IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75284 of 2018

(Arising out of Order-in-Original No. 27-28/CCE/CEX/RKL/2017-18 dated 25.10.2017 passed by the Commissioner of Central Tax, G.S.T. and C.X. Commissionerate, Rourkela, KK-42, Civil Township, Rourkela – 769 004)

M/s. Tata Steel Limited, Ferro Manganese Plant : Appellant
AT / P.O.: Joda, District: Keonjhar, Odisha

VERSUS

Commissioner of Central Tax, C.G.S.T. & C.X. : Respondent
Rourkela Commissionerate,
KK-42, Civil Township, Rourkela – 769 004

APPEARANCE:

Dr. Samir Chakraborty, Senior Advocate,
Assisted by Shri Abhijit Biswas, Advocate,
For the Appellant

Shri Debapriya Sue, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76431 / 2025

DATE OF HEARING / DECISION: 03.06.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein the demand of duty of Rs.5,93,70,398/- has been confirmed against them for the period from 01st April, 2011 to 30th November, 2013, on account of alleged undervaluation of goods.

2. The facts of the case are that the appellant is a manufacturer of High Carbon Ferro Manganese and having its Ferro Manganese Plant at Joda in the District of Keonjhar, State of Odisha, which, during the material period, manufactured Ferro Manganese lumps. Part of the said goods were stock transferred to TSL (Tata Steel Limited), Jamshedpur, wherein they were used captively for the production of other

final products. In addition, some of these goods were sold to independent buyers in the open market.

3. The appellant paid central excise duty on the said goods cleared by them for captive consumption and the assessable value was determined in terms of the provisions of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as the "Valuation Rules"). The appellant were filing their Returns periodically.

4. An audit was conducted for the period from 2011-12 to 2012-13 and an objection was raised, as per the decision relied upon in the said objection note, that allegedly, provisions of Rules 4 and 5 of the Valuation Rules, 2000 were applicable where the assessee had sold the goods to both related and unrelated buyers and the valuation done by the appellant in the instant case was allegedly incorrect. It was alleged that the valuation had to be done on the basis of price of goods sold to third parties, which had not been done. On the basis of the above, the Revenue alleged that the appellant had undervalued the goods cleared by them during the period from 2011-12 to 2012-13.

5. In view of these facts, Show Cause Notices were issued to the appellant, proposing to demand duty on account of the alleged undervaluation for the relevant periods, along with interest, and to impose penalties.

6. The matter was adjudicated and vide the impugned order, the demand of Rs. Rs.5,93,70,398/- was confirmed, along with interest. Penalty was also imposed on the appellant under Section 11AC of the Central Excise Act, 1944.

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

7. The Ld. Counsel appearing on behalf of the appellant submits that in similar circumstances, this Tribunal has held that the valuation is to be done in terms of Rule 8 of the Valuation Rules, 2000, in the case of *M/s. National Aluminium Company Ltd. v. Commissioner of C.G.S.T. & Excise [2024 (4) TMI 1088 – CESTAT, Kolkata],* which has been followed in the case of *M/s. OCL India Ltd. v. Commissioner of Central Tax, G.S.T. and Central Excise [2024 (6) TMI 1463 – CESTAT, Kolkata]*. He submits that the decision in the case of *M/s. OCL India Ltd. (supra)* has also been affirmed by the Hon'ble Apex Court as reported in *2025 (5) TMI 63 – SC.* Therefore, it is his submission that the impugned order is required to be set aside.

8. On the other hand, the Ld. Authorized Representative of the Revenue has relied upon the impugned order.

9. Heard the parties and considered their submissions.

10. We find that the issue arising in this case is whether, when the appellant is selling a small quantity of their goods to independent buyers and transferring the major quantity of their goods for captive consumption in their sister unit, the valuation of the said goods done by the appellant in terms of Rule 8 of the Valuation Rules, 2000 is correct or not.

10.1. The said issue has already been examined by this Tribunal in the case of *M/s. National Aluminium Company Ltd. (supra)* wherein this Tribunal observed as under: -

"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. Coples 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-assessees are also right in their contention that Revenue is bound by the Circular; while assessees 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 378, 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 facle 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 sald 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 assessees 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 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 assessees 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.*
>
> *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."

10.2. The said decision was followed by this Tribunal in the case of *M/s. OCL India Ltd. (supra)*, which has been affirmed by the Hon'ble Apex Court.

11. In view of the above, we hold that the appellant has correctly paid the duty, in accordance with Rule 8 of the Valuation Rules and the appellant is not liable to pay duty in terms of Rule 4 of the Valuation Rules.

12. We further take note of the fact that in the impugned order, the ld. adjudicating authority has dropped the said charges in the Show Cause Notices for the periods from December, 2013 to February, 2015 and October, 2015 to July, 2016, issued to the appellant, holding that the duty paid by the appellant under Rule 8 of the Valuation Rules is correct.

13. In these circumstances, we do not find any merit in the impugned order and therefore, the same is set aside.

14. In the result, the appeal is allowed, with consequential relief, if any, as per law.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd