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

Division Bench
Court – I

Excise Appeal No. 997 of 2012
(Arising out of OIO No.03/2012-C.Ex. (Commr) dt.11.01.2012 passed by Commissioner of Central Excise & Customs, Guntur-4)

Commissioner of Central Tax
Guntur - GST **......Appellant**
CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

VERSUS

The Andhra Sugars Ltd
Saggonda, West Godavari District,
Andhra Pradesh – 534 215 **......Respondent**

Appearance
Shri M.A. Surya, AR for the Appellant.
Shri N. Anand, Advocate for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30296/2023

Date of Hearing: 17.08.2023
Date of Decision: 17.08.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The issue involved in this case is determination of the value of the excisable goods cleared to sister units, which were used in the further process or manufacture of excisable goods/articles. The issue arose consequent to an observation of availability of two prices/values, viz., (i) value determined in terms of Rule 8 of Central Excise (Valuation) Rules, 2000 and (ii) the market value. In that context, the show cause notices were issued, *inter alia*, seeking to adopt the market value of the goods (being higher) as the basis for payment of central excise duty and demand for differential amount of the central excise duty in addition to the proposal for imposition of penalties under the Central Excise Act and the rules made thereunder.

3. Before the learned Commissioner, the Assessee made following contentions:

i) The valuation method adopted by them was in accordance with Rule 8 of Central Excise Valuation Rules, 2000, and also the directions given by the Department.
ii) The market price exhibited in the invoice, under which the impugned goods were cleared, was in tune with an accounting policy of the company, according to which the amount involved in that connection (transfer of the excisable goods) is considered at market price in the books of accounts of respective units.
iii) The Assessee also cited certain case law as an additional support to their line of argument.

4. Learned Commissioner observed and concluded that the impugned goods are transferred to a sister unit which in turn made use /consumes them in the production or manufacture of excisable goods/articles. Therefore, this is a case that clearly falls under the purview of proviso to Rule 9 of Central Excise Valuation Rules, 2000. Accordingly, the procedure prescribed under Rule 8 has to be adopted for valuation of the impugned goods. As per the admitted facts, the assessee has rightly been following the method prescribed under Rule 8 of Valuation Rules, 2000 as amended. This is also in conformity with the CBEC Circulars dated 30.6.2000 & 1.7.2002, on the subject. Therefore, no case is made out either for demand of duty or for imposition of penalties and accordingly, was pleased to drop the demand.

5. Aggrieved with the aforementioned Adjudication Order dropping the demand, Revenue is in Appeal, *inter alia*, on the ground that valuation was required to be done under the provisions of Rule 4 of Central Excise Valuation (determination of price of excisable goods) Rules, 2000 (in short Valuation Rules, 2000).

6. Rule 4 reads as follows:

> ***RULE 4 -*** *The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other place nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the rates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable.*

7. Learned AR relies on the grounds of Appeal and further relies on the following rulings:

a) Birdi Steels vs CCE, Ludhiana [2005 (179) ELT 82 (Tri-Del)]
b) Aquamall Water Solutions Ltd vs CCE, Hyderabad-II [2004 (12) TMI 166]

c) Commissioner vs Aquamall Water Solutions Ltd [2005 (10) TMI 533 (SC)]
d) Ispat Industries Ltd vs CCE, Raigad [2007 (2) TMI 5 (Tri-Mum)-LB]
e) Balajee Electro Steel Ltd vs CCE, Ranchi [2007 (219) ELT 563 (Tri-Kol)]
f) Howrah Gases Ltd vs CCE, Bolpur [2008 (230) ELT 512 (Tri-Kol)]
g) CCE, Vapi vs Subray Catal Chemical P Ltd [2010 (261) ELT 1170 (Tri-Ahmd)]
h) Daman Ganga Board Mills Pvt Ltd vs CCE, Daman, Vapi [2012 (276) ELT 532 (Tri-Ahmd)]

8. Opposing the Appeal of the Revenue, learned Advocate for the Respondent/Assessee, *inter alia*, urges that there is error in the Impugned Order and the learned Commissioner has rightly followed the mandate of Sec 4(1)(b) read with Valuation Rules, particularly Proviso to Rule 8 & Rule 9. Learned Advocate has also taken us through the Board Circular No. 643/34/2002-CX dated 1.7.2002, wherein the Board clarified the purport and scope of the new Valuation Provisions introduced w.e.f. 1.7.2000, wherein at Sl.No.5 – it has been recorded as follows:

5.	How will valuation be done in cases of **captive consumption** (i.e consumed within the same factory) including transfer to a sister unit or another factory of the same company/firm for further use in the manufacture of goods?	For captive consumption in one's own factory, valuation would be done as per rule 8 of the Valuation Rules i.e. the assessable value will be 115% of the "cost of production" of the goods. If the same goods are partly sold by the assessee and partly consumed captively, the goods sold would be assessed on the basis of "transaction value" [provided they meet the conditions of sec.4(1)(a)] and the goods captively consumed would be valued as per Rule 8 of the Valuation Rules. This is because, as per new section 4, transaction value has to be determined for **each removal**. Where goods are transferred to a sister unit or another unit of the same company valuation will be done as per the proviso to rule 9.

9. Learned Advocate further points out that pursuant to ruling of the Hon'ble Supreme Court in the Revenue's Appeal CCE vs Fiat India Pvt Ltd, wherein the fact was that Assessee was clearing the goods at below cost price and had claimed valuation as transaction value, Hon'ble Supreme Court held – Resort to Rule 7 of Central Excise (Valuation) Rules, 1975 stipulating best judgment assessment, was proper - It was with assistance of Cost Accountant after special audit to ascertain correct price - Assessee's plea that the Rules should have been applied sequentially i.e., invocation of Rule 7 ibid ought to have been

after Rules 4, 5 or 6 ibid were found inapplicable, rejected. The dispute in the case of Fiat was related to the period 27.5.1996 to 04.03.2001 that covers both old and new Valuation Rules. The Apex Court, *inter alia*, in Para 70 has held as follows:

> *"70. Rule 2 of the 1975 Valuation Rules provides for definition of certain terms, such as "proper officer", "value" etc., Rule 3 of the above Rules, provides that the value of any excisable goods, for the purposes of Clause (b) of Sub-Section (1) of Section 4 of the Act be determined in accordance with these Rules. Rule 4 provides that the value of the excisable goods shall be based on the value of such goods by the assessee for delivery at any other time nearest to the time of removal of goods under assessment. Rule 5 provides that when the goods are sold in the circumstances specified in Clause (a) of Sub-Section (1) of Section (4) of the Act except that the price is not the sole consideration, the value of such goods shall be based on the aggregate price and the amount of the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. Rule 6 provides, that, if the value of the excisable goods under assessment cannot be made, then to invoke provisions of Rule 6 of the Rules, wherein certain adjustments requires to be made as provided therein. Rule 7 is in the nature of residuary clause. It provides that if the value of excisable goods cannot be determined under Rule 4, 5 and 6 of the Rules, the adjudging authority shall determine the value of such goods according to the best of his judgment and while doing so, he may have regard to any one or more methods provided under the aforesaid Rules. A bare reading of these rules does not give any indication that the adjudging authority while computing the assessable value of the excisable goods, he had to follow the rules sequentially. The rules only provides for arriving at the assessable value under different contingencies. Again, Rule 7 of the Valuation Rules which provides for the best judgment assessment gives an indication that the assessing authority while quantifying the assessable value under the said Rules, may take the assistance of the methods provided under Rules 4, 5 or 6 of the Valuation Rules. Therefore, contention of the learned counsel that the assessing authority before invoking Rule 7 of the 1975 Valuation Rules, ought to have invoked Rules 4, 5 and 6 of the said Rules cannot be accepted. In our view, since the assessing authority could not do the valuation with the help of the other rules, has resorted to best judgment method and while doing so, has taken the assistance of the report of the 'Cost Accountant' who was asked to conduct special audit to ascertain the correct price that requires to be adopted during the relevant period. Therefore, we cannot take exception of the assessable value of the excisable goods quantified by the assessing authority."*

10. Learned Counsel for Respondent further points out that pursuant to ruling of the Apex Court in Fiat, the Board have come up with further clarification vide Circular No.975/9/2013-CX dated 25.11.2013, wherein it has been further clarified referring to the amended Rule 8, Rule 9 and Rule 10 of the Valuation Rules, 2000, which was amended by way of substitution. In Para 3 of this Circular, it has been reiterated by way of example as follows:

> *"For example, if an assessee clears his goods in such a way that first removal of goods is to an independent buyers, some goods are captively consumed, second removal is to such a related person who is covered under Rule 9 and third removal is to a person who is covered under Rule 10, then the first removal should assessed under section 4(1)(a), captively consumed goods should be assessed under rule 8, second removal should be assessed under rule 9 and third removal should be assessed under rule 10 of these*

rules. It may be noted that Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 are not required to be followed sequentially. Each of these rules provide for arriving at the assessable value of goods under different contingencies as noted by Hon'ble Supreme Court at paragraph 70 in case of Commissioner of Central Excise, Mumbai vs M/s FIAT India Pvt Ltd [2012 (283) ELT 161 or 2012-TIOL-58-SC-CX]."

11. The Circular dated 25.11.2013 further withdraws and substitutes Sl.No.5, 12 & 14 of earlier Circular dated 1.7.2002.

12. Accordingly, learned Counsel for the Respondent prays for dismissing the Appeal of Revenue and confirming the Impugned Order.

13. Having considered the rival contentions, we find there is no error in the Impugned Order, as we find the same is in consonance with the provisions of Sec 4 read with the Valuation Rules, 2000, read with Circular dated 1.7.2002 and the subsequent Circular post amendment dated 25.11.2013.

14. In view of the aforementioned findings and observations, we dismiss the Appeal of the Revenue and uphold the Impugned Order.

14. We also take judicial notice that Revenue itself had issued letter dated 05.12.2000 by Range Officer addressed to the Assessee, directing that in view of the new Valuation Rules, 2000 – all the clearances effected to your other divisions/ subsidiary companies, the value adopted may be in accordance with Rule 8 of Valuation Rules, 2000. Further by letter dated 19.2.2007, the Range Superintendent, Kovvur Range, issued letter to C & F Division of Assessee, again reiterating that in view of the Board Circular dated 1.7.2002, the valuation in facts of the appeal has to be done under the Valuation Rules, 2000. Accordingly, we find SCN is by way of change of opinion, as Revenue has taken total about turn by issuing SCN and have erroneously invoked extended period of limitation.

15. Appeal dismissed.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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