IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No.E/656/2009

(Arising out of Order-in-Appeal No.31/Kol-IV/2009 dated 25.08.2009 passed by the Commissioner (Appeal-IV), Central Excise, Kolkata)

M/s. Howrah Gases Ltd. …APPELLANT(S)

VERSUS

Commissioner of Central Excise, Bolpur

…RESPONDENT (S)

APPEARANCE

Shri A.K.Prasad, Advocate for the Appellant
Shri H.S.Abedin, AC(AR) for the Respondent.

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 30.11.2018

ORDER NO.FO/A/77033/2018

Per Bench :

The present appeal has been filed by the appellant against the Order-in-Appeal No.31/Kol-IV/2009 dated 25.08.2009. The appellant is engaged in the manufacture of Sponge Iron in their Raniganj Unit (Unit-I). The other unit of the company is situated at Burdwan (Unit-II), where Ingots and Billets are manufactured. A part of the sponge iron manufactured in the Raniganj unit is cleared to Burdwan unit on payment of duty for use in the further manufacture of goods. The main dispute in the present case is regarding valuation to be adopted for payment of duty on the sponge iron transferred to Unit-II. The Department was of the view that since the clearances are made to the appellant's own Unit-II, there is no sale and hence, the assessable value is required to be determined in terms of Rule 8 of the Central Excise Valuation Rules,2000. But the appellant paid duty for such clearances on the basis of the value at which duty was paid in respect of clearances to independent buyers from Raniganj Unit. Differential duty was demanded vide issue of show cause notice dated 16.08.2005, on the basis of the cost of production determined by the department. The other issue involved in the present dispute is regarding the goods found short at the time of stock verification. The Central Excise Officers visited the Raniganj Unit on 23.02.2005 and undertook a joint physical stock taking of the finished goods in the presence of Shri Tapan Kumar Biswas, Manager and Authorised Representative and concluded that finished goods of a total quantity of 139.205 MT was short in comparison to the closing stock as per records. The show cause notice demanded Central Excise duty on the quantity of sponge iron found short by alleging that this quantity of the sponge iron was cleared clandestinely without payment of duty. The Original Authority ordered payment of duty on the goods found short. He also ordered payment of differential duty on the valuation issue after carrying out necessary correction in the duty demanded in the show cause notice. When the issue came before Commissioner (Appeals), the findings of the Original Authority stands upheld. This order is under challenge in the present appeal.

2. With this background we heard Shri A.K.Prasad, Ld. Advocate for the Appellant and Shri H.S.Abedin, AC(AR) for the Respondent.

3. The main arguments advanced on behalf of the appellant are summarized below:

i) On the question of demand for differential duty on valuation, the ld. Advocate submitted that the demand for differential duty was totally unjustified. He emphasized the fact that the sponge iron manufactured in the Raniganj Unit was cleared not only to the Burdwan Unit of the appellant, but also to other independent buyers. He stated that the values adopted for payment of duty for clearances to Burdwan Unit were in line with the values arrived at on the basis of estimation of cost of production. He relied on the decision of the Larger Bench of the Tribunal in the case of Ispat Industries Ltd. vs. Commr. Of Central Excise Raigad [2007(209) ELT 185 (Tri-LB)]. The Larger Bench had held that the provisions of Rule 8 of the Valuation Rules will not be applicable in a case where some part of the production is cleared to independent buyers. He submitted that the Tribunal is following this same decision in similar cases and he brought to notice one such decision in the case of Bhusan Power & Steel Ltd. vs. Commr. Of C.Ex, Kolkata-IV [2018(359) ELT 598 (Tri.-Kolkata)].

ii) In respect of the alleged shortage, the ld. Advocate submitted that the goods which are manufactured in the Raniganj Unit is sponge iron which is in loose form and stored in silos. He submitted that the Central Excise Officers had not undertaken any elaborate process of stock verification of such finished products but had summarily arrived at the shortage. Even though Shri Tapan Kumar Biswas, Manager had admitted such shortage in his statement dated 23.02.2005, he had specifically retracted the statement by filing affidavit before the Notary Public, Assansole on 10.10.2006. Accordingly, he submitted that the shortage cannot be held against them.

4. Ld. DR however justified the impugned order on the issue of shortage. He emphasized the fact that the verification was carried out in the presence of

Shri Tapan Kumar Biswas, Authorised Representative. The Authorised Representative has expressed satisfaction for the process undertaken for such determination of shortage and the retraction should not be taken into account since the same has been made after a gap of one year and eight months from the date of the statement.

Ld. DR further submitted that the claim of the appellant that the goods have also been cleared to the independent buyers at prices at which the goods have been cleared to the Burdwan Unit, needs to be verified by lower authorities and for this purpose he prayed that the matter may be remanded.

5. Heard both sides and perused the appeal records.

6. The bulk of the demand has been made on the issue of valuation. The final product i.e. sponge iron has been cleared from the Raniganj Unit to Burdwan Unit. Since such clearances do not involve any sale, but are in the nature of transfer, the valuation to be adopted for payment of duty is to be determined as per the Central Excise Valuation Rules, 2000. In the circumstances of the present case the question which arises, is whether for the clearances to Burdwan Unit, the duty may be paid at values adopted for clearances to independent buyers. Revenue has taken the stand that the Rule 8 ibid is required to be followed for valuing clearances to the Burdwan Unit and has accordingly proceeded to determine the value on the basis of cost of production. But the issue has been considered by the Larger Bench of the Tribunal in the case of Ispat Industries Ltd. vs. Commr. Of Central Excise Raigad (supra). The Larger Bench has observed as follows:

> ***"7.*** *We also agree with the submission of the assessee that even if both the rules, i.e. Rule 4 and Rule 8, were applicable, it would only be logical to read and apply the various rules in the Central Excise Valuation Rules in a sequential manner. Though the Central Excise Valuation Rules, 2000 do not specifically prescribe such*

sequential application of various rules, the same, in our view, is the only reasonable way to read these rules. Any other interpretation would only lead to confusion and chaos. Since the applicability of Rule 4 is not really in dispute, there was no need to look further and regardless of the applicability or otherwise of Rule 8, the assessable value should have been determined in terms of Rule 4 of the Valuation Rules.

8. *The conclusion that we are drawing in the present case would lead to determination of a value which, in our view, will not only be reasonable but also consistent with the provisions of Section 4 of the Central Excise Act. We would, at this stage, draw support from the judgment of the Supreme Court in the assessee's own case, as reported in 2006 (202) E.L.T. 561, wherein the Court applied "The Gunapradhan Principle" in interpreting the Customs Valuation Rules. We have kept in mind the following observations of the Court in coming to our above conclusion :*

"26. In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.

27.................

36. In our opinion, the Gunapradhan principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14. We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9 (2) are the 'accessories'. The 'accessory' must, therefore, serve the 'primary'."

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."

7. The ratio emerging from the above Larger Bench decision is that the provisions of Rule 8 of the Valuation Rules will not apply in a case where some part of the production is cleared to the independent buyers.

8. In the submissions made before the lower authorities, the appellant has submitted as follows:

Cleared to	**2002-2003(M/T)**	**2003-2004 (M/T)**
Unrelated buyers at factory gate	195.330	9683.165
Cleared to Burdwan Unit	2081.300	11376.460
Total	**2276.630**	**21059.625**

9. In addition to above the appellant has submitted on the issue of valuation as follows before the lower authorities:

> *" The Appellant submits that during 2002-2003, Raniganj unit has cleared 2081.300 MT of Sponge Iron to Burdwan unit which are valued at Rs.1,04,06,500/-. Thus, value per metric ton of Sponge Iron comes to Rs.5,000/-. The total duty paid on 2081.300 MT of Sponge Iron during 2002-2003 is Rs.16,65,040/-. During 2003-2004, Raniganj unit has cleared 8459.064 MT of Sponge Iron to Burdwan unit which are valued at Rs.5,04,75,235/-. Thus, average value per metric ton comes to Rs.5,967/-. Total duty paid on 8459.064 MT of Sponge Iron comes to Rs.80,76,038/-.*
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> *During the same period i.e. 2002-2003, Raniganj unit has sold 195.330 MT of Sponge Iron at factory gate to unrelated buyers at factory gate at the aggregate sale price of Rs.9,76,650/-. The sale price per metric ton comes to Rs.5,000/-. Similarly, during 2003-2004, Raniganj unit has sold 9683.165 MT of Sponge Iron at factory gate to unrelated buyers at the aggregate sale price of Rs.5,76,86,100/-. The sale price per metric tone comes to Rs.5,957."*

10. From the above it is seen that the appellant has made clearances to independent buyers in addition to the Burdwan Unit. The values for clearances to Burdwan Unit are in line with the values adopted for independent buyers. In view of the above, by following the decision of the

Larger Bench of the Tribunal, we find no justification for demand of differential duty. Hence, we set aside the demand on the issue of valuation.

11. The second issue is shortage of sponge iron recorded at the time of stock verification on 23.03.2005. Shortage of 139.205 MT has recorded at the time of visit of the departmental officers. In the statement recorded, Shri Tapan Kumar Biswas has also expressed satisfaction of the stock taking procedure as well as admitted the shortages in the finished goods. But he has retracted such admission by filing affidavit before the Notary Public in Assansole.

12. The demand due on shortage has been strongly resisted by the appellant. It is further argued that no proper payment of finished goods were done during the course of stock verification. Further, looking at the nature of the finished products i.e. sponge iron, which is in loose granule form, carrying out weighment physically is also impractical. In any case no evidence has been brought on record to allege that the goods recorded as shortage were cleared clandestinely. As such we find no justification for demand of duty on such recorded shortage, so we set aside the demand.

13. In the result, the impugned order is set aside and the appeal is allowed.

(Dictated and Pronounced in the Open Court)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

S/d.

(V.Padmanabhan)
MEMBER (TECHNICAL)

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