IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.103 of 2011

(Arising out of Order-in-Appeal No.35/Kol.IV/2010 dated 18.11.2010 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Bharat Roll Industries Private Limited
Unit II, Vill.-Jaganathpur, P.O.-Bamunari, Dist.-Hooghly

Appellant

VERSUS

Commissioner of Central Excise, Kolkata IV
180,Shantipally,Rajdanga Main Road, Kolkata-700107

Respondent

WITH

Excise Appeal No.114 of 2012

(Arising out of Order-in-Appeal No.87/Kol.IV/2011 dated 21.10.2011 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Bharat Roll Industries Private Limited
Unit II, Vill.-Jaganathpur, P.O.-Bamunari, Serampore, Dist.-Hooghly

Appellant

VERSUS

Commissioner of Central Excise, Kolkata IV
180,Shantipally,Rajdanga Main Road, Kolkata-700107

Respondent

APPERANCE :

Shri Ananda Kumar Manna, Authorised Representative for the Appellant
Shri K.Chowdhury, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76400-76401/2023

DATE OF HEARING : 03 .08.2023
DATE OF DECISION : 03 .08.2023

Per Ashok Jindal :

The appellants are in appeals against the impugned orders wherein differential duties have been demanded from the appellants.

2. As the facts are identical in both the appeals, therefore, both the appeals are disposed off by a common order.

3. The facts of the case are that the appellants have two Units, namely, Unit I & Unit II. The Unit I is located at Vill.-Kantalia, P.O.-Nibra, Dist. Hooghly and the Unit II is located at Vill.-Jagannathpur, P.O.-Bamunari, Dist.- Hooghly.

3.1 During the course of audit of Unit II, it was noticed that during the period 2001-2002 and 2002-2003, the appellant has cleared the goods from their factory, Unit II to their other factory, Unit I for use and consumption by that unit for the manufacture and production of other finished excisable goods on payment of duty without following the provisions as laid down in Section 4 of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 for determining the value of the goods.

3.2 The appellant was asked to produce the cost sheet or any other documents in support of their cost of production for those goods, but the appellant did not produce those documents.

3.3 Thereafter, on examination of the Trial Balance and Balance Sheet pertaining to the impugned period, the assessable value was re-determined in terms of the provisions of Section 4 (1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. It was found that by way of not including the elements required to be included in the cost of production and consequently, the assessable value of the excisable goods cleared from their Unit II to Unit I. The appellant has under-valued of such goods. Consequently, the appellant has paid less duty and on the said premise, two show-cause notices were issued to the appellants for demand of differential duty from the appellants.

3.4 The matter was adjudicated and the demand of duty was confirmed against the appellants.

3.5 Against the said order, the appellants are before us.

4. The ld.Authorised Representative of the appellants, submits that the appellant has cleared the goods on transaction value, which is 115% of the cost, but the appellants did not give any CAS-4. Therefore, the Department assumed that the price on the basis of which the goods were cleared and duties were paid. Since the said price is the cost price and they loaded 15% on the said amount for determination of value. Therefore, the said value adopted is on the basis of assumption and presumption.

4.1 The ld.Authorised Representative for the appellants, has also relied on the Larger Bench's decision of this Tribunal in the case of M/s Ispat Industries Limited Vs. Commissioner of Central Excise, Raigad reported in 2007 (209) ELT 185 (Tri.-LB-Mumbai). He also relies on the decision of this Tribunal in the case o Mafatlal Industries Limited Vs. Commissioner of Central Excise, Daman reported in 2009 (241) ELT 153 (Tri.-Ahmd.), which has been affirmed by the Hon'ble Apex Court as reported in 2010 (255) ELT A77 (SC).

5. On the other hand, the ld.A.R. for the Revenue supported the impugned order.

6. Heard the parties and considered the submissions.

7. In this case, the sole issue before us is that in case whether the appellant is transferring the goods to their sister unit for further manufacture of other articles in terms of the provisions of Section 4 (1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. What should be the value of the goods ?

8. We find that in this case, it is admitted position that the appellant is clearing the goods to their sister unit on transaction value, but how the transaction value has been ascertained , that is not known, but in terms of the provisions of Section 4 (1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the goods were cleared to their sister unit, then value should be 115% on the cost of production or manufacture of such goods and the cost of production has to be determined , so as to include the cost of material liable to cost and overhead including price and depreciation has to be properly provided. That has to be done on the basis of CAS-4. Admittedly, the appellant has not adopted CAS-4 for determining their transaction value also.

9. In that circumstances, as pe Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the whole of the production has been cleared to sister unit, then the same is to be determined by paying duty on the cost of the articles at 115 % of the cost of production or manufacture of such goods. Admittedly, the appellant has not done so and it is also not known, how the appellant has arrived at the transaction value.

10. In that circumstances, we hold that the appellant is required to pay duty in terms of the provisions of Section 4 (1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, at the rate of 115% of the cost of production or manufacture of such goods.

11. The case law relied upon by the ld.Authorised Representative for the appellants, in the case of Ispat Industries (supra) is not applicable to the present facts and circumstances of these cases.

12. In that case, the goods were cleared to another unit of the appellant and balance products were sold to independent buyers. It is not the facts in the case in hand.

13. Further, in the case of Mafatlal Industries Limited, the issue involved relates to non-inclusion of notional profit for clearance to another unit of the assesse, whereas in this case, the appellant has failed to produce any evidence to show that how the transaction value has been arrived at. In that circumstances, the said decision is not applicable to the facts and circumstances of the case.

14. As the appellant has paid the duty on transaction value, which is not known, how the appellant has arrived at the transaction value ?

15. Therefore, the transaction value is rejected and we hold that the appellants are liable to pay duty in terms of the provisions of Section 4 (1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

16. In the above terms, we do not find any merit in the appeals filed by the appellants. Accordingly, we upheld the impugned orders and dismissed both the appeals.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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