

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 25.05.2017

Excise Appeal No. 313 of 2012
(Arising out of order in appeal No. 276(DKV)CE/JPR-I/2011 dated 20.10.2011 passed by the Commissioner (Appeals-I) Central Excise, Jaipur).

M/s Gola Steel & Castings Pvt. Limited Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Priyanka Goel, Advocate for the appellant
Sh. H. C. Saini, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53526/2017

Per: **Anil Choudhary:**

The issue in this appeal is whether the appellant, manufacturer of CI pipes, fittings etc. have been rightly charged or demanded duty as short paid on the allegation that they have cleared goods to related person at lower value and have undervalued the clearances as compared to other independent buyers.

2. The undisputed facts as per the show cause notice are that the appellant is a private limited company, having its factory located at village Adalpur, Dholpur in the state of Rajasthan. There is another partnership firm under the name and style of 'Raj Iron Foundry' having its office at Sultan Ganj, Agra having two partners, namely Kuldeep Goel and Rakesh Goyal, both sons of

late Dharam Pal Goel who was also a partner in the said firm till his death on 08.11.2006. The said Rakesh Goel and Kuldeep Goel are the two Directors, out of three, the third one being - Jawahar Lal Arora in the appellant company. The officers of Revenue paid a surprise visit to the factory of the appellant on 11.02.2009 and scrutinised the records, wherein it was noticed that appellant have cleared/removed the finished goods to the said firm Raj Iron Foundry, at lower rate, in comparison to such goods cleared to other independent buyers at or about the same time. It was also noticed by the Department that the appellant assessee are paying royalty charges to the said firm Raj Iron Foundry for use of its brand name "RIF". Moreover, the appellant are procuring orders in the said partnership firm namely, Raj Iron Foundry, Agra and goods are being manufactured in the appellant's factory at Dholpur, Rajasthan and are being supplied at lower rates in comparison to such goods cleared to other independent buyers. Hence it appeared to the Department that the said partnership firm namely, Raj Iron Foundry, Agra is a related firm of the appellant, as financial flow has been established between the two undertakings as they are procuring order in their partnership firm and supplying material from their private limited company, at lower rate than to other independent buyers at or about the same time. Accordingly, show cause notice for (on the differential transaction value) duty short paid Rs. 5,78,480/-, including cess was demanded. It was further alleged that the appellant have suppressed the material facts of clearance/removals of the finished goods at lower rate to the related firm in comparison to clearance to other independent buyers at or about the same time with intent to evade the payment of duty, as the appellant neither have informed the said facts to the Department in writing,

nor by any other mode of communication. Such facts came to notice only during the course of audit of the records and during visit of the divisional preventive party to the unit of the appellant. Therefore, extended period of limitation appear to be invocable.

3. The SCN was adjudicated on contest and the proposed demand confirmed with interest and equal amount of penalty was imposed under section 11 AC of the Act. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order have been pleased to reject the appeal, observing that there is no infirmity in the order in original.

4. Being aggrieved, the assessee preferred the present appeal before this Tribunal, inter-alia, urging that they have sold the goods to Raj Iron Foundry for fulfilment of supply to bulk buyers, which is near about 7% of its turnover. It is further urged that the appellant and the said Raj Iron Foundry, Agra are not related persons and the courts below have erred in holding them as related persons only on the ground that the two Directors of the appellant company are also the partners in the said partnership firm. The impugned order is silent about the clarification issued by CBEC through Circular No. 643/34/2002 – CX dated 01.07.2002, wherein at Sl. No. 9 it is provided – on cash discount and admissible discount?

Answer- Since valuation is now based on transaction value, the cash discount if actually passed on to the buyers, will be allowed as deduction, the transaction being on principal to principal basis. It is further urged that it is settled legal position that cash discount is permissible. It is evident from the

records that the appellant had received payment in advance and the transaction cannot be equated with other transactions sold on credit basis or for which the payments are received at later stage. The court below have not whispered about special discount given to different class of bulk buyers on account of advance payment which is permissible in terms of law settled by Hon'ble Supreme Court in the case of ***Union of India vs. Bombay Tyre International Private Ltd, 1984 (17) ELT 329***. Further, the Courts below have erred in drawing adverse inference for the brand name "RIF", which is owned by the said partnership firm and for which usage the appellant have paid royalty. Reliance is placed on this arrangement for holding the appellant is a related person of the said Raj Iron Foundry, Agra, is bad and untenable. Further, the appellants had filed a detailed analysis of the freight amount incurred for supply of such goods and the difference in price is only freight amount as the goods were sold on FOR basis. Further, there is no comparison by the courts below regarding the quantity of goods sold to the said Raj Iron Foundry, Agra and to other buyers. Thus, the show cause notice is not sustainable. Further, there is no flow back in the entire transaction and in absence of any flow back of funds being established the whole proceedings are bad. It is also submitted that almost the whole of demand is raised for the extended period of limitation. Under the facts and circumstances that the transactions are duly recorded in the books of accounts and proper returns filed with the Department. The said allegation of suppression does not stand and the demand for extended period is set aside.

5. Ld. AR for revenue relied on the impugned order.

6. Having considered the rival contentions, we find that as defined under section 4(3)(b) of the Act, person shall be deemed to be related. If –

- (i) they are interconnected undertakings,
- (ii) they are relatives,
- (iii) amongst them the buyer is a relative and the distributor of the assessee or sub distributor of such distributor or
- (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

7. From the aforementioned definition we are satisfied that the appellant and the said firm Raj Iron Foundry, Agra are not relatives, one being a limited company registered under the Companies Act and the other being a partnership firm. So far the issue of interconnected undertakings is concerned, we find that there is no such allegation nor any fact is on record, if the two partners of the said Raj Iron Foundry, hold directly or indirectly, not less than 50% of the shares, whether a preference or equity, of the appellant company or exercise control, directly or indirectly, whether as Director or otherwise over the body corporate, as defined under section 2(g) of Monopolies and Restrictive Trade Practices Act, 1969 as made applicable to the definition of ‘related persons’ under the Central Excise Act. Thus, we find that in the show cause notice as per the facts brought on record by the revenue and the allegations made, neither the allegation of related person is sustainable nor the allegation of interconnected undertakings which although have not been established or averred. Further, in absence of any finding of flow back, the element associated persons having interest, directly or indirectly in the business of each

other is also not established. In this view of the matter, we set aside the impugned order and allow the appeal. The appellant shall be entitled for consequential relief in accordance with law.

(Operative part of the order pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant