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

Division Bench

Court – I

Excise Appeal No. 679 of 2012

(Arising out of Order-in-Appeal No.56/2011-Adjn. (Commr) CE dt.27.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401

……Appellant

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001

……Respondent

with

Excise Appeal No. 686 of 2012

(Arising out of Order-in-Appeal No.55/2011-Adjn. (Commr) CE dt.26.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401

……Appellant

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001

……Respondent

with

Excise Appeal No. 21415 of 2014

(Arising out of Order-in-Appeal No.132/2013 dt.27.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401

……Appellant

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001

……Respondent

with

Excise Appeal No. 21416 of 2014

(Arising out of Order-in-Appeal No.133/2013 dt.27.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **......Respondent**

with

Excise Appeal No. 21417 of 2014

(Arising out of Order-in-Appeal No.130/2013 dt.27.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **......Respondent**

with

Excise Appeal No. 21418 of 2014

(Arising out of Order-in-Appeal No.131/2013 dt.27.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **......Respondent**

with

Excise Appeal No. 20098 of 2015

(Arising out of Order-in-Appeal No.50/2014-2015 (H-IV) CE dt.07.10.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet
Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **......Respondent**

with

Excise Appeal No. 21781 of 2015

(Arising out of Order-in-Appeal No.05/2014 (H-IV) CE dt.23.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti, Hyderabad, Telangana – 500 001 **......Respondent**

with

Excise Appeal No. 21782 of 2015

(Arising out of Order-in-Appeal No.06/2014 (H-IV) CE dt.23.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti, Hyderabad, Telangana – 500 001 **......Respondent**

and

Excise Appeal No. 30406 of 2016

(Arising out of Order-in-Appeal No.HYD-CEX-004-APP-049-15-16-CE dt.11.03.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Patil Rail Infrastructure Pvt Ltd
Survey No. 179-C & 180-B, Yellampet Village, Medchal, RR Dist., AP – 501 401 **......Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Posnett Bhawan, Tilak Road, Ramkoti, Hyderabad, Telangana – 500 001 **......Respondent**

Appearance

Shri P.V.B. Chary, Advocate for the Appellant.

Shri Pradeep Saxena & Shri K. Srinivas Reddy, ARs for the Respondent.

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

FINAL ORDER No. A/30007-30016/2024

Date of Hearing: 08.01.2024
Date of Decision: 08.01.2024

[Order per: ANIL CHOUDHARY]

Issue in these Appeals is with regard to valuation of the goods, wherein the Appellant Assessee have cleared kraft paper to their sister concern, and also to independent buyer during the period April 2006 to September 2012.

2. During the period April 2006 to September 2012, Appellant had both sales to independent buyers and also goods removed to their sister concern. We find that, under such facts and circumstances, the issue is wholly covered by ruling of the Larger Bench decision of this Tribunal in the case of Ispat Industries Ltd., Vs CCE [2007 (209) ELT 185 (Tri – LB)].

3. The issue before the Larger Bench was whether the assessable value in respect of goods which are transferred to any plant/unit of the same assessee, is required to be determined as per Rule 4 or Rule 8 of Central Excise Valuation Rules 2000, in case where some goods were also sold to independent buyers.

4. Rule 8 of the Valuation Rules requires that, where some goods are removed not by way of sale, but are used for consumption by the assessee or on his behalf in the production or manufacture of other articles, the value shall be determined at 110% / 115% of the cost of production. Whereas Rule 4 provides "the value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of removal of goods under assessment".

5. The Larger Bench have held in the circumstances and facts as follows:

> "9. In view of what we have observed above, we answer the reference in the following terms:
>
> (a) the provisions of Rule 8 of the Valuation Rules will not apply in a case where some part of the production is cleared to independent buyers;
> (b) the provisions of Rule 4 are in any case to be preferred over the provisions of Rule 8 not only for the reason that they occur first in the sequential order of the Valuation Rules but also for the reason that in a case where both the rules are applicable, the application of Rule 4 will lead to a determination of a value which will be more consistent and in accordance with the parent statutory provisions of Section 4 of the Central Excise Act, 1944."

6. The said Ruling was also considered by Hon'ble Gujarat High Court in the case of CCE, Bhavnagar Vs Ultra Tech Cement Pvt Ltd., [2014 (302) ELT 334 (Guj)] wherein similar issue was involved. Gujarat High Court has been pleased to confirm the findings of Larger Bench of this Tribunal in Ispat Industries Ltd., (supra).

7. Learned AR for Revenue relies on the impugned order and also relies on the Board Circular No. 643/34/2002-CX dated 01.07.2002. He further relies on the Circular and the Notification No. 14/2003-CE (NT) dated 22.11.2013 (which became effective from 01.12.2013) wherein the Rule 8 was substituted as follows:

> In the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as the said rules), for Rule 8, the following Rule shall be substituted, namely:-
>
> > "8. Where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods."

8. Learned AR also relies on the ruling of Division Bench of this Tribunal in CCE, Indore Vs Surya Roshni Ltd., [2016 (10) TMI 1137–CESTAT, New Delhi] wherein the assessee had both clearances to sister units and independent sales. So far independent sales are concerned duty was paid on the transaction valuation and so far sister unit is concerned the assessee had paid tax under Rule 8 being 110% / 115% of the cost of production. The case of Revenue was that the assessee should pay on the transaction value for the goods removed to sister concern, being higher. This Tribunal dismissed the appeal of Revenue, as without merits.

9. Having considered the rival contentions, we find that the issue herein is squarely covered by the ruling of the Larger Bench of this Tribunal in the case of Ispat Industries ltd., (supra) which have been confirmed by the Gujarat High Court in the case of Ultra Tech Cements Ltd., (supra). Accordingly, we allow the Appeals and set aside the Impugned Orders. All penalties also stands set aside. Appellant is entitled to consequential benefits, if any, in accordance with the law.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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