, there will be occasions where individual purchases may be more expensive than the average cost of raw materials taken in the CAS-4 certificate. There could also be occasions where the cost of raw-materials is lower than the average cost taken in the CAS-4 certificate. There is no one-to-one co-relation between the input cost and outputs cleared for captive consumption.

(iii) There is no loss of Revenue to the Government as the entire exercise was Revenue neutral and, therefore, extended period of limitation was not invokable and, there is no suppression or willful mis-statement in this case.

5. The Commissioner (Appeals) passed the impugned order allowing the appeal on the grounds taken by the respondent. He also relied on the judgment of the Supreme Court in **CCE, Pune** vs. **Cadbury India limited**[5]**.**

6. Aggrieved, Revenue filed this appeal on the following grounds:

(a) The average price of material taken in the cost in the CAS-4 certificate by the appellant was lower than the cost of raw materials;

(b) The appellant had produced samples copies of the Bills of Entry along with the some of the invoices

5. 2006 (200) ELT 353 (SC)

for the year 2012-2013 but failed to submit the documents for the whole period;

(c) On examination by the audit, it was found that the prices in invoices for supply of goods was not in the consonance with invoices for output supply of goods.

(d) It is prayed that the impugned order passed by the Commissioner (Appeals) may be set aside and the order of the Additional Commissioner may be restored.

7. Learned authorized representative appearing for the Revenue vehemently reiterated the above submissions.

8. Learned counsel for the respondent submitted that the appeal by the Revenue needs to be dismissed as the demand could not sustain either on merits or on limitation.

9. We have considered the submissions by both sides and perused the records.

10. The undisputed facts of the case and the legal position are that the appellant had manufactured the goods which it had cleared to its own sister unit which in turn used them captively to manufacture final products. Under such circumstances, as per Rule 9 read with Rule 8 of the Valuation Rules, duty has to be paid on 110% of the cost of production of the goods. It is a well

established practice that the cost of production is determined as per the CAS-4 certificate issued by the cost auditor and duty has to be paid on 110% of the cost of production indicated in the CAS-4. The department has nowhere questioned the validity of CAS-4 submitted by the respondent. The only case of the department is that there are invoices where the cost of raw-material was higher than the value on which the respondent had paid central excise duty. The reason for this, as explained by learned counsel for the respondent and accepted by the Commissioner (Appeals) in the impugned order, is that CAS-4 calculates the cost of production based on the average cost of raw-material and average overheads etc. In some cases the price in invoices may be much higher and in other case it may be much lower than the average taken in CAS-4. When a method has been prescribed by the Board and the cost has been determined professionally by a cost auditor, unless the Revenue can establish that the cost auditor’s report (CAS-4) was wrong and the average cost for the entire period is higher after taking into consideration all the invoices, the department has no case whatsoever to dispute the CAS-4 certificate. Therefore, the demand was correctly set aside by the Commissioner (Appeals) in the impugned order.

11. We also find that the entire exercise is revenue neutral as the respondent was supplying goods to its own sister units. So whatever duty was paid by the respondent would have been

taken as credit by its sister unit which would have used it to pay duty on the final products. Therefore, there cannot be any intention to evade payment of duty and without such an intention the extended period of limitation could not have been invoked nor could any penalty have been imposed under section 11AC.

12. In view of the above, we find in favour of the Respondent and against the Revenue both on merits and on limitation.

13. The impugned order is, therefore, upheld and the appeal filed by the revenue is dismissed. Cross objection filed by the respondent also stand disposed of.

[Order pronounced in open court]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Tejo