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

COURT-I

Date of hearing/Decision: 25.07.2017

Appeal No. E/2010/2011 with E/CROSS/17/2012 EX [DB]
[Arising out of the Order in Appeal No. 54/RPR-I/2011 dated 01/04/2011 Passed by The Commissioner (Appeals), Custom & Central Excise, Raipur]

Appeal No. E/2173/2011 EX [DB]
[Arising out of the Order in Appeal No. 103/RPR-I/2011 dated 09/06/2011 Passed by The Commissioner (Appeals), Custom & Central Excise, Raipur]

Appeal No. E/2385/2011 EX [DB]
[Arising out of the Order in Appeal No. 102/RPR-1/2011 dated 08/06/2011 Passed by The Commissioner (Appeals), Custom & Central Excise, Raipur]

M/s Mahendra Strips Pvt. Ltd … Appellant
& Super Ispat (Raipur) Pvt.Ltd.

Vs.

CCE Raipur … Respondent

Appearance:
Present Mr. Manish Saharan, for the appellant
Present Shri R.K. Mishra,M.R. Sharma, S.K. Bansal, DR for the respondent

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

FINAL ORDER No. 55640-55642/2017

Per:Justice Dr. Satish Chandra

1. These three appeals have been filed against respective Orders in Appeal No. 54/2011 dated 01/04/2011;103/2011 dated 09/06/2011 and 102/2011 dated 08/06/2011.The period of dispute is from April, 2008 to September,2009.
2. The brief facts are that during the subject period, the appellants were engaged in the manufacture of steel items which were sold to the independent buyers. It is the allegation in the show cause notice that the goods were sold at lower prices to the related

persons. So, the demand was raised. Being aggrieved, the appellants have filed present appeals.

3. With this background, we heard Shri Manish Saharan, Ld. Advocate for the appellant; and Shri R.K. Mishra, Shri M.R. Sharma, Shri S.K. Bansal, Ld. DRs.
4. After hearing all the parties and on perusal of record, it appears that the main dispute is about the related persons. In the balance sheet the wordings 'related persons' have been mentioned.
5. Needless to mention that Hon'ble Supreme Court in the case of ***Xerographic Ltd.*** **v/s** ***CCE, Ahemedabad 2006-TIOL-201-SC-CX*** has observed that for the term of 'related person' following three conditions are to be satisfied:-
    i. There should be mutuality of interest;
    ii. The alleged related person should be related to the assessee as per definition of Section 4(4)(c) given in the Central Excise Act, 1944;
    iii. The price charged from the "related persons" was not the normal price but the price lower than the normal price and because of extra commercial considerations the price charged was less than the normal value.
6. The above mentioned ratio has not been considered by the Lower Authorities. In view of above, we are of the view that the matter needs fresh adjudication. Therefore, we set aside the impugned orders and remand these matters to the Original Adjudicating Authority to examine the issue of 'so called related persons' in the light of the above discussion. The Adjudicating Authority shall also decide is issue of sale price to so called related persons. The Original Adjudicating Authority is directed

to examine all these aspects and decide the issue in view of above, but by providing reasonable opportunity of personal hearing to the appellants. Fresh evidence may be admitted, if need be, as per law.

7. In the result, all three appeals are allowed by way of remand.

[Order Dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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