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

Appeal No. E/804/2011 [DB]
[E/Cross/130/2011]

[Arising out of Orders in Original No. Commissioner/RPR/61/2010 dated 30.11.2010 passed by the Commissioner, Central Excise & ST, Raipur.]

Commissioner of Central Excise & S.T., Raipur ….Appellant

vs.

Jindal Steel & Power Limited ….Respondent

Appearance:

Rep by. Shri Bhaskar Thakkar, CA for the Appellants.
Rep by. Shri Yogesh Agarwal, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 22.12.2016

Date of Pronouncement :24.01.2017

FINAL ORDER NO. 50457 / 2017-EX

Per V. Padmanabhan

The assessee is engaged in the manufacture of excisable goods falling under Chapter 72, 73, 74 and 84 of the Central Excise Tariff Act, 1985. The dispute pertains to the period 2004-05 to 2006-07. During the course of scrutiny of books of accounts by the Accountant General (Audit), two objections were made:-

(i) While making clearances of final products to their sister concern, the assessee was alleged to be not loading the profit element and the demand amounting to Rs. 2,18,50,490/- was raised on this ground.

(ii) The assessee was not including the cost of packing materials in the assessable value of sponge iron which was captively consumed in the manufacture of their finished products. These finished products were in turn, further captively consumed for the manufacture of final products. Excise duty to the tune of Rs. 3,22,79,542/- was demanded for the alleged non-inclusion of cost of packing materials.

Ld. Commissioner vide the impugned order dated 30.11.2010 dismissed all charges and vacated the show cause notice dated 04.08.2009 issued in this regard.

2. With the above background, we have heard Shri Yogesh Agarwal, ld. DR appearing for Revenue as well as Shri H.V. Ghirnikar, ld. Chartered Accountant representing the respondent-assessee.

3. The first issue in the instant case is whether the assessee has undervalued the goods i.e. Sponge iron by not including the profit element. We find that in the impugned order, the Commissioner has elaborately discussed this issue and has come to the finding that the assessee has determined the value of goods for captive consumption appropriately. The findings of the Commissioner in this regard are reproduced below:-

> **"7.1** The issue involved in the case relates to the interpretation of Rule 9 and 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; therefore it would be expedient to reproduce the provisions of the said Rules for proper appreciation of the provisions.
>
> > **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 per cent 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 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.

7.2 I find that the CBEC in Para 5 of its Circular No. 643/34/2002-CX dated 01.07.2000 has clarified as under:-

> **Point of doubt No. 5. -** How will valuation be done in cases of captive consumption (i.e. consumed within the same factory) including transfer to a sister unit or another factory of the same company/firm for further use in the manufacture of goods ?
>
> **Clarification -** For captive consumption in one's own factory, valuation would be done as per rule 8 of the Valuation Rules i.e. the assessable value will be 115% of the "cost of production" of the goods.
>
> If the same goods are partly sold by the assessee and partly consumed captively, the goods sold would be assessed on the basis of "transaction value" [provided they meet the conditions of Sec. 4(1)(a)] and the goods captively consumed would be valued as per Rule 8 of the Valuation Rules. This is because, as per new Section 4, transaction value has to be determined for **each removal**.
>
> Where goods are transferred to a sister unit or another unit of the same company valuation will be done as per the proviso to Rule 9.

7.3.1 This Circular applies to consumption of goods under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000. What is meant by "Consumption" here is not capitvely used within the factory of production for manufacture of Final products but, clearance made by him which has been used by the noticee themselves or used on their behalf for production or for their manufacture of other articles. Therefore, this circular is applicable when the goods are not sold but cleared and consumed by the Noticee themselves or used on their behalf. The CBEC initially issued circular

No. 354/81/2000-TRU dated 30.06.2000, wherein how to arrive at the value has been explained in Para 21. This was further clarified vide circular No. 692/8/2003-CX dated 13.02.2003 to work out the cost of production for captive consumption in accordance with CAS-4. Therefore, the objection raised by audit is not correct as the goods were consumed under Notification No. 67/95-CE dated 16.03.1995 and in these cases value of goods cannot be determined under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000."

4. The second issue for consideration is whether the assessee has failed to include the cost of packing materials in respect of Sponge iron captively consumed. The ld. Commissioner in the impugned order has discussed this issue also elaborately:-

"8. In the instant case, Noticee has sold Sponge Iron as also consumed captively. The Sponge Iron was sold on the transaction value which has also been taken as basis for valuation of the said goods cleared for captive consumption. Even the costing data in form CAS-4 submitted by the Noticee subsequent to audit objection reveal prices of the Sponge Iron for captive consumption is higher than the cost of production as per CAS-4 standard +10%. As per CAS-4 for the financial year 2005-06, 304304.230MT of Sponge Iron captively consumed by Noticee and cost of production of Sponge Iron comes to Rs. 4973/- PMT and +10% added to the cost the transfer value comes to Rs. 5470/- PMT which includes the packing charges in their CAS-4, as per Rule 8 of Central Excise Valuation Rules, 2000 and availed benefit of Notification No. 67/1995-CE NT dated 16.3.1995 as amended. From Noticee's submission dated 23.6.2010, I find that the cost of packing materials has already been taken in excess when compared to the assessable value of packing material according to Audit Report. The Noticee have submitted certificate from Cost Accountant in respect of the cost of the goods intended for captive consumption, cost of goods thereafter would be determined as per CAS-4 Guidelines, cost of production inter-alia, includes packing charges. I find that the charges made in the show cause notice regarding Undervaluation of the Sponge Iron captively used and there-by value of final product has been suppressed, is not sustainable and is liable to be dropped.

8.1 The matter was got verified from the Range-Superintendent, Central Excise, Raigarh who submitted their verification report vide F.No. CEX-13/JSPL/Show Cause Notice Vfn/RGH/17/2010/1880 dated 19.08.2010 and submitted that Noticee captively consumed 304304.230 MTs of Sponge Iron manufactured during the said period, for onward manufacture of other finished goods within their factory of production. The matter was also got verified from the Assistant Director (Cost.) Central Excise HQrs., Raipur. On valuation aspect Asst. Director (Cost) opined that Noticee have included the cost of packing material in the value of Sponge Iron. The Superintendent in his report dated 19.08.2010 supra, has also reported that the Noticee have availed benefit of Notification No. 67/1995-CE (NT) dated 16.03.1995. Accordingly, I hold that the demand raised in the impugned show cause notice is not correct, unsustainable on merits and therefore liable to be dropped.**"**

5. After careful consideration of the facts and circumstances of the case, we find that the stand taken by the Commissioner in the impugned order is as per law. Accordingly, we sustain the impugned order along with the reasons elaborated therein.

6. In the result, Revenue's appeal is dismissed. Cross objection also disposed of.

[Pronounced in the open Court on 24.01.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

KL