IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO.II

APPEAL No.E/1158/09

(Arising out of Order-in-Appeal No.SB(57)57/MI/2009 dated 03/08/2009 passed by the Commissioner of Central Excise (Appeals), Mumbai)

Godrej Industries Ltd., : **Appellant**

VS

Commissioner of Central Excise Mumbai : **Respondent**

<u>Appearance</u>

Shri.Rajesh Ostwal, Advocate for Appellant
Shri.A.B. Kulgod, Asst. Comm. (AR) for respondent

CORAM:

Hon'ble Shri C.J. Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing : 26/07/2018
Date of pronouncement : /2018

ORDER NO.87592/2018

Per : **C.J. Mathew**

1. This appeal has been filed by M/s Godrej Industries Ltd against order-in-appeal no.SB(57)57/MI/2009 dated 3rd August 2009 of Commissioner of Central Excise (Appeals), Mumbai which has upheld the order of the lower authority confirming demand duty of Rs.9,11,740/-, along with interest thereon, besides imposing penalty of like amount under section 11AC of Central Excise Act, 1944.

2. Learned Counsel for appellant informs that, between April 2001 to March 2004, they had cleared 'soap stock', under heading 1507 of Schedule to Central Excise Tariff Act, 1985, to their sister unit and duty

liability was assessed as per section 4 of Central Excise Act, 1944. The central excise authorities proceeded against them on the ground that the goods, having been consumed internally, should have been valued at 115%/110% (as appropriate) of the cost of production or manufacture of such goods. It is his contention that assessee procures ‘soap stock’ from other entities as well and that the market price of such goods, which was less than the value adopted by them for clearance, should take precedence over the price computed by jurisdictional authorities on the basis of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

3. Learned Counsel for appellant further contends that the goods so cleared are ‘by products’ to which Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 would not apply. Furthermore, it is submitted that the value of the final product on which duty liability is demanded, takes into account the manufacturing cost of ‘byproduct’ which should not, therefore, be subject to valuation intended for manufactured goods. It is also his contention that the entire exercise is revenue neutral inasmuch as the sister unit availed credit of the duty discharged, and therefore, the bar of limitation would not apply to the demand.

4. Learned Authorised Representative placed reliance on settled law and the finding of the lower authorities that the cost of production should be the basis for determination of the value for assessment of goods utilized captively.

5. We rely upon the decision of the Tribunal in *HM Polycontainer Ltd. v. Commissioner of Central Excise [2011 (163) ELT 459 (T)]* to the effect that transaction value after abating expenses of the assessee is also on acceptable basis of computation even under rule 8 and find no law in the valuation adopted by assessee. On revenue neutrality, we find that the

decision of the Tribunal in *Commissioner of Central Excise v. Special Steel Ltd [2015 (329) ELT 449 (T)]* has been upheld by the Hon'ble Supreme Court and that the Hon'ble High Court of Bombay in *Commissioner of Central Excise, Customs & Service Tax, Vapi v. Tarapur Grease India Pvt. Ltd [2016 (334) ELT 416 (Bom)]* has held that the principles of revenue neutrality would apply for recovery of duty sought by the Revenue.

6. Following the above decision of the Tribunal, we set aside the impugned order and allow the appeal.

(Pronounced in Court on ....)

(Ajay Sharma)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

PJ