CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 51116 of 2017

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-012-17-18 dated 5.4.2017 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

M/s Vandana Global Limited **Appellant**
Phase II, Siltara Industrial Growth Centre,
Siltara, Raipur (CG)

Versus

Commissioner, Central Excise & **Respondent**
Service Tax, Raipur
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur (CG).

Appearance

Shri A.K. Prasad, Advocate - for the appellant

Shri H.C. Saini, DR - for the respondent

Date of Hearing/Decision: 23.04.2019

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 50661/2019

Per **Bijay Kumar :**

This appeal has arisen out of Order-in-Appeal No. BHO-EXCUS-002-APP-012-17-18 dated 5 April, 2017 passed by the Commissioner (Appeals), Central Excise, Customs, Raipur. In the said appellate order, the learned Commissioner (Appeals) has set aside the order passed by the primary adjudicating authority dropping the demand raised vide Show Cause Notice dated 24 February, 2016 issued to the appellant.

2. The facts of the case are that the appellant is a holder of Central Excise Registration and engaged in the manufacture of Sponge Iron, Ingot, Billet, Silico Manganese classifiable under Chapter 72 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the Tariff Act) and also availing the facility of Cenvat credit under the provisions of Cenvat Credit Rules, 2004. During the scrutiny of ER-1 returns filed by the appellant, it appeared that they have transferred Silico Manganese from their factory to their depot at Nagpur for further sales to their customers. However, they were paying excise duty at the time of removal. The Revenue was of the view that the appellant has not followed the provisions of Rule 2, 3, 4 and 7 of Central Excise Valuation (Determination of Price of Excisable Goods), Rules, 2000, at the time of removal of goods to its depot, resulting a short payment of Central Excise duty of Rs. 66,907/- for the period February to March, 2015. This short payment is stated to have arisen on account of the fact that the value of the finished goods i.e. Silico Manganese at the time of removal from their factory at Nagpur was less when compared with the value of same goods cleared from the depot to independent buyers at about the same time and thus the appellant appeared to have undervalued their finished goods transferred to their own depot for further clearance. The duties short paid was proposed to be recovered from the appellant under Section 11A(1)(a) of Central Excise Act, 1944 (hereinafter referred to as Act). Interest was also proposed to be recovered along with penalty under the provisions

of Section 11 AC(1)(a) of the Act and Rule 25 of Central Excise Rules, 2002.

3. Learned Advocate on behalf of the appellant submits that a similar issue had come up for consideration before this Tribunal in their own case for an earlier period and the Tribunal by **Final Order No. 53284-53287 of 2018 dated 15 November, 2018,** allowed the appeal with consequential benefits.

4. Learned Authorized Representative has, however, supported the impugned order.

5. After hearing the parties, we find that the issue is no more res integra in view of the order of this Tribunal referred above. The relevant portion of the order is reproduced as under:

> "11. For the present case, it is apparent and admitted fact that before removing goods from the appellants factory in Raipur to their Depot in Nagpur the appellants have paid the Excise Duty. In the given scenario the definition of transaction value acquires importance for the adjudication of the above question. Section 4 (d) of CEA defines transaction value means;
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> > *"The price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.]"*
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> 12. Thus, it becomes clear that the value is a normal price that is the price at which such goods are ordinarily sold by the assessee to a buyer where the buyer is not the related persons and the price is the sole consideration as it was held by Hon'ble Apex Court in the case of **Tata Iron and Steel Co. Ltd. vs. Collector of Central Excise - AIR 2003 (SC) 144**. The above discussed definitions clarifies that if the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to its Depots or consignment agents or any other place for sale, the assessable value in such case for the goods cleared from the factory/warehouse shall be the normal transaction value of such goods at the Depot etc. at or about the same time on which the goods are being valued are removed from the factory or the warehouse and it is only in this situation that Rule 7 of the valuation Rules 2000 can be invoked, as has been invoked by the Department and confirmed by the Adjudicating authorities below in the present case. But we observe that the differentiating fact of

the present case is that the appellants are not removing the entire manufactured Silicon Manganese to their Deport rather they are selling the major portion thereof from the factory itself and the remaining is being transferred to the Depot to be sold to the further buyers. If we have a look at Rule 7, it reads as follows:-

> *"Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a Depot, premises of the consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the place of removal and were the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be normal transaction value of such goods sold from such other place at or about the same time and where such goods are not sold at or about the same time at the nearest time to the time of removal of goods under assessment."*

13. The bare perusal makes it clear that Rule 7 is invokable only in the case where the goods are not sold by the manufacturer/ assessee from the factory, which basically is the place of removal. It is in that case only that the transaction value has to be considered as the value at which the manufactured product is sold from the Depot to its buyer. That too, at or about the same time. As already discussed above, the Silicon Manganese is simultaneously sold from the factory/place of manufacture itself that too the major portion of the manufacture and it is only the part produced which has been shifted to Depot for further sale to the buyers. The question of invoking Rule 7 of Valuation Rules, 2000 is absolutely irrelevant and also illegal. Tribunal, Chennai CESTAT in a decision in the case of **Bharat Petroleum Corporation Ltd. vs. CCE, Chennai - 2010 (261) ELT 695** while relying upon a Larger Bench decision of **Tribunal in Ispat Industries Ltd. vs. CCE, Raigarh – 2007 (209) ELT 185** has held that the transfer of part of production to another plant of the same assessee and balance production sold to independent buyers would not attract Rule 7 of Valuation Rules when the manufactured product is also sold to the customers even at the time and place of removal. It was held that not even Rule 8 of the Valuation Rules is applicable to the situation as the said Rule is also applicable only in a situation where entire production of a particular commodity is captively consumed. The Larger Bench had held that in a case as the one in hand the value as per Rule 4 of the Valuation Rules has to be accepted."

6. The impugned order is not sustainable and, therefore, is set aside. The appeal is, accordingly, allowed.

(Pronounced in open Court)

(Justice Dilip Gupta)
President

(Bijay Kumar)
Member (Technical)

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