

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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75474-75475 of 2014

(Arising out of Order-in-Original No. 03/Commr./CE/GHY/13-14 dated 18.12.2013 passed by Commissioner of Central Excise & Service Tax, Guwahati.)

M/s Godrej Consumer Products Ltd.,

(Lalungaon, Lokhra, Bhind National Public School, Guwahati-781024.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Guwahati,

(Sethi Trust Building, GS Road, Bhangagarh, Guwahati-781005..)

...Respondent

**..
APPERANCE :**

Shri Deepro Sen & Mr. S. Betal, Advocates for the Appellant

Shri K. Chowdhary, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Final Order No...76824-76825/2024

DATE OF HEARING : 07.08.2024

DATE OF DECISION : 07.08.2024

Per Rajeev Tandon :

The present appeal assails the Order-in-Original No.03/Commr./CE/GHY/13-14 dated 18.12.2-2013 whereby the learned Commissioner has confirmed the recovery of demands for an amount of Rs.90.39 lakh and Rs.1.86 crore under Section 11A of the Central Excise Act, 1944 alongwith interest as applicable under Section 11AB/11AA of the said Act besides imposing penalty of equal amount under Section 11AC of the Act ibid.

2. The appellant is engaged in the manufacture of Mosquito Repellent Refills and Mosquito Repellent Mats, classifiable under CTI 38081091 and 38089191 of the Central Excise Tariff Act, 1985 and has

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been clearing the goods availing the benefit of Notification No. 20/2007-CE dated 25.04.2007. The appellant clears the goods manufactured at its units to both independent parties as well as to related concerns (sister unit at Puduchchery). While clearances to independent buyers were for natural sale, those to sister unit were for captive consumption and further manufacture of finished goods. In terms of the said Notification the appellant has been seeking refund of Excise Duty paid through PLA which were duly sanctioned from time to time.

3. The issue concerns valuation undertaken by the appellant while stock transferring "Mosquito Repellent Refills" to its sister unit at Puducherry which were sent to a job worker, M/s Enox Device Company, for making a combo pack consisting of the refills and electrical mosquito repellent device, manufactured by the said job worker. It is noted that the appellant has claimed refund of the Excise Duty paid on such good as well, in accordance with the said Notification No. 20/2007-CE. Vide Show Cause Notice No. IV (06)15/Hqrs.AE/GHY/Gr.-I/2010-2011 dated 03.04.2013, the Department called for valuation of goods cleared to its sister unit in terms of Rule 8 of the Valuation Rules 2000 and not on the basis of MRP based valuation as per Section 4A of the Central Excise Act. It is the contention of the Department that the noticee adopted MRP based valuation, for goods stock transferred to the sister unit, which resulted in over-valuation and over invoicing of the goods, thereby enabling excess refund of Excise Duty in terms of the Notification *ibid* to the appellant. Accordingly, Show Cause Notices for recovery of erroneous refund of Rs.1,86,14,116/- granted to the appellants Lokhra Unit and

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Rs.90,39,471/- granted to the Kalapahar Unit were issued and confirmed by the impugned order under challenge.

4. The learned Counsel for the appellant submits that the value of the goods cleared to its sister unit is required to be determined in terms of Rule 4 of the Rules. For the proposition they placed reliance on the ruling of the Tribunal in the case of **Ispat Industries Limited Vs. CCE, Raigad-2007 (209) ELT 185 (Tri.-LB)**. Emphasising that Section 4A of the Act is independent of Section 4 and that the value of goods assessed under Section 4A of the act *ibid*, cannot be adopted for determining value of goods assessable under Section 4 of the said Act, they point out that "value" in terms of Rule 2(c) of the Rules means the value as referred to in terms of Section 4 of the said Act. Thus Section 4A of the said Act, being independent of Section 4; Section 4A value cannot be adopted for determination of value under Section 4 or vice-versa. It is their plea that it can however be so done, when value of such goods under Section 4 is available. In this regard they seek to distinguish the ruling of the Larger Bench of the Tribunal, in case of **Cadila Pharmaceuticals Vs. CCE, Ahmedabad-II, 2008 (232) ELT 245 (Tri.-LB)**, as it did not concern captive consumption of goods and was in the context of valuation of physician samples.

5. The appellant has also taken a preliminary plea, that proceedings under Section 11A of the Act cannot be initiated without in effect actually challenging the refund sanction orders, as the said orders and the refund matter had attained finality. It therefore, cannot be contended to hold that the said refunds were sanctioned erroneously. In support of the stand the learned Advocate places reliance on the

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observations of the Hon'ble High Court of Jammu & Kashmir, in the case of **Commissioner of CGST & Central Excise, Vs. Krishi Rasayan Exports Pvt. Ltd., 2023 (7) TMI 661**, wherein the Hon'ble High Court had categorically held that without challenging the refund sanction order, the Adjudicating Authority cannot launch proceedings under Section 11A of the Central Excise Act for recovery of the refund amount referred as erroneous payment. The relevant part of the impugned judgment is reproduced below:-

"15. That apart, we are abso in agreement with CESTAT that, once the excise duty in favour of assessee is sanctioned by the competent authority after passing a speaking order and which order is appealable under section 35 of the Act, parallel proceedings seeking recovery of the sanctioned refund cannot be launched by The Adjudicating Authority. Unless the orders of sanctioning refund passed by the Adjudicating Authority are revised in appeal or revision under the Act, Section 11 cannot be invoked by terming such sanctioned refund of excise duty as erroneous refund by hoiding collateral proceedings under section 11A of the, Act. Any duty which is paid/refunded to the assensee after holding formal proceedings and passing speaking orders in favour of the assessee, cannot be termed as 'erroneous refund. The revenue, if it is of the opinion, that the Adjudicating Authority has made an erroneous refund in favour of assessee to which it was not otherwise eligible, can avail the remedy of filing appeal or revision under the Act. So long as the orders stand as having attained finality, the same cannot be tampered with by the Adjudicating Authority by launching collateral proceedings purportedly under Section 11A of the Act."

6. The appellant further placed strong reliance on the ruling of the larger bench in the case of **Ispat Industries Ltd.**, supra to state that provisions of Rule 8 would apply only in a case where the entire production of goods manufactured is captively consumed and would

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have no bearing to a situation where partly the goods were offered for sale to independent buyers and partly were supplied to sister unit for captive consumption. This they state is evident on a plain reading of Rule 8 of the valuation Rules.

Central Excise valuation (Determination of Price of Excisable Goods) Rules, 2000.

"Rules 8

Where 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 shall be one hundred and ten per cent of the cost of production or manufacture of such goods"

They state that If the intention was not to restrict the applicability of Rule 8 to cases where the entire production was being captively consumed, the Rule would have simply stated "where excisable goods are consumed by an assessee himself or on his behalf in the manufacture of other articles instead of preceding the above expression with the words "where the excisable goods are not sold".

7. The Ld. AR for the Revenue, Shri K. Chowdhary supports the impugned order and reiterates the findings therein.

8. We have heard the rival contention of the two sides and perused the case records.

9. In the present case the application of Rule 4 of the Valuation Rules, for valuation of goods cleared to sister unit is being disputed by the Revenue not on the ground that the said rule is inapplicable to the present case, but on the ground that a more specific provision in Rule 8 of the Valuation Rules is available to enable determination of the assessable value. As held by the Larger Bench of the Tribunal in the

case **Ispat Industries Ltd., Vs. CCE, Raigad**, the provisions of Rule 8 of the Rules are not applicable to the present case and therefore the plea that value determined by the assessee under Rule 4 deserves acceptance.

10. We find merit in the submission of the assessee that even if both the rules, i.e. Rule 4 and Rule 8 of the valuation Rules were applicable, it would only be logical to read and apply the said rules (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 actually was no need to look further, regardless of the applicability or otherwise of Rule 8.

11. It is a fact on record that entire amount of Mosquito Repellent Refills manufactured by the appellant, are not cleared to its sister unit but part quantities thereof, are also cleared to independent parties and such clearances are valued as per Section 4A of the Act, being a notified commodity under Notification No. 49/2008-CX (NT) dated 24.12.2008 [Sl. No. 45).

12. The ruling of the Hon'ble High Court of J&K in the case of Krishi Rasayan Exports Pvt. Ltd., has been followed by this Tribunal in the case of **Classic Cosmetics Company Vs. Commissioner of Central Excise & Service Tax, Guwahati, 2024 (3) TMI 402**), CESTAT. It noted therein, that at the time of filing of the refund claim by the appellant in terms of Notification No.32/99-CE dated 08.07.1999, the

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refund claims were sanctioned by passing a speaking order during the period from 25.04.2007 to 31.01.2008. In that circumstance, a show cause notice issued to the appellant by invoking extended period of limitation on 15.03.2012 was held as not sustainable adopting the decision of the Hon'ble Jammu & Kashmir High Court in the case of Krishi Rasayan Exports Private Limited. To similar ratio is the decision of the Tribunal in the case of **Ravi Crop Science Vs. Commissioner of Central Excise, J&K, 2023 (1) TMI 1298** adopting the law as propounded by the J&K High Court in the case cited supra.

13. As regards the valuation of the subject goods, cleared to the sister unit for captive consumption, the Larger Bench of the Tribunal in the case of Ispat Industries Ltd Vs. CCE, Raigad, has inter alia held as under:-

"5. We have considered the rival submissions and are of the view that the assessee is correct in contending that provisions of Rule 8 would apply only in a case where its entire production of a particular commodity is captively consumed. This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under

"Where 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 shall be one hundred and ten per cent of the cost of production or manufacture of such goods"

(emphasis supplied).

If the intention was not to restrict the applicability of Rule 8 to cases where the entire production was being captively consumed, the Rule would have simply stated "where excisable goods are consumed by an assessee himself or on his behalf in the

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manufacture of other articles” instead of preceding the above expression with the words “where the excisable goods are not sold”. This view is also supported by the judgment of the jurisdictional High Court in the case of Indian Drug Manufacturers Association v. Union of India, wherein the Court held that Rule 8 applies in a situation where goods are not sold but are cleared ‘exclusively’ to be used in consumption or for manufacture of other articles. We also agree with the contention of the assessee that Rule 8 will apply only in two situations, (a) where the goods are consumed by him in the same factory (captive consumption) or (b) where such goods are transferred to another factory for consumption in the manufacture of other articles on behalf of the assessee. In this case, it is not the case of the revenue that the goods were transferred to other units for manufacture of other articles on behalf of the assessee/appellant, i.e. the Dolvi Unit. We agree with the assessee’s contention that the expression ‘assessee’, wherever it appears in the Central Excise Rules, applies to a particular factory, which is why different units belonging to one company are separately registered and separately assessed to duty. Since the assessee in the present case is the Dolvi plant and it is not the revenue’s case that the other three units of the company to whom HR coils were transferred were undertaking further manufacturing operations on behalf of the Dolvi Unit, the provisions of Rule 8 will not apply. We, therefore, hold that Rule 8 is inapplicable in the instant case.

6. *We also note that in the present case the application of Rule 4 is being disputed by the Revenue not on the ground that the said rule is inapplicable to the present case but on the ground that a more specific provision in Rule 8 is available to enable determination of the assessable value. As discussed above, the provisions of Rule 8, in our view, are not applicable to the present case and therefore the value determined by the assessee under Rule 4 deserves acceptance.*

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*

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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."

14. Thus applying the ratio of law cited above, Rule 8 can only be considered, under the circumstances where entire quantity of goods manufactured by the appellant are cleared for captive consumption to the sister unit. In the present case valuation can be resorted to in accordance with Section 4 of the Act. It's a fact on record in the matter that Mosquito Repellent Refills manufactured by the appellant were not cleared in entirety to the sister unit for captive consumption, but have also been independently sold to unrelated parties and valuation under Section 4A (being notified goods under Notification No. 49/2008-CX (NT) dated 24.12.2008- Sl. No. 45), adopted.

15. Appropriate formal refund sanction orders were issued by the department to each claim of refund filed while sanctioning the same Copy of one such order, by way of ready reference is scanned and pasted herein below:-

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ANNEXURE-1 24 12



OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE
G.S. ROAD, BHANGAGARH : GUWAHATI-781005 (ASSAM)
Phone # 0361- 529 435, 528 172, Fax - 0361- 2452816, E - Mail - : exc0603@excise.mca.gov

ORDER No. 649 /ACG/2010

Dated, 2010

M/s. Godrej Sara Lee Ltd. (hereinafter referred to as the assessee) holding Central Excise Registration No. AAAC1921CXM032 are engaged in the manufacture of excisable goods, viz Hair cream and Hair gel falling under Chapter subheading 33059090 and 33059090 of the Central Excise Tariff Act 1985. The factory of the assessee is situated at Lalung Gaon, Lokhra, Guwahati-781034.

2 The assessee has filed a claim for refund of Rs.4408619/- in terms of notification No.20/07-CE dated 25/4/07 as amended for the month of March,2010 stating that they paid Rs.6131883/-, out of which Rs.1852967/- was paid by debiting Cenvat credit and remaining amount of Rs.4278916/- was paid through Account current vide sl no. 33 & 40 dated 27.03.2010. The aforesaid amount of Cenvat credit utilized includes Rs.188765/- for clearance of input as such and Rs.119/- for clearance of scrap.

3 I find that the assessee is claiming exemption in terms of Notification 20/07-CE dated 25.7.10 being a new industrial unit which has commenced commercial production on or after 01.04.2007. I have verified and found that the unit had commenced commercial production w.e.f.18.12.2008. Reliance is placed on the Daily stock account of the assessee duly verified by the jurisdictional Range Officer.

4 I have caused verification of the records such as Statement of Duty Refund, PLA, TR-5 Challan, ER-I and other relevant documents of the assessee relating to their claim of production/clearance of the goods and payment of duty thereof. I am satisfied that the manufacturer has first utilized the whole of CENVAT Credit available on the last day of the month towards payment of duty.

5 Notification No.20/07-CE dated 25.4.07 as amended by notification 38/2008-CE dated 10.6.08 provides that admissible refund shall be equivalent to the amount of duty payable on value addition undertaken in the manufacture of excisable goods by the claimant. Rate of value addition for products under Chapter-33 and Chapter-34 is fixed at 56% and 38% respectively. Accordingly the admissible amount of refund is calculated as follows:-

Chapter	Duty paid	Duty paid through		Duty paid on value addition as notn.no.38/08-CE dtd 10.6.08	Refund claimed	Refund admissible
		PLA	Cenvat credit			
33	2559095	1919321	639774	1433093 (@56%)	4408619	1433093
34	667652	333826	333826	253708 (@38%)		253708
38	2716252	2025769	690483	923526 (@34%)		923526
	5942999	4278916	1664083	2610327	4408619	2610327

6. The assessee is found to have included Education Cess of Rs.86457/- & SHE Cess of Rs.43246/- paid from PLA during the month of March,2010 in their claim for refund. Since Education Cess and SHE Cess are not specified as admissible duties for refund under Notification No.20/07-CE dated 25/4/07, claim for the said amounts is not admissible. The matter of admissibility of Education Cess & SHE Cess in terms of Notification 32/99-CE dated 8.7.99 has been decided by the Deputy Commissioner, C.Ex., Guwahati vide his order No.35/R-04/06 dated 28.04.06 after allowing due natural justice to the assessee and considering the documents/ records submitted by the assessee in support of their claim. The instant claim is also squarely covered by the above mentioned order dated 28.04.06, I am therefore not inclined to accept their claim for exemption of Education Cess & SHE Cess under Notification 20/07-CE dated 25.4.07.

In view of above, I find that the assessee is eligible for refund of Rs.2610327/- for month of March,2010 in terms of Notification No. 20/07-CE dated 25.4.07 as amended.

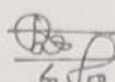
I pass order accordingly.

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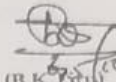
ORDER

I sanction Rs.26,10,327/- (Rupees Twenty Six Lakh Ten Thousand Three Hundred Twenty Seven) only being refund of Excise duty for the month of March,2010 in terms of Notification No.20/07-CE dated 25.4.07 as amended by notification 38/2008-CE dated 10.06.08.


 (B.K. Linn)
 Assistant Commissioner

C. No.V(18)42/R-04/ACC/2010/1181
 To,
 ✓ M/s. Godrej Sara Lee
 Talung Gaon, Lohra
 Guwahati-781034

Dated, 24/5/2010


 (B.K. Linn)
 Assistant Commissioner

16. Under the circumstances and in view of our discussions the law as propounded by the Hon'ble High Court, and taking note of the fact that

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there has been no challenge to the refund orders issued from time to time, which had become final as no appeal was filed by the Department against the same; the Department therefore cannot proceed with the recovery of the said erroneously refunded amount merely by way of issuance of a Show Cause Notice for erroneous recovery of refund.

17. Also in view of the law as laid down by the Larger Bench and our discussions, we are of the understanding that the order of the lower authority is not in accordance with law and can therefore, not be sustained. We therefore, set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

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

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.