

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision: 8.2.2017

Excise Appeals Nos.1060/2011, 1603/2011 and 56238/2013-EX(DB)

[Arising out of Order-in-Original No.COMMISSIONER/RPR/13-14/2011 dated 31.01.2011 in appeals nos.E/1060 and 1603/2011 and Order-in-Original No.Commissioner/RPR/CEX/90-91/2012 dated 30.11.2012 in Appeal No.E/56238/2013, passed by the Commissioner, Customs & Central Excise, Raipur and

E/1060/2011 and 56238/2013

M/s.Jindal Steel & Power Ltd.

Appellant

Vs.

CCE,Raipur

Respondent

E/1603/2011

CCE, Raipur

Appellant

Vs.

M/s.Jindal Steel & Power Ltd.

Appearance:

Rep by Shri B.L. Narsimhan, Advocate for the appellant.

Rep. by Shri R.K. Manjhi, DR for the respondent.

Coram: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
 Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order Nos.50810-50812/2017

Per B. Ravichandran:

These are three appeals interconnected to the main central issue about valuation of goods cleared from one unit to another unit of the same company. Accordingly, all the three appeals are taken up together for disposal.

2. Appeal No.E/1060 of 2011 –EX is by the assesee/appellant (Raipur Unit) against the confirmation of differential central excise duty of Rs.1,37,87,407/-. The

Revenue filed appeal No.1603/2011 against the same impugned order aggrieved by non-imposition of penalty by the Original Authority.

3. Appeal No.E/56238/2013-EX is by Raigarh Unit of the appellant /assessee against denial of cenvat credit on this differential duty, for which they have received supplementary invoices.

4. The brief facts of the case are that M/s. Jindal Steel and Power Ltd. are having two manufacturing units - one at Raipur and another at Raigarh. Raipur Unit is engaged in the manufacture of various machinery items and have been clearing these items on payment of duty to various independent buyers. Some of these machinery items were also being cleared to their Raigarh Unit on transfer basis, on payment of duty. For these transfers, they have adopted, for the purpose of central excise duty, the value applicable to similar items sold to independent buyers. Revenue objected to the said practice and proceeded to recover differential duty by proposing valuation under Rule 8 of the Valuation Rules to be arrived at by applying 110% cost of manufacture. The Original Authority held that the appellant/assessee, Raipur unit is related to Raigarh Unit and as such, the valuation should be 110% of the cost of production. Accordingly, based on the CAS-4 cost certificate submitted by the appellant / assessee, the differential duty was confirmed. However, no penalty was imposed as no justification was found for the same.

5. Ld. Counsel for the appellant submitted that the show cause notice has been issued on a wrong understanding of legal provisions to the effect that two manufacturing facilities of the same legal entity are to be considered as related persons. The appellant/assessee is a single legal entity having two facilities at

different places. The question of related persons has no application to the facts of the present case. Relating to the transfer of machinery items from one unit to another on payment of duty, Id. Counsel submitted that in terms of the applicable provisions of Valuation Rules, during the relevant time, the appellant/assessee, Raipur Unit correctly followed the assessable value of similar goods sold to independent buyers. There is no dispute on the fact that there are sales to independent buyers and the goods are similar. The Revenue's contention that the transfer to Raigarh Unit should be treated as sale to related party is without any factual basis. He further relied on the certain case laws, which are referred to later in this order.

6. Regarding the denial of credit to Raigarh Unit, Id. Counsel submitted that Original Authority fell in error by relying on the provisions to Rule 9(1)(b) of Cenvat Credit Rules, 2004, which have no application to the facts of the present case. The differential duty was confirmed by the jurisdictional Commissioner of Raipur Unit and the order was without any penalty. The denial of credit invoking the above said rule has no support as there is no finding for penal action by the jurisdictional officer of the issuing unit.

7. Id. AR relied upon the findings of the lower authorities. Rule 8 is correctly applied to the present case. The clearance of capital goods cannot be considered as clearance of 'excisable goods'. He submitted that there is a finding by the Original Authority while confirming the differential duty to the effect that the extended period is rightly invoked in the facts of the present case. Accordingly, the credit availed by Raigarh Unit is hit by bar under Rule 9(1)(b) of the Cenvat Credit Rules, 2004. Emphasizing the grounds in the appeal filed by the Revenue, Id. AR submitted that when the Commissioner arrived at conclusion to confirm the

demand for extended period, rightly invoking the elements required for such confirmation, it is automatic that he should have imposed penalties under Section 11 AC of the Central Excise Act, 1944. There is no discretion available to the Adjudicating Authority in this regard.

8. Heard both the sides and perused the appeal records.

9. On the first issue, regarding liability of the appellant /assessee , Raipur Unit to pay the differential duty of central excise, the goods cleared by them to Raigarh Unit, we note that the similar set of facts were subject matter of decision by the Tribunal in earlier cases. In **Steel Authority of India Ltd. – 2016 (335) ELT 94 (Tribunal-Delhi)**, **Ispat Industries Ltd. – 2007 (209) ELT 185 (Tribunal-Lb)**, the Tribunal held that if there are independent sales of similar items, then the provisions of Rule 8 of Valuation Rules, 2000 will not apply. The observation of the Tribunal in **Steel Authority of India Ltd.** is as under:-

“6. We find here the assesses are using only part of their production captively for project work. There are proper sale of these items to unrelated persons fulfilling the condition of transaction value for the purpose of Central Excise duty. The new Rule 8 introduced w.e.f. 1-12-2013 clearly makes departure to the effect that even where part of the excisable goods are not sold the value should be on the cost basis. The provisions of Rule 8 as prevailing during the relevant time have no application in the present case where the goods are partly sold under ex-factory basis and partly cleared for captive consumption. This has been repeatedly held in various decisions of the Hon’ble Supreme Court and Tribunal. In a recent decision in the case of *Steel Complex Limited* (Civil Appeal No. 3408/2004, decided on 1-4-2015) [2015 (321) E.L.T. A138 (S.C.)] the Supreme Court upheld the above reasoning. The ratio have been followed by the Tribunal in various decisions :

1. *Balajee Electro Steel Ltd. v. CCE* - 2007 (219) [E.L.T.](#) 563 (Tri.-Kol.)

2. *Oswal Woollen Mills Ltd. v. CCE* - 2012 (282) [E.L.T.](#) 547 (Tri.-Kol.)

3. *SAIL v. CCE* - 2010 (251) [E.L.T.](#) 571 (Tri.-Kol.)

4. *Gangotri Electrocasting v. CCE* - 2013 (293) [E.L.T.](#) 395 (Tri.-Kol.).

7. We find the reasoning given by the original authority in his order dated 30-1-2006 regarding the applicability of Rule 8 in the present case of captive consumption is misconceived. Since the transaction value of the excisable goods is available and not all the excisable goods are captively consumed, the provisions of Rule 8 as prevailing during the relevant time will not apply to the assesseees. “

10. In the present case, we note that all the excisable goods are not cleared for captive use by Raigarh Unit. Admittedly, there are independent sales and in such situation, the value of independent sales should be considered as a transaction value for excisable goods cleared on transfer to appellant's own unit in Raigarh. We note that the findings of the Original Authority to the effect that Raipur Unit and Raigarh Unit of the appellant /assessee are related parties is fallacious and without any basis. Both are owned by single legal entity and as such, they cannot be two persons related to each other. Reference to Accounting Standard for annual balance sheet and term of “Associated Enterprises”, made by the Original Authority is not relevant to the facts of the present case. Accordingly, following the decisions on similar facts already arrived at by the Tribunal, we find that the appellant/assessee is right in adopting value of independent sales to the goods cleared and transferred to their own unit at Raigarh. As such, there is no need for cost based value invoking the provisions of Rule 8 of the Valuation Rules. Accordingly, the impugned order on this issue is set aside and the appeal is allowed. The Revenue also filed appeal against the impugned order dated 31.01.2011. The non-imposition of penalty under Section 11 AC was contested. We note that since the demand itself is held to be not sustainable the appeal by revenue does not survive. Accordingly, the same is dismissed.

11. Regarding the appeal by the Raigarh Unit, we find that the issue of availing credit on supplementary invoices is no more relevant as the differential duty demand against the Raipur Unit is set aside. However, we note that the Id. Counsel for the appellant stated that the duty originally paid by Raipur Unit was passed on by supplementary invoices to Raigarh Unit and the credit was accordingly availed. In this background, the appellant/assessee is not proceeding further with any relief by way of claiming refund on this favourable order as the supplementary invoices and the credit thereupon have already been availed and settled. The denial of credit to Raigarh unit is on the ground that the differential duty has been paid by Raipur Unit against detection of evasion of duty involving suppression of facts etc. with intent to evade the payment of duty and hence the credit on such duty is barred in terms of Rule 9(1)(b) of CCR, 2004. We note that original authority (Raipur Unit), though confirmed differential duty for extended period, observed that the appellant on their own calculated the duty liability and paid the differential duty. Hence, he did not find any substance in imposition of penalty under Section 11AC. In such situation, denial of credit availed by another unit of appellant is not sustainable. In this connection, we also refer to decisions of Tribunal in **Karnataka Soaps & Detergents Ltd. – 2005 (192) ELT 892 (Tribunal-Bang.)** as upheld by Hon'ble Karnataka High Court in **2010(258) ELT 62 (Kar.)** and **Godrej Industries Ltd. – 2008 (232) ELT 108 (Tribunal-Mum), Jai Raj Ispat Ltd. – 2007 (217) ELT 272 (Tribunal-Bang.)** as affirmed by Hon'ble Andhra Pradesh High Court in **2009 (245) ELT 118 (AP)**. These decisions dealt with credit flow on supplementary invoices for inter unit transfers of excisable goods. In view of the facts and analysis as above, we find the credit availed by Raipur during

the material time on valid documents, cannot be denied invoking the provisions of Rule 9(1)(b). Accordingly, we set aside the impugned order on this ground.

12. In view of the above findings, the appeals filed by the assessee/appellants are allowed. Appeal by Revenue is dismissed.

[order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.