

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75563 of 2018

(Arising out of Order-in-Original No. 46/CCE/CEX/RKL/2017-18 dated 29.11.2017 passed by the Commissioner of Central Tax, G.S.T. & C.X. Commissionerate, Rourkela, KK-42, Civil Township, Rourkela – 769 004)

M/s. Jindal Steel & Power Limited

: Appellant

Barbil – Joda Highway,
Post Box No. 86,
District: Keonjhar, Odisha – 758 038

VERSUS

Commissioner of Central Tax, G.S.T. and C.X.,

: Respondent

Rourkela Commissionerate,
KK-42, Civil Township,
Rourkela, Odisha – 769 004

APPEARANCE:

Shri Vishal Agarwal, Advocate,
Ms. Tuhina, Advocate
Ms. Neha Gulati, Advocate,
Shri Utkarsh Srivastva, Advocate,
For the Appellant

Shri Shambhoo Nath, Advocate (Special Counsel),
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75043 / 2026

DATE OF HEARING: 09.12.2025

DATE OF DECISION: 09.01.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein central excise duty amounting to Rs.333,22,45,002/-, along with interest, has been demanded and penalty thereon under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 has been imposed.

2. The brief facts of the case are that M/s. Jindal Steel & Power Ltd. ('JSPL'), Barbil Unit, the appellant before us, is engaged in the manufacture of iron ore pellets falling under Chapter 26 of the Central Excise Tariff Act, 1985, ('CETA'). The pellets manufactured by the appellant are primarily cleared to its own manufacturing units located at Angul, in the State of Odisha and Raigarh, in the State of Chhattisgarh, for captive consumption. The appellant also sells iron ore pellets to independent third-party buyers.

2.1. With regard to the clearances made by the appellant to its own units for captive consumption, during the period in dispute, the excise duty was paid on the value determined in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as "Valuation Rules") i.e., on the basis of 110% of the cost of production computed in terms of Cost Accounting Standard-4 ("CAS-4"). It is undisputed that the excise duty paid on the goods cleared for captive consumption to its own units at Angul and Raigarh, was available as CENVAT credit to the recipient units and had in fact, been so availed and utilized for the purpose of discharging excise duty on the downstream goods manufactured by using such pellets.

2.2. The records of the appellant's units were audited from time to time and the audit team, in its reports dated 16.05.2012 and 14.08.2013, specifically observed that there was some infirmity in the determination of value arrived under Rule 8 by applying CAS-4, in respect of excisable goods cleared to its own units and had directed the appellant for payment of excise duty with interest, for the period from 2009-10, 2010-11 and 2011-12.

3. A Show Cause Notice was issued to the appellant on 11.12.2014, alleging that the appellant's clearances to its own units at Angul and Raigarh, tantamount to "sales" to a related party. The Show Cause Notice placed reliance on the decision of the Tribunal in the case of *Aquamall Water Solutions Ltd. [2005 (182) E.L.T. 196 (Tri. - Bang.)]* maintained by Apex Court in the case of *2006 (193) E.L.T. A197 (S.C.)*, as well as the C.B.E.C. Circular No. 643/34/2002-CX dated 01.07.2002, particularly para 12 thereof, to allege that where excisable goods are sold by one unit to another unit of the same company or to a sister unit, valuation in terms of Rule 9/10 of the Valuation Rules, read with Rule 8 of the Valuation Rules is inapplicable since all the excisable goods are not sold to the related buyer. Accordingly, demand of central excise duty amounting to Rs.333,22,45,002/- (inclusive of cesses), along with interest and penalty, was proposed, considering the price charged to independent buyers at the nearest point in time when the goods were cleared to the appellant's own units at Angul and Raigarh, by invocation of the extended period of limitation.

4. The matter was adjudicated by way of the Order-in-Original No. 46/CCE/CEX/RKL/2017-18 dated 29.11.2017, wherein the Id. adjudicating authority has confirmed the demand of central excise duty amounting to Rs.333,22,45,002/-, as proposed, along with interest thereon; penalty under Section 11AC of the Central Excise, Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 was also imposed upon the appellant.

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

5. The various submissions made by the Ld. Counsel appearing on behalf of the appellant herein can inter alia be summarized as under: -

- (i) The issue as to whether the clearances made by the appellant to its own units for captive consumption is to be valued in terms of Rule 8 of the Valuation Rules, or on the basis of the price at which sales are made to independent third-party buyers, in terms of Rule 11 r.w. Rule 4 of the Valuation Rules is no longer *res integra* and has been decided by the Tribunal in the case of **OCL India Ltd.,** having **Final Order No. 76670 / 2024 dated 26.06.2024,** which is affirmed by the Apex Court as reported in **2025 (5) TMI 63 - SC.** The dispute in the case of **OCL India Ltd (supra)** was whether the cement clinker manufactured by Rajgangpur unit of OCL, which was captively consumed on stock transfer basis at its Kapilas unit in Odisha, as also at its Medinapore unit in West Bengal, was to be valued in terms of Rule 8 of the Valuation Rules or in terms of Rule 11 r.w. Rule 4 of the Valuation Rules, basis the price at which meager sales of about 5% were made to independent buyers, during the period, April'12 to November'13. In that case also, Revenue placed reliance on the decision of **Aquamall Water Solutions Ltd. (supra)** and **Ispat Industries Ltd. (supra).** The Tribunal in the case of **OCL India Ltd. (supra),** has held that Rule 4 of the Valuation Rules, is inapplicable and that valuation in respect of goods cleared to one's own units, for captive consumption, is to be in terms of Rule 8 of the Valuation Rules, as provided for in Circular No. 692/8/2003-C.X.

dated 13.02.2003. In coming to this conclusion, the Tribunal also placed reliance on its earlier decision in the case of ***National Aluminium Company Limited v. Commissioner of CGST & Excise, Bhubaneswar*** having ***Final Order No. 75776/2024 dated 26.04.2024.***

- (ii) The Revenue preferred an appeal before the Apex Court against the decision of this Tribunal in the case of ***OCL India Ltd. (supra)***, which was dismissed by a speaking order, which reads as under:

"Heard the learned counsel appearing for the appellant.

Delay condoned.

Apart from the fact that the decision relied upon in the impugned judgment has not been challenged, even otherwise, we agree with the view taken by the Custom, Excise Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata. There is no merit in the appeal and the same is accordingly dismissed."

- (iii) The issue regarding valuation of goods in a case where part of the goods manufactured are captively consumed in other units of the manufacturer and partly sold to independent buyers, has now been settled by the judgment of the Apex Court in the case of ***OCL India Ltd (supra)***. In light of this fact alone, the Impugned Order deserves to be quashed and set aside.

- (iv) Insofar as the reliance placed by the Adjudicating Authority, as also the Ld. Special Counsel for the Revenue, on the judgment of the Apex Court in the case of *Aquamall Water Solutions Ltd. (supra)*, which reads as under, is concerned:

"Delay condoned.

Appeal admitted.

Heard parties.

As in an earlier round of litigation this Court has in the order reported in 2003 (158) E.L.T. A182 (S.C.), confirmed the order passed by the Tribunal in the case of Aquamall Water Solutions Ltd. v. Commissioner of C. Ex., Bangalore, reported in 2003 (153) E.L.T. 428, the same principle must apply in this case also. In this case Mr. Lakshmikumaran learned Counsel very fairly states that the Respondent will pay at the rate at which the goods are sold to independent third parties. We, therefore, send the matter back to the Commissioner in order to re-work the duty on the basis of sale made to third parties. To that extent, the Tribunal's order stands varied.

The Appeal stands disposed of accordingly.

No order as to costs."

- (v) It can be seen that the said judgment has been rendered in the context of facts, as has been recorded in the Tribunal in its Order, reported in *[2003 (153) E.L.T. 428]*, wherein admittedly the Aquamall was selling goods to a related person viz. Eureka Forbes Ltd. and also to independent third parties and all such sales were made from

depots located in various States and that there were no sales made at the factory gate. In the facts of the present case, the dispute is not qua the valuation of sales made to related party, but is in respect of clearances made to its own unit for captive consumption. The factual position in both the cases being poles apart, the ratio laid down in the decision of *Aquamall Water Solutions Ltd. (supra)* cannot be applied to the facts of the present case.

- (vi) Even otherwise, the dispute in the case of *Aquamall Water Solutions Ltd. (supra)* was with respect to the basis of valuation to be adopted qua sales made to related party. In the present case, the appellant has cleared goods to its own unit for captive consumption, which has erroneously been presumed, both in the SCN and the Impugned Order, as clearances to related party. Since the clearance is to another unit of the same legal entity, for captive consumption, the same cannot by any stretch of imagination be treated as clearance to a related party, as for there to be a related party transaction there have to be two 'distinct' and 'separate' legal entities. Two units of the same legal entity cannot be said to be 'related', as has been decided by the Tribunal in the case of *India United Mills v. CCE, Mumbai - 2017 (5) G.S.T.L. 430 (Tri-Mumbai)*. The relevant extract of the decision is reproduced herein below:

"5. We find that the CDC is like a depot owned by M/s. National Textile Corporation (Maharashtra North) Ltd. and the appellant is a unit of said company. Therefore, all the three i.e., National Textile Corporation (Maharashtra North) Ltd., the appellant and

CDC, are under one single entity, i.e. the company, M/s. National Textiles Corporation (Maharashtra North) Ltd. Therefore, among three there are no different persons involved. Accordingly, there is no related person exist in the entire transaction. In the show-cause notice, the entire basis for disputing the valuation is that the CDC is a related person of the appellant, which is factually incorrect.....”

- (vii) Insofar as the decision by the Larger Bench of the Tribunal in the case of *Ispat Industries Ltd. (supra)* is concerned, it was undisputed and admitted in that case that the clearances by *Ispat Industries Ltd.* to its other unit at Taloja, Kamothe and Kalmeshwar were not for captive consumption. In the facts of the present case, it has been the appellant's contention all along, which has not been disputed by the Department or rebutted in the Impugned Order, that the clearances made to its own unit at Angul and Raigarh were for captive consumption. Further, in *Ispat Industries Ltd.*, the Larger Bench specifically recorded that the Revenue has not *per se* disputed the applicability of Rule 4, which is in serious dispute in the facts of the present case. Also, the Larger Bench had noted that Rule 4 was to be preferred over provisions of Rule 8, as it occurs first in the sequential order of the Valuation Rules. This principle has been negated by the Apex Court in the case of *CCE vs Fiat India Pvt. Ltd. [2012 (283) E.L.T 161]*, by holding that Valuation rules were not required to be followed sequentially, as each of the rules provides for manner of computation of assessable value in different scenarios.

- (viii) Furthermore, the Tribunal has in the case of *National Aluminium Company Ltd. (supra)*, wherein the dispute was with respect to valuation of calcined alumina cleared from the Damanjodi unit to the Angul unit, taken note of the fact that in case of *Ispat Industries Ltd. (supra)*, goods were not cleared to other plant for captive consumption. Accordingly, it was held that the ratio laid down in the case of *Ispat Industries Ltd. (supra)*, would not apply, in a case where goods are partly cleared for captive consumption and partly sold to independent third-party buyers. As noted by the Apex Court in the case of *OCL India Ltd. (supra)*, the Tribunal decision in the case of *National Aluminium Company Ltd. (supra)*, has been accepted and no appeal has been preferred against the same by the Revenue. Thus, in view of such observation made while deciding the case of *OCL India Ltd. (supra)*, the decision in the case of *National Aluminium Company Ltd. (supra)*, in effect, stands affirmed by the Apex Court.
- (ix) The underlying fact position in the case of *Aquamall (supra)* and *Ispat (supra)*, being at variance and vastly different from the factual position in the present case, the ratio laid down in the said decisions, cannot be applied to the facts of the present case.
- (x) Furthermore, the Tribunal has in the case of *Tata Steel Limited*, having *Final Order No. 76431/2025 dated 03.06.2025*, followed the ratio laid down by the Apex Court in the case of *OCL India Ltd. (supra)* and held that clearances made by the assessee therein i.e., Ferro

Manganese plant at Joda to its other plant at Jamshedpur for captive consumption is to be valued in terms of Rule 8 and not in terms of Rule 4 of the Valuation Rules, based on the prices at which goods are sold to independent third party buyers.

- (xi) Even the CBEC has in its clarifications provided vide Circular No. 354/81/2000-TRU dated 30.06.2000 and Circular No. 643/34/2002-CX dated 01.07.2002, stated in no uncertain terms that valuation of goods which are captively consumed, is to be done in terms of Rule 8 of the Valuation Rules, even if there are independent third-party sales. The relevant extract of said circulars is reproduced herein below for ready reference:

Circular dated 30.06.2000

21. As a measure of simplification, it has been decided to value goods which are captively consumed on cost construction method only as there have been disputes in adopting values of comparable goods. The assessable value of captively consumed goods will be taken at 115% of the cost of manufacture of goods even if identical or comparable goods are manufactured and sold by the same assessee. The concept of deemed profit for notional purposes has thus been done away with and a margin of 15% by way of profit etc. is prescribed in the rule itself for ease of assessment of goods used for captive consumption. Thus, the formula for determining value is simple. If the cost of production based upon general principles of costing of a commodity is Rs. 10,000 per unit, the assessable value of the goods shall be Rs. 11,500 per unit.

Circular dated 01.07.2002

Sr. no.	Point of doubt	Clarification
5.	<i>How will valuation be done in cases of captive consumption (i.e. consumed within the same factory) including transfer to a sister unit or another factory of the same company/firm for further use in the manufacture of goods ?</i>	<i>For captive consumption in one’s own factory, valuation would be done as per rule 8 of the Valuation Rules i.e. the assessable value will be 115% of the “cost of production” of the goods.</i> <i>If the same goods are partly sold by the assessee and partly consumed captively, the goods sold would be assessed on the basis of “transaction value” [provided they meet the conditions of Sec. 4(1)(a)] and the goods captively consumed would be valued as per Rule 8 of the Valuation Rules. This is because, as per new Section 4, transaction value has to be determined for each removal.</i> <i>Where goods are transferred to a sister unit or another unit of the same company valuation will be done as per the proviso to Rule 9.</i>

(xii) In this regard, reliance placed by the Ld. Special Counsel for the Revenue, on paragraph 12 of Circular dated 01.07.2002, is misplaced as the said Paragraph 12 deals with valuation of sales made to a related party as also independent third-party buyers. It is in this context, that the Circular clarifies that the recourse would have to be taken to Rule 11 r.w. Rule 9 or Rule 10 of the Valuation Rules, as Rule 9/ Rule 10 cannot

be directly applied, in the absence of all sales being made to related party. the relevant extract of para 12 of the Circular dated 01.07.2002 is reproduced herein below:

Sr. no.	Point of doubt	Clarification
12.	<i>How will valuation be done when goods are sold partly to related persons and partly to independent buyers ?</i>	<i>There is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per Section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers' valuation will be done as per Section 4(1)(a) and for sale of the same goods to related buyers' recourse will have to be taken to the residuary Rule 11 read with Rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are to related buyers only.</i>

(xiii) As set out earlier the clearances in the present case, were to appellant’s own units for captive consumption, which cannot be treated as sales to related party and even otherwise, the said Circular merely clarifies that though Rule 9 is not applicable, but the principle laid down in Rule 9 would apply, by virtue of Rule 11 of the Valuation Rules. If the clarification is taken to its logical conclusion, then Rule 9 is the relevant rule which deals with valuation of sales to related party, while Rule 8 deals with valuation

of goods cleared for captive consumption. Therefore, even if the entire quantity of goods is not captively consumed, even then, by virtue of para 12 of the Circular, the principle of Rule 8 read with Rule 11 would apply in case of clearances for captive consumption. Therefore, there is no infirmity in the method of valuation adopted by the Appellant.

- (xiv) It is also relevant to note that Rule 8, 9 and 10 of the Valuation Rules have been substituted by Notification No. 14/2013-CE (N.T.) dated 22.11.2013, to provide that the valuation in respect of captive consumption, sales to related party, sales to an inter-connected undertaking respectively, would be required to be done in terms of the said respective rules, even if there are independent third-party clearances. The Tribunal has in the cases listed below, held that the said substitution was merely clarificatory in nature and has retrospective application:

- a. Ultratech Cement vs CCE Raipur [Final Order No. 57753-57755 of 2017 dt. 08.11.2017],*
- b. Commissioner of CE, Indore vs Surya Roshni [2017] 357 ELT 978 (Tri-Del)*
- c. Hindustan Zinc vs CCE, Udaipur [Final Order No. 578671 of 2017 dt. 10.11.2017]*

- (xv) Furthermore, the contention of the Ld. Special Counsel for the Revenue that valuation ought to be have arrived at in terms of Rule 4 of the Valuation Rules, is also otherwise unsustainable, as Rule 4 stipulates that value of excisable goods shall be based on value of 'such goods' sold for delivery at any other time

nearest to the time of the removal. Neither the SCN or the Impugned Order has demonstrated as to how clearances made to appellant's own units, which were about 59% of the total clearances, could be said to be comparable with clearances ranging from 0.001% to 8%, made to independent third parties. It is not in dispute that as against approximately 77,00,000 MT of pellets which were cleared to its own unit for captive consumption, during the period of dispute, the highest clearance to independent third parties was about approximately 11,00,000 MT, which clearly shows difference in terms of the quantity cleared by the Appellant vis-à-vis the clearances to third party and therefore the two clearances are not comparable, so as to fall within the ambit of '*such goods*'.

- (xvi) The burden was on the Revenue to have established that the excisable goods which are proposed to be valued in terms of Rule 4, are identical, in respect of quality, quantity, nature, etc. with '*such goods*' whose value is supposed to be applied to the excisable goods in dispute, which they have failed to discharge. It is settled law laid down by the Apex Court in the case of *Metal Box India Limited v. Collector of Central Excise, Madras* [1995 (75) E.L.T. 449 (S.C.)] that a bulk buyer and a small buyer fall in two different classes. Therefore, the goods cleared to a bulk buyer vis-à-vis those cleared to a small buyer cannot be said to be comparable so as to qualify as '*such goods*'.

(xvii) Further, the Hon'ble Supreme Court in the case of *UTC Fire and Security India Ltd., 2015 (319) E.L.T. 591 (S.C.)*, has held that smoke detectors and parts thereof, which were used by the appellant-assessee therein, in executing turnkey contracts, could not be valued basis such smoke detectors and parts thereof, sold in loose condition to independent buyers, as they did not qualify as '*such goods*'. The relevant observation of the Hon'ble Supreme Court is as under:

"13. Rule 4 would be applicable only in those cases where value of "such goods" which are sold by the assessee for delivery at any other time nearest to the time of the removal of the goods under the assessment, appears to be reasonable to the concerned officer. Here, as already noted above from the detailed discussion in the order of Commissioner (Appeals), the goods cannot be treated as same or would fall within the description "such goods" as sold to the other buyers in loose form when they are used captively by the appellant in the turnkey projects.".

(xviii) Even otherwise, the proceedings under Section 11A of the Act, itself could not have been initiated as the entire dispute with respect to valuation of the goods cleared for captive consumption to appellant's own units, who were entitled to avail CENVAT credit of the same, is revenue neutral. It is not in dispute that the

appellant has paid central excise duty on clearances made to its own units, and, the same was availed as CENVAT credit by the Angul and Raigarh units, in terms of Rule 3 of the Cenvat Credit Rules, 2004 and the iron ore pellets were captively consumed, for the manufacture of iron and steel (excisable goods), which were cleared on the payment of appropriate duty of excise by such units. Thus, whatever duty was paid at the dispatching unit was seamlessly availed as credit at the receiving units, without any break, blockage or loss in the credit chain.

(xix) It is settled law that where credit is fully admissible, there cannot be any non-levy or short-levy or non-payment or short payment of tax so as to warrant a demand for duty under Section 11A of the Act. Reliance in this regard is placed on the following decisions:

- *Britco Foods Company Ltd. v. CCE, Pune, 2001 (127) ELT 73 (Tri-Mum) affirmed by*
- *Commissioner of C. Ex., Pune vs. Coca-Cola India Pvt. Ltd [2007 (4) TMI 17 - Supreme Court]*
- *Commr. of C. Ex. & Cus., Vadodara-II vs. Indeos Abs Limited [2010 (3) TMI 656 - Gujarat High Court]*
- *Steel Authority of India Limited vs. Commissioner of Central Excise & Service Tax, Ranchi-I [2025 (3) TMI 565 - CESTAT Kolkata]*
- *Steel Authority of India Limited vs. Commissioner of Central Excise & Service Tax, Ranchi I [2025 (3) TMI 258 - CESTAT Kolkata]*
- *Steel Authority of India Limited vs. Commissioner of CGST & Central Excise, Ranchi [2025 (11) TMI 1191 - CESTAT Kolkata]*

- *R.S. Concast Ltd. vs. Commr. of Central Excise, Durgapur [2025 (8) TMI 1139 - CESTAT Kolkata]*
- *Indian Oil Corporation Ltd. v. CCE, Haldia, [(2024) 16 Centax 131 (Tri-Cal)]*
- *Hindalco Industries v. CCE, Bhubaneswar-II [2023 (5) TMI 720 - CESTAT Kolkata]*
- *JSL Ltd. v. CCE, Bhubaneswar-I [(2024) 21 Centax 368 (CESTAT Kolkata)]*
- *HV Transmission Ltd. v. Commissioner of CE, Jamshedpur [2023 (12) TMI 118 - CESTAT Kolkata.]*

(xx) The Ld. Special Counsel for Revenue has relied upon the judgment of the Apex Court in the case of *Star Industries*, reported in [2015 (324) E.L.T 656] wherein it has been held that merely because CENVAT Credit could be availed of the countervailing duty, is no ground to contend that countervailing duty is not to be paid at the very threshold and instead, exemption from the payment of the same could have been claimed, even though otherwise not available. Reliance has also been placed on the decision of the Tribunal in the cases of *Dharampal Premchand Ltd.* reported in 2011 (265) ELT 81 and *Baba Asia Ltd* reported in 2011 (267) ELT 115. All of the aforementioned three decisions deal with a situation where duty has not been paid by claiming exemption, which was inadmissible. None of these decisions involved a case of short payment on account of valuation or classification, rather the dispute was whether the exemption claimed on payment of duty was available or not. In all the decisions cited by the appellant in support of revenue neutrality, the

alleged dispute was regarding short payment of duty on account of valuation or classification. Since the facts of the cases referred to by the Ld. Spl. Counsel for the Revenue are distinguishable, the said decisions cannot render the argument of Notice under Section 11A of the Act, being unsustainable, when the situation is otherwise revenue neutral.

(xxi) The entire demand is otherwise also beyond the normal period of limitation and unsustainable as none of the ingredients for invoking the extended period of limitation were present in the facts of this case. It is undisputed that appellant has been subjected to periodic audits wherein the aspect of valuation of clearances to its own units had time and again been examined. In this regard, reference is made to the following details:

- a. The Department had conducted EA-2000 audit of the records of the Appellant. In this regard, the Department has issued a letter No. V (1) 305/IA/B-II/2011 dated 19.09.2011 requesting for documents such as Balance Sheets, Trial Balance, Annual Financial Statements, annual returns and various other statutory documents. The Appellant *vide* Letter dated 05.03.2012 furnished such documents.
- b. Audit Observation No. 1 dated 16.05.2012, wherein, it was noticed that the Appellant had made short payment of duty as per CAS-4 on clearance of goods

to its units for captive consumption for the period FY 2009-10 and FY 2010-11.

c. Audit Observation No. 1 dated 14.08.2013, wherein it was observed that the Appellant had short paid duty on the value determined as per CAS-4 in respect of goods cleared for captive consumption to its own units, for the period FY 2011-12.

d. On 23.05.2014, the Department had initiated audit for the period FY 2012-13, while on 29.05.2014, it initiated a computer assisted audit for FY 2013-14 and for this purpose called upon the Appellant to furnish copies of balance sheet, trail balance and other documents.

(xxii) It is pertinent to note that in during audit, the aspect of clearances made by the appellant to its other unit as also to independent third parties, was examined in detail and in fact the value determined under CAS-4 for captive consumption at its other units was also revised. Since all facts were within the knowledge of the Department, the extended period on the count of there being suppression, fraud, wilful mis-statement with the intention to evade payment of duty cannot be sustained. The law with regard to allegation of suppression not being sustainable when facts are known to the Department, is well settled by the judgment of the Apex Court in *Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut* [2005 (188) E.L.T. 149 (S.C.)] and *Commissioner,*

Central Excise & Customs vs. Reliance Industries Ltd. [2023 SCC OnLine SC 767].

(xxiii) Besides the fact that there was no suppression, fraud or wilful mis-statement, there was no intention to evade payment of duty nor could there have been any intention to evade duty, as the entire dispute was revenue neutral and the entire duty paid was completely available as credit to its other unit, at Angul and Raigarh. The absence of there being any intention to evade duty is by itself fatal to the invocation of the extended period of limitation.

(xxiv) The extended period is also not invokable as the Department has itself been taking different positions qua appellant itself, as Notice dated 11.12.2014, which is impugned in the present proceedings, proposed to demand differential duty in respect of clearances to its own units for captive consumption under Rule 11 r.w. Rule 4 of the Valuation Rules, basis the prices at which sales were made to independent third party, while another SCN dated 24.12.2014, has for an overlapping period proposed to demand differential central excise duty in respect of clearances made by Appellant to its own unit, on the count that the value under CAS-4 was not correctly determined. The relevant extract of the SCN dated 24.12.2014 is reproduced below for ease of reference:

"2. M/s Jindal Steel & Power Ltd, Barbil, used to clear Iron Ore Pellet to their sister unit at Raigarh (Chhattisgarh) for captive consumption. As per provisions of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, value of

goods cleared for captive consumption to the sister unit of an assessee would be 110% of the cost of production which would be determined as per CAS-4. In course of audit of accounts of M/s Jindal Steel & Power Ltd, Barbil, for the year 2010-11 & 2011-12, it was found that although CAS-4 price of the goods cleared for captive consumption to its sister unit was not available with the assessee at the time of clearance of such goods, they did not follow the procedure of provisional assessment as per Rule 7 of Central Excise Rules, 2002, but paid duty on provisional prices. Later on, upon preparation of the CAS-4, they raised supplementary invoices on the revised price and paid differential duty thereon. However, there was still short payment of duty for the months of April, 2010 to October, 2010 and April, 2011 to July, 2011 to the extent of Rs. 5,35,13,056/- (Rupees Five crore Thirty five lakh Thirteen thousand Fifty six only). (Annexure-A/1 to A/2).

...(emphasis supplied)

(xxv) It is settled law laid down by the Apex Court in the following cases that extended period of limitation cannot be invoked when divergent views are taken by the Revenue on similar facts:

a. *Jaiprakash Industries Ltd. v. CCE, Chandigarh* [2002 (146) E.L.T. 481 (S.C.)]

b. *Mentha & Allied Products Ltd. v. CCE, Meerut* [2004 (167) E.L.T. 494 (S.C.)]

5.1. In view of the above submissions, the Ld. Counsel appearing on behalf of the appellant have prayed for setting aside the demand for duty, the consequential demand of interest and the imposition of penalty and therefore, to set aside the impugned order in toto.

6. On the other hand, the Ld. Special Counsel representing the Revenue has inter alia made the following submissions: -

- (a) During the period January 2010 to November 2013, the appellants have cleared 59% of their excisable goods iron ore pellets to their related units Related units viz M/s. Jindal Steel & Power Ltd., Angul and M/s. Jindal Steel & Power Ltd., Raigarh 41% to various unrelated buyers by not determining correct assessable value as per the provisions under Rule 11 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules (CEVR), 2000. Rather excise duty was paid on lower assessable value determined under Rule 8 of said Rules, thus, short paid duty Rs.333.22 Cr,
- (b) Angul and Raigarh have separate central excise registration under the same PAN number of Appellants. The Appellants have Central Excise registration No. AAACJ7097DXN008 whereas the unit located at Angul & Raigarh have Registration No. AAACJ7097DXN003 and AAACJ7097DXN007 respectively.
- (c) The sub-clause (iv) of clause (b) of sub-section 3 of section 4 of the Central Excise Act 1944 reads as:

"Section 4. Valuation of Excisable goods for the purposes of charging of duty of Excise.....

(3) For the purpose of the section,

(a) "assessee" means the person who is liable to pay the duty of Excise under this Act and includes his agent;(b) Person shall be deemed to be "related" if-

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other."

- (d) The above provisions stipulate that where the units are having mutuality of interest they can collectively be termed as "related" units.
- (e) The Rules 8, 9, 10 & 11 of CVR deal with the valuation of excisable goods cleared to different categories of buyers. The show cause notice covers the period January, 2010 to November, 2013. The provisions of Rule 8, 9, 10 & 11 as existed during the relevant period read as follows:

Rule 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.

Rule 9: When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in any of the sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers/not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:

Provided that in a case where the related person does not sell the goods but uses or

consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

Rule 10: When assessee so arranges that the excisable goods are not sold by him except to through an inter-connected undertaking, the value of goods shall be determines in the following manner, namely:-

(a) If the undertakings are so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9.

Explanation In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies act, 1956(1 of 1956).

(b) in any other case, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4.

Rule 11: If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act.

- (f) Section 4 of the Central Excise Act 1944 stipulates valuation of Excisable goods for purposes of charging of duty of Central Excise and its sub section (1) reads as under:

"Section 4 (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the

sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation-"

- (g) It is settled law the provisions of CEVR Rules 8 apply when excisable goods are not sold by the assessee but are entirely used for consumption by him or on his behalf in the production or manufacture of his final product. As parts of goods cleared to their related units for captive consumption and remaining parts are sold to unrelated buyers, valuation under CEVR rule 8 is not applicable, whereas, the residuary CEVR Rule 11 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 would apply for determination of excisable goods cleared to their sister units.
- (h) Chapter 3, Para 3(v) of CBEC's Excise Manual of Supplementary Instruction, 2005 provides that:

"where goods are sold partly to related persons and partly to independent buyers, there is no specific rule covering such a contingency, value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers valuation will be done as per Section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the Residuary Rule 11 read with Rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are to be related to buyers only."

- (i) Aforesaid legal position has been reiterated by Board under paras 5 & 12 in their Circular no 643/34/2002-CX dated 01.07.2002. Thus, Statute is clear that provisions of CEVR Rules 8 apply only when excisable goods are not sold by the assessee but are entirely used for consumption by him or on his behalf in the production or manufacture of his final product. In instant case Appellants clear 59% of their excisable goods to related and 41% goods are sold unrelated/independent buyers.
- (j) The Tribunal in case of *Birdi Steels Vrs. Commissioner of Central Excise, Ludhiana reported in 2005(179) ELT 82(Tri.-Del.)* held that Rules 8 & 9 of Central Excise (Valuation) Rules, 2000 cannot be invoked where sales made by the assessee both to related person as well as independent buyers.
- (k) The Hon'ble Apex Court in the case of *Commissioner Vis. Aquamal Water Solutions Ltd. [2006(193) ELT A197(S.C.)]* held that:

"As in earlier round of litigation this Court has in the order reported in 2003 (158) ELT. A 182 (S.C.), confirmed the order passed by the Tribunal in the case of Aquamall Water Solution Ltd. V Commissioner of C.Ex., Bangalore, reported in 2003 (153) E.L.T. 428, the same principle must apply in this case also. In this case Mr. Laxmikumar learned Counsel very fairly states that the respondent will pay at the rate at which the goods are sold to independent third parties. We, therefore, send the matter back to the Commissioner in order to re work the duty on the basis of sale made to third parties. To that extent, the Tribunal's orders stands varied."

- (l) The Larger Bench of Hon'ble Tribunal in the case of *Ispat Industries Ltd. Vrs. Commissioner of C.Ex., Raigad [2007(209) ELT-185(Tri.-L.B.)]* has held that:

"9. In view of what we have observed above, we answer the reference in following terms:

(a) The provision 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 provision 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 Rule 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."

- (m) Reliance has also been placed on the following decision: -

- *Commr of CE & ST Rohtak Vs Merino Panel Products 2022(12) TMI 453-SC*

- (n) In recent decisions of Tribunal [2025 (5) TMI 152-CESTAT Ahmedabad] & several other judgements/ Orders above views have been held. In the judgement of Hon'ble Apex Court in *CCE Jaipur Vs. Scan Synthetics Ltd- 2008-TIOL-34-SC-CX*, it has been held that when independent factory sale price is available, that should be the basis for determining the value of same excisable goods captively consumed. Besides above, following case laws are relied upon:-

- *Avon Tubes Ltd Vs. CCE, Ludhiana [2007 (117) ECR 616 (Tribunal)]*
- *Hindustan Copper Ltd. Vs. CCE Jaipur-I [2005-TIOL-751-CESTAT-DEL].*
- *Hindustan Copper Ltd. Vs. CCE, Jaipur-1-2006-TIOL-901-CESTAT-DEL.*
- *Steel Complex Ltd. Vs. CCE, Calicut [2004 (171) ELT 255 (Tri.-Bang.)]*

(o) With regard to following judicial pronouncements relied upon by the appellant:-

(i) M/s OCL India Limited [2024(6) TMI 1463 – CESTAT (Kol)]

(ii) GST & CE Vs M/s OCL India Limited [2025 (5) TMI 63-SC]

(iii) National Aluminium Company [2024 (4) TMI -1088 CESTAT (Kol)]

(iv) Tata Steel vs Commr CGST, Rourkela [2025 (6) TMI 437-CESTAT (Kol)]

the above decisions are clearly Per Incuriam wrongly decided as the inadvertently overlooked a relevant statute, a statutory provision, and binding precedents of Supreme Court & Larger Bench. There was no discussion of precedent decisions nor judgements in favour of Revenue were distinguished.

(p) As regard the appellant's argument on Revenue neutrality of the case, Respondent states that this has nowhere been provided in the statute. Under the Cenvat Scheme, the taxes paid by one assessee is available to the subsequent buyers as credit and even to the assessee himself who pay the taxes under reverse charge basis. Even if these cases create revenue

neutral situations, the assessee are bound by the provisions of statutes to discharge the tax liabilities. Even if duty paid as per value determined Rule 11 Central Excise Valuation Rules, 2000 by one assessee, this is available as credit to their sister concerns. The right to claim Cenvat Credit arises only after payment of duty and not prior thereto. Being so, for the period the duty remains to be paid, obviously, interest accrues in favour of Department. Hence, merely the assessee is entitled for credit for such payment of duty does not result in revenue neutrality.

(q) In this regard, reliance is placed upon the following decisions: -

- *Commissioner of C. Ex., Chandigarh Versus Dharampal Prem Chand Ltd. [2011 (265) E.L.T. 81 (Tri. Del.)],*
- *Commissioner of C. Ex., Chandigarh Versus Baba Asia Ltd. [2011 (267) E.L.T. 115 (Tri. Del.)],*
- *Star Industries v. Commissioner of Customs (Imports), Raigarh [Civil Appeal No.6088 of 2013] (Supreme Court)*

(r) With regard to suppression of facts, extended period of limitation, penalty u/s 11AC, and interest, the respondent's submissions are as under:-

- The appellant's contention that the extended period of limitation is not applicable on the ground of acting under a bona fide belief in the interpretation of law is wholly without merit, both legally and factually. A bona fide belief must rest on a reasonable and defensible interpretation of the statutory

provisions and must be accompanied by full, candid, and truthful disclosure of all material facts to the Department. In the present case, neither of these essential conditions is met.

- The appellant neither sought clarification from the Department despite adopting a distinct pricing mechanism for clearances to related persons as opposed to independent buyers, nor did they disclose in their statutory ER-1 returns the differential values or the simultaneous clearance to units with mutuality of interest. Sub-clause (iv) of clause (b) of Section 4(3) of the Central Excise Act, 1944, explicitly defines such units as "related persons." The appellant's related units operated under the same PAN-based registration and had mutual financial interest, leaving no ambiguity whatsoever regarding their status as related persons under Section 4(3)(b) of the Central Excise Act, 1944. Consequently, they were fully aware that transactions with such related units fell squarely within the purview of the valuation provisions under Rule 11 of the Central Excise Valuation Rules, 2000 (CEVR).
- The statutory scheme under Section 4 of the Central Excise Act, 1944, read together with Rules 8, 9, and 11 of the CEVR, and further reinforced by CBEC Circular F.No. 6/39/2000-CX-I dated 01.07.2002 and Para 3(v) of Chapter 3 of the CBEC Manual, leaves no room for doubt: where goods are cleared to both independent buyers and related persons, valuation must be undertaken strictly under Rule 11. There is no ambiguity

or scope for misinterpretation. The appellant's deliberate failure to apply the correct valuation method, despite clear statutory and administrative guidance, cannot be attributed to inadvertence or bona fide belief in the interpretation of law.

- Under the self-assessment regime, the law imposes a positive obligation on the assessee to declare the correct assessable value and all material information. In this case, the appellant had undervalued goods cleared to related persons, failed to disclose related-party transactions or the simultaneous sale of the same goods to independent buyers at higher prices and filed ER-1 returns containing incorrect assessable values constitute a systematic and deliberate exercise to mislead the Department. The appellant has meticulously and in a well organized manner cleared the goods by way of undervaluation. The undervaluation unearthed only due to the investigation conducted by the departmental. Absent such investigation, the evasion would have remained entirely concealed.
- These deliberate omissions, misrepresentations, and concealment of material facts demonstrate a conscious, intentional effort to evade duty, which squarely satisfies the judicial meaning of "suppression." Such conduct is far beyond a mere technical breach or interpretational confusion. It reflects a carefully calibrated design to suppress critical facts that were essential for determining the correct duty

liability of the appellant. The Hon'ble Supreme Court in *M/s. Continental Foundation Joint Venture v. CCE, Chandigarh-I* [2007 (216) ELT 177 (SC)] held that suppression constitutes failure to disclose full information with intent to evade duty, and that mere errors or omissions cannot be treated as suppression unless deliberate. Similarly, in *M/s. Pushpam Pharmaceuticals Company v. Collector of C. Ex., Bombay* [1995 (78) ELT 401 (SC)], it was held that suppression under Section 11A(1) of the Central Excise Act, 1944 arises only where there is deliberate evasion of duty.

- In the present case, the undervaluation, concealment of related-party transactions, and submission of false returns constitute a deliberate act intended to evade Central Excise duty, resulting in a substantial loss of revenue. The appellant knowingly withheld material information and manipulated assessable values for clearances to related persons, despite the unequivocal provisions of the statute. Thus, all the essential elements of suppression, as required under the proviso to Section 11A(1) of the Central Excise Act, 1944, are fully satisfied.

- (s) Accordingly, the invocation of the extended period of limitation is both legally justified and entirely appropriate.

6.1. On the basis of the above submissions, the Ld. Special Counsel for the Revenue prayed that the appeal be rejected.

7. Heard the parties and considered their submissions.

8. We find that the following issues emerge from the submissions made by both the sides: -

- (1) Whether the appellant is correct in following Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [“the Valuation Rules” for short] for arriving at the value in respect of clearances of goods to their own units at Angul and Raigarh, when most of the quantity of such goods manufactured by them is cleared to their own units and part of the quantity is cleared to third-party buyers, or not.
- (2) Whether it is a case of revenue neutrality, or not.
- (3) Whether the extended period of limitation can be invoked in the facts and circumstances of the present case, or not.

Issue No. (1): Whether the appellant is correct in following Rule 8 of the Valuation Rules for arriving at the value in respect of clearances of goods to their own units at Angul and Raigarh, when most of the quantity of such goods manufactured by them is cleared to their own units and part of the quantity is cleared to third-party buyers, or not:

9. We find that the Ld. Special Counsel appearing on behalf of the Revenue has heavily relied on the decision in the case of *Aquamall Water Solutions Ltd. v. Commissioner of C.Ex., Bangalore* [2003 (153)

E.L.T. 428 (Tri. – Bang.)] to say that the valuation is required to be done on the basis of the price at which goods were sold to third-party buyers, wherein, admittedly, M/s. Aquamall was selling goods to a related person i.e., M/s. Eureka Forbes Ltd., and also to independent buyers and all such sales were made from depots located in various States; there were no sales made at the factory gate. However, the facts in the present case under dispute is not qua the valuation of sales made to related persons, but in respect of clearances made to their own units, for captive consumption. Therefore, the facts of the present case are altogether different from that in the case of *Aquamall Water Solutions Ltd. (supra)*.

9.1. Further, the Ld. Special Counsel for the Revenue has also heavily relied on the decision of the Larger Bench of this Tribunal in the case of *Ispat Industries Ltd. v. Commissioner of C.Ex., Raigad [2007 (209) E.L.T. 185 (Tri. – LB)]*. It is an undisputed and admitted fact that in that case, the clearances made by M/s. Ispat Industries Ltd. to their other units at Taloja, Kamothe and Kalmeshwar were not captively consumed, but in the facts of the case before us, the case of the appellant was that of clearing goods to their own units for further manufacturing processes and these goods cleared by the appellant were captively consumed by their own units located in other places. Therefore, the decision in the case of *Ispat Industries Ltd. (supra)* is also clearly not applicable to the facts of this case.

9.2. We find that the case of the appellant is squarely covered by the decision in the case of *OCL India Ltd. v. Commissioner of Central Tax, G.S.T. & C.E., Rourkela* rendered vide *Final Order No. 76670 of 2024 dated 26.06.2024 in Excise Appeal No. 76300 of 2018*

[2024 (6) TMI 1463 – CESTAT, Kolkata], wherein the facts of the case were as under: -

"2. The facts of the case are that the appellant is engaged in manufacture of clinker cement. Clinker is the intermediate product to manufacture cement. The appellant has two other unit at Kapilas Cement Works, Cuttack in the State of Odisha and Bengal Cement Works at Medinapore, in the state of West Bengal which are engaged in manufacture of cement. For all three units the appellant have opted separate registration. The clinker manufactured in appellant's unit was utilized as follows:

- a. Captively consumed by the Appellant (Rajgangpur unit) to manufacture cement
- b. Stock transferred to Kapilas unit to manufacture cement.
- c. Stock transferred to Bengal unit to manufacture cement starting 2014, and
- d. Sold to independent buyers at 'transaction value' (in very meager proportion of 2% to 5%)

3. On stock transfer of clinker, the Appellant paid excise duty at 110% of cost of production in accordance with Rule 8 of the Central Excise Valuation Rules, 2000 ('Valuation Rules'). The Kapilas and Bengal units availed Cenvat Credit of the excise duty charged and paid by the Appellant."

which are almost similar to the facts of the case on hand. In the said case, this Tribunal, after relying on the decision in the case of *National Aluminium Company Ltd. v. Commissioner of C.G.S.T. & C.Ex., Bhubaneswar* vide Final Order No. 75776 of 2024 dated 26.04.2024 in Excise Appeal No. 75650 of 2021 [2024 (4) TMI 1088 – CESTAT, Kolkata], has observed as under: -

"14. We find that a similar issue has been examined by this Tribunal in the case of *Nalco (Supra)* 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) ELT. 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 (ICWA)) 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 ICWAL.

4. Board's Circular No. 258/92/96-CX, dated 30-10-96 [1996 (88) ELT 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-CX, 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 in as much 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-assessee is also right in their contention that Revenue is bound by the Circular, while assessee is 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) ELT. 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 378 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), appellate 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 HM. 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 assessee is 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 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

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 & 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."

15. We find that in similar set of facts this Tribunal has examined the issue in the case of Nalco (Supra) and this Tribunal has come to a conclusion that the Appellant has correctly paid the duty on 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.

16. Therefore, Appellant has correctly paid duty as per CAS-4 in terms of Rule 8 of the Valuation Rules."

10. As the issue is squarely covered by the decision in the case of *OCL India Ltd. (supra)*, in view of this, we hold that the appellant has correctly valued their goods in terms of Rule 8 of the Valuation Rules and therefore, the demand of central excise duty by adopting Rules 4 and 11 of the Valuation Rules is not sustainable.

Issue (2): Whether it is a case of revenue neutrality, or not.

11. Admittedly, in this case, the appellant has been clearing the goods to their own units, for further manufacture. In that view, the issue that arises is whether the duty paid by the appellant is available as CENVAT Credit to their own unit which is using these goods for further manufacture and clearing on payment of duty, resulting in a revenue neutral situation, or not.

11.1. We find that the same issue has been examined by this Tribunal in the case of *Britco Foods Company Ltd. v. Commissioner of C.Ex., Pune [2001 (127) E.L.T. 73 (Tri. - Mumbai)]* wherein it was held that such a situation is revenue neutral. The said decision has been affirmed by the Hon'ble Apex Court as reported in *2007 (213) E.L.T. 490 (S.C.)*.

11.2. Further, in the case of *Steel Authority of India Ltd. v. Commissioner of C.G.S.T. & C.Ex., Ranchi vide Final Order No. 77634 of 2024 dated 17.10.2025 in Excise Appeal No. 78083 of 2018 (CESTAT, Kolkata) [2025 (11) TMI 1191 – CESTAT, Kolkata]* again this Tribunal held, under similar circumstances, that it is a revenue neutral situation. The relevant portion of the said order reads as under: -

"12. This Bench in a catena of decisions has held that when the situation is that of revenue neutrality, the differential duty demand is not called for. Some of the decisions on identical issues are given below :

Steel Authority of India Limited v. Commissioner of Central Excise & Service Tax, Ranchi-I, 2025 (3) TMI 565- CESTAT Kolkata

"3. The appellant submits that the entire demand is not sustainable on the ground of revenue neutrality. The final product cleared from the Appellant's factory to their other units are used by the other factories in the manufacture of their dutiable finished products which are cleared by them on payment of applicable excise duty. The other factories of the Appellant are availing the credit of duty paid by the Appellant and utilizing the same for payment of duty on the final product cleared. Thus, the Appellant submits that the differential duty confirmed shall be available as credit to the Appellant's other factories/units. Hence, demand of differential duty is clearly revenue neutral.

....

6.1. We observe that the issue is no longer *res integra*, as this Tribunal has already decided this issue in the Appellant's own case *Steel Authority of India v. Commissioner of Central Excise & Service Tax, Ranchi I*, vide Final Order No. 75435/2025 in Excise Appeal No. 75523 of 2016 pertaining to a different unit of the same assessee and concerning the same issue pertaining to valuation of inter-unit transfer of refractory material had held that no demand is sustainable since the issue is revenue neutral. The relevant paragraph of the said decision is extracted below for ready reference –

.....

6.3. In view of the above discussions and by relying upon the decisions cited *supra* we hold that the demand confirmed in the impugned order is not sustainable and accordingly, we set aside the same. Since the demand of duty is not sustained, the question of demanding interest and imposition of penalty does not arise."

Shyam Sel & Power Ltd., (Divn.) v. Commissioner of CGST & Central Excise, Durgapur, 2025 (7) TMI 796-CESTAT Kolkata

2.2 Without prejudice to the above submission, it is a settled position of law that in cases wherein goods have been cleared by the appellant to their sister unit, wherein whatever duty is paid by the appellant, the same is entitled as CENVAT Credit, no further duty is payable considering the Revenue Neutral

Position Without prejudice to the above submission, it is a settled position of law that in cases wherein goods have been cleared by the appellant to their sister unit, wherein whatever duty is paid by the appellant, the same is entitled as CENVAT Credit, no further duty is payable considering the Revenue Neutral Position

7. Admittedly, there is no dispute that the clearances of the appellant is to their sister units. It is not also disputed by the Revenue that the Excise Duty paid by the appellant accrues as Cenvat Credit to the other units.

.....

12. We have also taken in to account that without dispute the Excise Duty paid by the appellant is eligible as Cenvat Credit at the end of the receiving sister units. There are several decisions holding that when the Excise Duty paid by the unit is available fully as cenvat credit at the end of the receiving unit of the same assessee, the same results in revenue neutrality. Some of the decisions by this Bench are discussed below :

.....

13. We find that to the facts of the present case, the cited case laws are squarely applicable on account of revenue neutrality. Therefore, we set aside the demand of Rs.85,01,189/- on this ground on merits."

11.3. Therefore, in that view, if duty is paid by the appellant, the same would be available as CENVAT Credit to the appellant in their own unit and in these circumstances, we hold that it is a revenue neutral situation.

Issue No. (3): Whether the extended period of limitation can be invoked in the facts and circumstances of the present case, or not.

12. The Ld. Counsel for the appellant has also submitted before us that periodical audits had been conducted in their unit during the impugned period, on 16.05.2012 and 14.08.2013, but nowhere was any observation made as to there being an infirmity in the value determined by the appellant under Rule 8 in terms of Cost Accounting Standard-4 (CAS-4). In these circumstances, we find that the issue to be decided is whether the Show Cause Notice issued to the appellant on 11.12.2014 is barred by limitation or not.

12.1. The said issue has been examined by the Hon'ble Apex Court in the case of *Commissioner, Service Tax v. Spicejet Ltd.* [(2023) 10 Centax 275 (Tri. – Del.) = 2023 (79) G.S.T.L. 271 (Tri. – Del.)] wherein the facts of the case were that during the audit of records of the respondent therein (i.e., M/s. Spicejet Ltd.) conducted from 02.05.2012 to 08.05.2012, it was inter alia noticed by the Department that for the months from July 2010 to March 2011, the respondent had not reversed 95% of the CENVAT Credit taken by adopting the ratio for the previous financial year, resulting in excess availment of CENVAT Credit amounting to Rs.21,54,80,008/-. Further, on another issue, it was observed by the Department that the respondent had received the payment of Rs.38,95,88,747/- towards excess baggage charges from passengers, for which service tax amounting to Rs.4,01,27,641/- was found to be payable by the respondent in terms of Section 65(105)(zzn) of the Finance Act, 1994, but such tax had not been paid by the respondent therein. It was

also noticed that with effect from 10.09.2004, the services provided by an aircraft operator, in relation to transport of goods by aircraft, came within the ambit of Service Tax. The respondent had submitted a detailed reply dated 03.01.2013 to the audit paragraphs and had explained that no excess credit had been availed and that the excess baggage charges were not leviable to Service Tax. However, a Show Cause Notice dated 21.10.2014 had been issued to the respondent, proposing the above mentioned demand of CENVAT Credit and Service Tax, by invoking the extended period of limitation. In these set of facts, this Tribunal came to the conclusion that:-

"12. In the present case, the show cause notice was issued on 21-10-2014. In regard to the demand of Cenvat credit taken in excess of Rule 6(3A) of the 2004 Credit Rules, the period of dispute is from July, 2010 to March, 2011. In regard to the demand of service tax short paid on excess baggage charges, the period of dispute is from April, 2009 to March, 2012. In the present case, the entire demand is for the extended period of limitation. The Commissioner has recorded a categorical finding of fact that the extended period of limitation could not have been invoked in the facts and circumstances of the case. This finding has not been assailed by the department in this appeal and the challenge is only to the findings recorded by the Commissioner for dropping the demand proposed in the show cause notice. Thus, in the absence of any challenge to this finding, the extended period of limitation could not have been invoked. When the entire demand proposed in the show cause notice is for the extended period of limitation, the demand proposed in the show cause notice has to be set aside, irrespective of the challenge by the department to the issues on merit.

13. The audit of the statutory records of the respondent was conducted from 2-5-2012 to 8-5-2012. The same issues and demand were suggested in the audit report. The respondent had also been filing ST-3 returns. However, the show cause notice was only issued on 21-10-2014, i.e. after more than two years of the facts coming to the knowledge of the department. The department could have issued the show cause notice within the normal period of limitation. The extended period of limitation could, therefore, not have been invoked by the department."

12.1.1. The said order was taken up by the Revenue before the Hon'ble Apex Court and the Hon'ble Apex Court vide their Order as reported in 2025 (394) E.L.T. 229 (S.C.) has dismissed the appeal filed by the Revenue.

12.2. Admittedly, in the facts of this case also, audits took place, on 16.05.2012 and 14.08.2013, but the valuation arrived at by the appellant by adopting Rule 8 of the Valuation Rules and payment of duty as per CAS-4 has never been disputed. In these circumstances, we find that the Show Cause Notice, issued to the appellant for the period from January, 2010 to November, 2013, is barred by limitation. Therefore, we hold that the whole of the demand against the appellant is barred by limitation.

13. In view of the above discussions, the impugned order is set aside and the appeal is allowed, with consequential relief, if any.

(Order pronounced in the open court on **09.01.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd