CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Order-in-Appeal No.
E/719/2008	Thejo Engg Services Pvt Ltd	CCCE & ST, Guntur	18 & 19/2008, Dt.28.02.2008 passed by CCCE (Appeals), Guntur
E/28/2009	-do-	-do-	67/2008, Dt.31.10.2008 passed by CCCE (Appeals), Guntur
E/29/2009	-do-	-do-	66/2008 (denovo), Dt.31.10.2008 passed by CCCE (Appeals), Guntur
E/68/2009	CCCE & ST, Guntur	Thejo Engg Services Pvt Ltd	-do-

Appearance
Shri M.N. Bharath, Advocate for the Assessee.
Smt B.V. Siva Naga Kumari, Commissioner/AR for the Revenue.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 01.08.2018
Date of Decision: 12.09.2018

FINAL ORDER No. A/31158-31161/2018

[Order per: M.V. Ravindran]

1. All the appeals are pertaining to same appellant and hence are being disposed of by a common order.

2. The brief facts that arise for consideration in the appeals of the appellant/assessee are that assessees are engaged in manufacture of lagging sheets and are clearing the same to their branches located at various places in the country for carrying out/executing service contracts using such goods; goods are not exclusively used in the servicing but there was also sale of these goods to other customers; assessee paid duty by adopting value on such goods which are used for servicing based on cost of production (+) 15% / 10% as per Rule 8 of the Central Excise (determination of price of excisable goods) valuation rules, 2000. Revenue authorities are of the view that Rule 8 is not applicable to the appellant's case since the said sheets are neither sold nor used for consumption by them or on their behalf in the production or manufacture of other articles; various show cause notices were issued covering period from 01.07.2000 to 30.04.2007 demanding differential duty. The said show cause notices were confirmed which were carried in appeal before the Tribunal and the Tribunal by Final Order dated 17.04.2007 remanded the matter back to the adjudicating authority for reconsideration as to whether Rule 7 read with Rule 4 / Rule 8 of the Valuation Rules will apply or otherwise. In the impugned order, the first appellate authority has come to a conclusion that provisions of Rule 7 of Central Excise (determination of price of excisable goods) Valuation Rules, 2000 will apply and coming to conclusion, in the remand proceedings upheld the demand of duty and interest and set aside the penalties. Appellant/assessee as well as the Revenue are in appeal against such orders.

3. Learned Counsel submits that the issue is now settled in their own case by the Tribunal in the Final Order No.483-488/2005 dated 22.03.2005. He took us through the said order exhaustively and submits that issue is no more *res integra* and further that this order dated 22.03.2005 was carrying appeal by the revenue to the Apex Court and the said appeals were dismissed by the Apex Court by order dated 29.07.2015 as reported at [2015 (322) ELT 418]. He produces the copies of the said orders.

4. Learned Commissioner, on the other hand, submits that the assessable value of the lagging sheets cleared by them to their branches/depots is on the basis of stock transfer basis and appellants have factory gate sale also. It is her submission that the assessee/appellant discharged duty liability following Rule 8 of valuation rules to arrive at assessable value of such lagging sheets cleared to depots /branches on stock transfer basis is incorrect. It is her submission that assessable value has to be arrived at as per Sec.4 of the Central Excise Act, 1944 read with Rule 7 of Valuation Rules which indicates about the assessable value for the depot sales. It is her submission that since there were no normal sales of the said item at the depot, the value should be the price of the goods cleared for sale at the factory gate. It is her further submission that the product which has been cleared to depots/branches on stock transfer basis are not captively consumed per se as they are not consumed for further manufacture but were used for executing various contracts. It is her submission that revenue's appeals are for imposition of equivalent amount of penalties.

5. Heard both sides at length and perused the records.

6. The issue that falls for consideration in these appeals is whether revenue authorities were correct in contending that the assessable value of the lagging sheets cleared by appellant to their branches/depots for executing various contracts needs to be valued as per the provisions of Rule 7 or Rule 8 of the valuation rules.

7. It needs to be noted here that similar issue arose in the same appellant's case in Order-in-Original No.36/2003 dated 30.10.2003 which was carried in appeal before the CESTAT in Appeal Nos.E/88-92/2004 and E/1360/2004. In those appeals, appellant/assessee had discharged duty liability as per the valuation rules but revenue authorities contested the same and one of the points which was raised by the appellant/assessee was valuation should be done according to the CAS-4 for the earlier period also. The said matters were decided by the Tribunal in Final Order dated 22.03.2005.

8. As stated herein above, the issue arising in these appeals by the revenue as well as by the assessee are continuation of the proceedings which got culminated in the hands of the Tribunal by the order dated 22.03.2005. We find that before the Tribunal, various issues were contested by both sides and one of the issues was regarding valuation of the lagging sheets consumed for executing the contracts for which, the assessee/appellant had cleared the sheets to their branches/depots. We find that the entire issue is in Para (3) of the said order dated 22.03.2005 which we reproduce.

> *"3. The impugned order has confirmed a duty demand of about Rs. 1.46 crores and imposed penalties. Out of this, demand of <u>Rs. 18.54 lakhs has been confirmed in regard to 'lagging sheets' manufactured and cleared for exclusive use in servicing. It is pointed out by the learned Counsel that the assessee had been paying duty (correctly) by treating the cost of production of lagging sheets as the assessable value</u>. The impugned order has demanded differential duty by treating the entire realization from servicing along with 10% of such billing towards profit as assessable value. The further contention of the learned Counsel is that the Board has issued a Circular dated 13.2.2003 in regard to valuation of captively consumed goods. The circular had specifically ordered valuation according to CAS-4 valuation standard developed in consultation with Costs & Works Accountants' Institute and all pending matters are required to be decided in terms of CAS-4. The learned Counsel has relied upon the decision in the case of Alstom Ltd Vs CCE Kolkata-III reported in 2002 (1570) ELT 462 (Tri.Kolkata), M/s BMF Beltings Ltd Vs CCE, Hyderabad reported in 2004 (TIOL) 844 CESTAT-Bang and M/s Tecumesh Products India Ltd Vs CCE reported in 2004-TIOL-1090-CESTAT-Bang. <u>As against the contention of the Appellant, the Revenue's objection is that valuation is required to be determined based on the instructions applicable to the particular period and CAS-4 being a standard developed subsequently, it is not applicable. We find no merit in the objection raised by the Revenue. Admittedly, CAS-4 is a standard which has been developed in consultation with the professional body on the subject. Being a standard, it has application in all pending matters. The Circular is also very clear that "henceforth all valuation are to be done in terms</u>*

> *of CAS-4". Therefore, the appellants are right in contending that the value for lagging sheets is required to be determined in terms of CAS-4. In any view of the matter, authorities were not justified in adding cost of servicing and profit arising there from to the value of the goods under assessment. Assessment was of manufactured laggings sheets and not of service. This aspect is required to be re-considered in terms of CAS-4. We remand this aspect of the matter to the original authority for a fresh decision in terms of CAS-4." (Emphasis supplied)*

9. It can be seen from the above reproduced Para that the Bench had clearly accepted that value of lagging sheets cleared to depots/branches is to be determined in terms of CAS-4. It is nobody's case that CAS-4 determination of the value is not in respect of value to be determined under Rule 8 of the valuation rules. It is well settled that for arriving at the assessable value, for the purpose of discharging duty liability under Rule 8 of the valuation rules CAS-4 certificates need to be produced, which in the case in hand had been done so. Since the issue involved in all these appeals had already been disposed by the Bench in order dated 22.03.2005 wherein it is categorically held that valuation of goods cleared to branches/depots for executing contracts needs to be done on CAS-4 which needs to be submitted in furtherance to provisions of Rule 8, we find nothing survives in this matter. It is seen that the first appellate authority has not, in the impugned order, passed on remand proceedings, has reverted to this order of the Tribunal, though it was produced before him. We note that this order of the Tribunal was carried in appeals before the Apex Court by the revenue and the Apex Court by their order dated 29.07.2015, has upheld the orders and we reproduce the entire order of their Lordships.

> *"1. Though in these appeals, various issues are raised, we feel that the only issue which needs consideration relates to cutting of the conveyor belting into required sizes and the issue is as to whether it involves manufacture or not. The Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') in its impugned order has dealt with this issue in the following manner: -*

> *"Another point raised in the Revenue's appeal is that the appellant buys the conveyor belting in endless length and cuts them to required size and that involves manufacture. This contention of the Revenue is not correct. The conveyor belting is the material used in the construction of conveyors. Like fabrics and other materials, belting comes in endless length and the activity cutting etc. carried out by the appellant cannot be considered as amounting to manufacture. So, no duty is attracted."*

2. After hearing the learned counsel for the parties, we are of the opinion that the aforesaid decision of the CESTAT does not call for any interference. Mere cutting of the lengthy conveyor belt into smaller sizes would not amount to manufacture, ipso facto, unless it is shown that as a result of the said cutting, it was transferred into a new product which was a marketable product. Revenue has failed to bring out these aspects. We, therefore, are of the opinion that the matter is squarely covered by the judgment of this Court in 'Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai' [2015 (319) E.L.T 578 (S.C)].

3. The appeals are, accordingly, dismissed."

10. It can be seen from the above reproduced orders of the Tribunal as well as the Apex Court, the issue in respect of valuation of the lagging sheets cleared to depots/branches of the appellant now stands settled in their favour by Apex Court's decision. It is held that valuation of lagging sheets needs to be done as per Rule 8 of Valuation Rules. We find that the appeals filed by the appellant needs to be allowed and the appeals of the revenue needs to be rejected on the same ground.

11. Appeals filed by the assessee are allowed and the revenue's appeals are rejected.

(Pronounced in the Open Court on 12.09.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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