CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51225 of 2017

(Arising out of Order-in-Original No. 52-53/COMMR/CEX/UJN/2017 dated 28.03.2017 passed by the Commissioner of Central Excise, Ujjain)

DATE OF HEARING : 04.12.2017
DATE OF DECISION : 04.12.2017

M/s Magnum Steels Ltd. **….** **Appellants**
(Rep by Sh. Abhan Mishra, Adv.)

VERSUS

CCE, Ujjain **….** **Respondent**
(Rep. by Sh. R.K. Mishra, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 58426/2017

PER B. RAVICHANDRAN :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. 52-53/COMMR/CEX/UJN/2017 dated 28.03.2017 passed by the Commissioner of Central Excise, Ujjain. The period in dispute is 2010-11 to 2014-15 (till February) & March to October, 2015.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the

manufacture of twisted bars & rods, bars & rods of steel and C.I. Casting & Ingot Moulds liable to Central Excise duty. After verification of record, the Revenue entertained a view that the assessee-Appellants are not discharging Central Excise duty on correct value in respect of goods cleared to M/s Magnum Iron & Steel Pvt. Ltd. and M/s Deluxe Alloys Pvt. Ltd. The view of the Revenue is that, these two companies are related and inter-connected companies and as such the transaction value as per the invoice cannot be accepted and the assesse-Appellants are liable to pay the Central Excise duty by taking 110% of the cost of production of the excisable goods in terms of Rule 9 of Central Excise Valuation Rules, 2004.

3. Heard Shri Abhan Mishra, learned counsel for the assessee-Appellants and Shri R.K. Mishra, learned DR for the Department.

4. Contesting the findings in the impugned order, the learned counsel for the assessee-Appellants submitted that they are aggrieved with the two issues, which were not examined in detail by the original authority; one is with reference to merit of the contention of the Revenue regarding relationship with the buyer. The learned counsel submitted that they are not related parties as they are completely independent registered companies and cannot be considered as interconnected or related parties. The original authority erred in applying the scope of the term 'relative'

to this case. These are juristic persons and not natural persons. On the second point, he submitted that all their sales are not through these two parties. They have other independent sales also. He submitted illustrative sales documents. During the course of hearing, his first claim is that such value to independent buyers is almost similar to the present transaction value with these two companies. He also submitted that even on this ground, there can be no dispute of valuation. In any case, the amendment in 2013 in the Valuation Rules would make it abundantly clear that when all clearances are made through related persons, then only the question of arriving at the value by cost basis will arise.

5. The learned DR for the Department reiterated the findings of the original authority.

6. After hearing both sides and on perusal of the material available on record, we note that the question in dispute is with reference to correct valuation to be followed for clearances made to these two companies. The claim of the assesse-Appellants that they have independent sales also and the value now adopted is similar to the value of the independent sales requires close consideration. The learned counsel submitted the documents to establish that there were unrelated independent sales other than these two companies. We note that in such scenario, it is not necessary to invoke cost construction method to arrive at the transaction value. When the goods were cleared to non-related

parties and the value is available, then the same can be adopted for transactions which are purportedly tainted by relationship. The question of relationship itself is being contested by the assesse-Appellants and we find considerable force in their submission. We note that the matter requires *de novo* consideration by the original authority with respect to these two issues in line with the amended provisions of the Valuation Rules. Accordingly, the impugned order is set aside and the original authority is directed to decide both the issues afresh by providing reasonable opportunity of hearing to the assessee-Appellants with liberty to file additional evidence, if any, regarding independent sales of the goods.

7. In the result, the appeal filed by the assessee-Appellants is allowed way of remand.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay