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

Excise Appeal No. E/2177/2008-[DB]
[Arising out of Order-In-Appeal No. 11 &12/COMMR/CEX/IND/2008 dated 08.07.2008 passed by CCE, Indore]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B.Ravichandran, Member(Technical)

M/s Indo Micronutrients Pvt. Ltd. ...Appellant(s)

Vs.

C.C.E. Indore …Respondent(s)

Appearance:
Mr. Manish Saharn for the Appellant
Mr. R.K. Manjhi (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member(Technical)

Date of Hearing/Decision:09.02.2017

Final Order No. 50781 /2017

Per B. Ravichandran:

The appeal is against order dated 08.07.2010 of Commissioner of Central Excise Indore. The appellant is engaged in the manufacture of copper and brass ingots and are registered as 100% EOU. The dispute in the present case is relating to valuation of such ingots cleared in domestic tariff area. The transaction value as declared by the appellant was rejected by the Revenue on the ground that in case of Copper ingots the London Metal Exchange (LME) price is higher than what is declared by the appellant and in case of brass ingots, the price is less than the import value of brass scrap from which such ingots were manufactured. The original authority rejected the transaction value adopted by the appellant in terms of Rule 10A of Customs Valuation Rules, 1988 and re-fixed the value for excise duty based on calculation adopted from LME prices for copper ingots and tariff value for brass scrap.

2. The Ld. Counsel for the appellant submitted that the rejection of transaction value and the re-fixation of value are on these two items is totally in violation of the provision of Customs Act, 1962. The department did not produce any evidence of their transaction value being not in terms of valuation provisions. The sale is to independent buyers and there is no evidence of any manipulated pricing in the transaction. The comparison made to LME prices of copper ingot and customs tariff value for brass scrap is not appropriate for the simple reason that metal manufactured by them is a recycled ingot and further the tariff value fixed for scrap for import is only for determining the Customs duty and not the transaction value.

3. The Ld. AR reiterated the findings in the impugned order and submitted that the transaction value is not acceptable on the very basis that manufacturer using the imported raw material cannot declare a lesser value of the finished ingots than the price paid for imported scrap. He reiterated that Section 14 provides for redetermination of transaction value based on the concept of consideration ‘payable’. The amount actually paid is not the sole criteria for determining the value.

4. We have heard both the sides and perused the appeal records.

5. Admittedly, the redetermination of value for excise duty purposes has been done on the basis of prices mentioned in LME. There is no evidence relating to manipulated transaction in the sale of ingots by the appellant. The sales are to independent buyers and the price is the sole consideration for such sale. However, the original authority recorded that in respect of copper ingots, the price declared by the appellant is much lower than the price of copper ingots mentioned in LME list. We find the price mentioned in LME list cannot be automatically compared to that of sale in domestic market. Further, it is also not recorded whether the copper ingot, price for which was listed in LME is comparable to the copper ingots manufactured and cleared by the appellant. Admittedly, the appellants are manufacturing copper ingots using scrap. There is no indication in the original order that such scrap based ingots are listed in LME and are compared for determining the price. Apparently, a comparison cannot be made between the ingots manufactured from ore and the ingots manufactured from scrap. Both will vary in quality and value.

6. Regarding brass ingots the impugned order adopted the tariff value fixed for customs duty purposes for determination of duty of imported brass scrap. Adding 20% on that tariff value, the brass ingot price for domestic market was arrived at. We find no legal reason to support such calculation. First of all, it is to be noted that the tariff value for this scrap is fixed for determining customs duty on import. This is not to be considered

automatically as the cost of raw material suffered by the importer. The original authority erroneously recorded that the value of goods produced cannot be below the cost spent on the raw material. The tariff value fixed for raw material need not be the cost spent on the raw material. There is no evidence to the effect that the appellant did spent amount equal to tariff value at the time of import of brass scrap. Even otherwise, the transaction value in the domestic market is admittedly market driven and the transaction is between unrelated party, the same cannot be brushed aside on the basis of existence of higher price as per the listing in LME or imported tariff value of scrap. We find such proposition is not supported by the provisions of Section 14 or the Valuation Rules made there under. We also refer to the Hon'ble Supreme Court's decision in the case of Prabhu Dayal Prem Chand 2010–TIOL-43-SC-CUS. The Hon'ble Supreme Court observed that in the absence of any details regarding contemporaneous import, reliance cannot be placed automatically on the price notified in the LME bulletin. We also refer to the decision of the Supreme Court in J. D. Orgochem Ltd. 2008-TIOL-74-SC-CUS. The said decision dealt with the background of rejection of transaction value and the need for evidence to support the claim of under valuation. In the present case, we also note no attempt has been made by the Revenue to examine the contemporaneous price of similarly situated market in India, so that a comparison could have been made for examining the correctness of transaction value adopted by the appellant. The whole proceedings for demanding differential duty was solely on the ground that LME price of copper inogt as well as tariff value for import of brass scrap which were much higher and accordingly, the transaction value is held to be not correct. We are unable to appreciate the legal basis of such assertion. Accordingly, we hold the impugned order is not legally sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(**B. Ravichandran**)
Member (Technical)

(**S. K. Mohanty**)
Member (Judicial)

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