IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1117 of 2012

[Arising out of Order-in-Appeal No. 25/RPR-I/2012 dated 9.2.2012 passed by the Commissioner (Appeals) Central Excise , Raipur]

Commissioner of Central Excise **Appellant**
Raipur

Vs.

M/s. Super Ispat Raipur Pvt. Ltd **Respondent**

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing/ Decision: 04.01.2017

FINAL ORDER No.50216/2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against the order in appeal No. dated 9.2.2012. The appellant is engaged in the manufacturing of iron and steel goods and has cleared the goods to related person. Revenue by assessing the transaction value under Rule 8 of the Central Excise Valuation Rules, 2000, demanded differential duty and imposed penalty. On appeal before Commissioner (Appeals), demand and penalty were set aside. Being aggrieved, the department has filed the present appeal.

2. With this background, we heard Shri Yogesh Agarwal, learned DR and Shri Manish Saharan, learned Advocate.

3. From the record, it appears that the appellant apart from selling the goods to the other buyers, also sold the goods to their related buyers/ Associated companies M/s. Mahendra Sponge & Power Pvt. Ltd. , M/s. Mahendra Strips Pvt. Ltd. Raipur. Accordingly, appellant prays that Valuation Rules should have been taken to assess the value with Rule 11 read with Rule 9 and 10 of Central Excise Valuation (Determination of price) Rules, 2000. The submission of the assessee-respondent is that the respondent are the private limited company having separate legal entity filing independent returns. There is no evidence on record to show any financial flow between them to treat them as related person.

4. Learned Counsel for the respondent has also relied on the ratio laid down in decision of the Tribunal in Appeal No. 1274/2012 dated 18.10.2016 (Final Order No. 54117/2016) CCE, Raipur vs. M K Re-rolling Mills Pvt. Ltd. to say that there is no material difference in the basic principle with reference to valuation of goods when the transaction is between related person. Mutuality of interest and lower price due to extra commercial consideration are relevant factor for consideration.

5. From the records, it appears that from the data of assessable value furnished by the assessee that they have cleared the excisable

goods to the concerned unit debiting the transaction value, which means that for other buyers, it is the same value and not the higher value. The appellate authority observed that Rule 9 of the Valuation Rules was also invoked in the show cause notice. Finally, the appellate authority has observed that Valuation of goods cleared in the present case, none of the provisions of Rule 9 or 11 are applicable and in the absence of any contrary evidence having been adduced in the impugned show cause notice, the transaction value will not be under Section 4(3)(b)(iv) of Central Excise Rules, 1944.

6. But fact remains that in case the transaction was made to related person, mutuality of interest is generated. Section 4(3)(b)(iv) of Central Excise Rules, 1944 deals with this point but the same was not examined by the lower authorities. Hence, we set aside the impugned order and remand the appeal to the original authority to examine the issue de novo from the angle of mutuality of interest as mentioned above. Appellant be given an opportunity of being heard and to furnish additional evidence as per law.

6. In the result, the appeal filed by the Department is allowed by way of remand.

(Ashok K Arya)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

ss