

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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.524 of 2011

(On behalf of Appellant)

(Arising out of Order-in-Original No.13/Commr./Bol/11 dated 14.03.2011 passed by Commissioner of Central Excise, Bolpur)

M/s Steel Authority of India Limited

(Durgapur Steel Plant, Durgapur-713203, West Bengal)

Appellant

VERSUS

Commissioner of Central Excise, Bolpur

SIAN, Bolpur, Dist.-Birbhum, Bolpur-731204

Respondent

APPEARANCE :

Dr.Samir Chakraborty, Sr.Advocate and Shri Abhijit Biswas, Advocate for the Appellant

Shri Prosenjit Das, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75888/2024

DATE OF HEARING : 06 .05.2024

DATE OF DECISION : 06.05.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding differential duty in terms of Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. The facts of the case are that the appellant has integrated steel plants and carries on the manufacture of various iron and steel and allied products.

2.1 The present dispute relates to the Durgapur Steel Plant (DSP) of the appellant situated at Durgapur in the State of West Bengal.

2.2 The appellant is duly registered with the respondent and carrying out manufacturing activity.

2.3 DSP clears excisable goods manufactured by it to its unit under Steel Authority of India including to its sister units, Alloy Steel Plant (ASP) and Indian Iron and Steel Company (IISCO) at Burnpur, both in the State of West Bengal. Such goods are cleared to the said sister units for further processing on the basis of prevailing transaction value of similar goods sold by DSP to unrelated buyers in terms of Section 4 (1)(a) of the Act.

2.4 Two show-cause notices were issued to the appellant alleging that DSP has contravened the provisions of Section 4 (1)(b) of the Act read with Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 in as much as the appellant has manufactured and cleared the pig iron and concast billets and ingot and concast billets to its sister units, DSP & IISCO during the period August, 2009 to March, 2010, without ascertaining the correct assessable value thereof as per Rule 4 of the Valuation Rules, which resulted short payment of duty.

2.5 Therefore, proceedings were initiated by issuance of the above said show-cause notices and the matter was adjudicated. The appellant contested the show-cause notices. But the adjudicating authority confirmed the demand of differential duty payable by the appellant.

2.6 Against the said order, the appellant is before us.

2.7 The Id.Sr.Counsel for the appellant submits that the similar issue came up before this Tribunal in the case of M/s National Aluminium Company Limited Vs. Commissioner of CGST & Excise, Bhubaneswar vide Final Order No.75776/2024 dated 26.04.2024, wherein this Tribunal held that in a situation like this, the appellant is liable to pay

duty in terms of Rule 8 of the Valuation Rules, therefore, differential duty is not payable by the appellant.

3. On the other hand, the Id.A.R. for the Revenue supported the impugned order.

4. Heard both sides and considered the submissions.

5. We find that the similar issue came up before this Tribunal in the case of M/s National Aluminium Company Limited (NALCO), wherein this Tribunal has observed as under :

" Whether the appellant has paid the duty correctly in accordance with Rule 8 of the Valuation Rules or the appellant is liable to pay duty in terms of Rule 4 of the Valuation Rules

7. We find that the Circular No.692/8/2003-CX dated 13.02.2003 is relevant in the present facts and circumstances of the case. Accordingly, the same is extracted below :

*"Valuation (Central Excise) — Captive consumption —
Cost of production to be in accordance with CAS-4
Circular No. 692/8/2003-CX., dated 13-2-2003
F. No. 6/29/2002-CX.I
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi
Subject : Valuation of goods captively consumed.*

*I am directed to say that on introduction of Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000, w.e.f. 1-7-2000, it was clarified by the Board vide Circular No. 354/81/2000-TRU, dated 30-6-2000 (para 21) [2000 (119) E.L.T. T22] that for valuing goods which are captively consumed, the **general principles of costing** would be adopted for applying Rule 8. The Board has interacted with the Institute of Cost & Works Accountants of*

India (ICWAI) for developing costing standards for costing of captively consumed goods.

2. The Institute of Cost & Works Accountants of India [ICWAI] has since developed the Cost Accounting Standards, CAS 2, 3 and 4, on capacity determination, overheads & cost of production for captive consumption, respectively, which were released by the Chairman CBEC on 23-1-2003.

3. It is, therefore, clarified that cost of production of captively consumed goods will henceforth be done strictly in accordance with CAS-4. Copies of CAS-4 may be obtained from the local Chapter of ICWAI.

4. Board's Circular No. 258/92/96-CX., dated 30-10-96 [1996 (88) E.L.T. T9], may be deemed to be modified accordingly so far as it relates to determination of cost of production for captively consumed goods.

5. This Circular may be brought to the notice of the field formations.

6. Suitable Trade Notices may be issued for the benefit of the Trade.

7. Hindi version will follow.

8. Receipt of these instructions may be acknowledged."

In view of the above, the Circular clarified the position that the cost of production of captively consumed goods will be done strictly in accordance with CAS-4. Admittedly, in this case also, the appellant has adopted the above said Circular and was paying duty as per CAS-4 in terms of Rule 8 of the Valuation Rules.

8. Further, in the appellant's own case for the earlier period, this Tribunal vide order dated 04.03.2005, has observed as under :

"5. A perusal of the Circular dated 13-2-2003 makes it clear that what is being advised under that circular is to follow "the general principles of costing". The Circular also makes it clear that "ICWAI has since developed the costing

standards.....". About the applicability of the circular and the effect of the new costing instructions on the previous instructions, the Circular states as under :

"3. It is therefore, clarified that cost of production of captively consumed goods will henceforth be done strictly in accordance with CAS-4.....

4. Board's Circular No. 258/92/1996-C.X., dated 30-10-1996, may be deemed to be modified accordingly in so far as it relates to determination of cost of production for captively consumed goods."

The above paras make it clear that the cost of production of captively consumed goods will "henceforth" be done strictly in accordance with CAS-4. Even in the absence of such a statement, it would be correct to follow the Circular inasmuch as 'general principles' are of guidance without regard to time and an assessee would be well within his rights to demand that a dispute involving him may be decided according to "the general principles" applicable to the issue in dispute, irrespective of what a Circular of the Government may say. In the present case such a situation does not arise since the Circular has taken care to specifically clarify that "existing instructions may be deemed to be modified". Since the earlier instruction is to be deemed to be modified, it would not be permissible to apply them without the said modification. The appellant-assesseees are also right in their contention that Revenue is bound by the Circular; while assesseees are at liberty to contest the circulars. Therefore, in pending matters, the assessee can seek determination of his case under a later beneficial circular by pointing out that instructions contained in the earlier circulars are incorrect and the matter should be settled according to "general principles" developed by an authority competent to lay down standards. Tribunal and

Courts are duty bound to consider such a contention. This position enunciated in the judgment of the High Court of Calcutta in the case of Birla Jute and Industries Ltd. v. Assistant Collector - [1992 \(57\) E.L.T. 674](#) has been approved by the Apex Court in the case of Eswaran & Sons Engineers Ltd.

6. *We may also note that the judgment of the Apex Court in the case of Eswaran & Sons Engineers Ltd. does not support the revenue's contention that assessments for each period should be decided in terms of the Circular of the relevant period, without considering the modifications subsequently made in them. The issue considered in the Eswaran & Sons Engineers Ltd. judgment was altogether different. It was as to what was the effect of a subsequent circular on a demand which had been raised prior to the issue of a circular. The Court observed as under :*

"13. Under Section 37B of the Act, the Board is empowered to issue instructions to Central Excise Officers, for the purpose of uniformity in the classification of excisable goods, which instructions, are required to be followed by such officers. However, under proviso (a) to Section 37B an exception is made. The said proviso states that the said Instructions, orders or directions cannot make any Central Excise Officer to dispose of a particular case in a particular manner. Similarly, under proviso (b) such Instructions, shall not bind the discretion of Commissioner of Central Excise (Appeals), discharging appellate functions. In view of the proviso to Section 37B, the said Circular dated 14-7-1994 issued by the Board was not applicable to the facts of the present case. As stated above, in the present case, the Assistant Collector had taken a prima facie view for purposes of reclassification as far back as 17-12-1993. Therefore, the Circular dated 14-7-1994 had no application

to the facts of the present case. The judgment of the Supreme Court in the case of H.M. Bags Manufacturer (supra) did not deal with the case where the department had issued show cause notice purporting to reclassify the product prior to the issuance of Instructions by the Board. Therefore, the said judgment has no application to the facts of the present case."

The ratio of this judgment is that a legally sustainable claim, which had been raised by the Revenue prior to and independently of a circular, cannot be extinguished on a plea that a subsequently issued circular is prospective in operation. That is not the case in the present appeals. The revenue seeks to finalise pending valuations applying different costing principles on the plea that different criteria had been circulated from time to time. The assesseees are contesting the correctness of that approach by contending that the instructions contained in the earlier circulars were not in conformity with the general principles of cost accounting, and that the latest circular which incorporated correct principles should be followed in all pending cases. It is also to be noticed that the latest circular of 2003 specifically states that the earlier instructions have to be "deemed to be modified" by the later circular. Thus, Revenue had no independently sustainable claim. Its claim is based entirely on circulars issued from time to time. That too, on incorrect costing principles. It would be wholly incorrect to apply old circulars without considering the modifications brought about by the latest circular, particularly when, as noted already, it is well settled that assesseees are not bound by any circular, though at liberty to seek the benefit of circulars and a Court has to allow such a claim while Revenue is bound by its own circulars.

Excise Appeal No.524 of 2011

7. In view of what is stated above, all the appeals are allowed by way of remand with the direction to the original authorities to decide valuation in terms of the Circular No. 692/8/2003, dated 13-2-2003."

The said order of this Tribunal was affirmed by the Hon'ble Apex Court in 2016.

9. The Revenue sought to distinguish the decision of their own case for the earlier period on the ground that in the case of Ispat Industries (supra), the Larger Bench of this Tribunal held that the assessable goods transferred to another plant of the same assessee is required to determine the value as per Rule 4 of the Valuation Rules as the goods were sold to the independent buyers also.

10. We find that said decision is distinguishable on the facts of the case, as in that case, the goods were cleared to another plant not for captive consumption whereas in the case in hand, the goods in question have been cleared to their sister unit for captive consumption in manufacturing of excisable goods i.e. aluminium, which has been cleared by the appellant on payment of duty. Therefore, the said decision cannot be applied to this case.

11. We further take note of the fact that the Circular dated 13.02.2003 on the basis of which the appellant paid the duty is binding on the Revenue as held by the Hon'ble Apex Court in the case of Ratan Melting and Wire Industries (supra).

12. Therefore, we hold that the appellant has correctly paid the duty on the goods in question, which has been captively consumed by the sister unit for manufacturing of excisable goods in terms of CBEC Circular No.692/8/2003-CX dated 13.02.2003. On merit, the appellant has rightly paid the duty as per CAS-4 in terms of Rule 8 of the Valuation Rules.

13. In view of this, we hold that Rule 4 of the Valuation Rules, is not applicable in the facts and circumstances of the case."

6. As the issue has already been settled by this Tribunal in the case of NALCO (supra), we hold that the appellant has correctly paid the

Excise Appeal No.524 of 2011

duty in terms of Rule 8 of the Valuation Rules as per CAS-4. Therefore, no differential duty is payable by the appellant.

7. In view of this, we hold that the appellant has correctly paid the duty.

8. As there is no demand against the appellant, therefore, no penalty is imposable on the appellant.

9. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm