IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/913/2010

[Arising out of Order-in-Original No: 09/2010/C dated 12th February 2010 passed by the Commissioner of Central Excise & Customs, Nagpur.]

For approval and signature:

Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Commissioner of Central Excise
Nagpur … ***Appellant***

versus

Maharashtra Electrosmelt ***…Respondent***

Appearance:

Shri Ajay Kumar, Additional Commissioner (AR) for appellant

Ms Manasi Patil, Advocate for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 07/08/2018
Date of decision: 10/12/2018

ORDER NO: A/88074 / 2018

Per: C J Mathew

Revenue challenges the legality and propriety of order-in-original no. 09/2010/C dated 12th February 2010 of Commissioner of Central Excise & Customs, Nagpur which dropped proceedings against M/s Maharashtra Electrosmelt Ltd in seven show cause notices for recovery of short-paid duty of ₹ 3,95,35,236 covering the period from July 2000 to June 2006 on what was alleged to be additional consideration of ₹ 26,07,25,721 in the clearance of 'silico manganese' and 'high chrome ferro manganese' to M/s Steel Authority of India Ltd.

2. Narrating the background to this appeal, Learned Authorised Representative submitted that the respondent had entered into a 'conversion agreement' with M/s Steel Authority of India Ltd under which the latter was required to supply, free of cost, 'high grade manganese ore', 'low grade manganese ore' and 'coke' to be converted for consideration of ₹ 15,000 per metric ton of the finished

product. It was also informed that the consumption efficiency was embodied in the agreement with the rider that cost of all other material and inputs are to be borne by the respondent. Pointing out that the respondent had retained the by-product, *i.e.*, 'high manganese ore slag' and 'low manganese ore slag', that emerged in the process of manufacture while clearing the finished goods, Learned Authorised Representative contended that this was tantamount to additional consideration which had not been included in the assessable value computed by the respondent for discharge of duty liability on the goods cleared to M/s Steel Authority of India Ltd. Reiterating the grounds of appeal, he submitted that the adjudicating authority had, incorrectly, laid emphasis on the special nature of relationship between the respondent and the principal manufacturer to deny recourse to rule 11, read with rule 6, of Central Excise Valuation (Determination of Price Excisable Goods) Rules, 2000 as proposed in the show cause notice even though the contractual arrangements between the two was that of principal-to-principal. According to him, the clarification of Central Board of Excise & Customs in circular no. 619/10/2002-CX dated 19th February 2002 to the effect that

> *'3..... In other words, after 1-7-2000, in respect of goods manufactured on job-work basis, valuation would be governed by Rule 11 of the new valuation Rules of 2000 read with rule 6 read with the above two decisions of the Apex Court.'*

and with reference to the decisions in *re Ujagar Prints Ltd [1989 (39) ELT 493 (SC)]* and in *re Pawan Biscuits Co Pvt Ltd [2000 (120) ELT 24 (SC)]*, should have guided the decision of the original authority.

3. Learned Counsel for respondent relies upon the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Indore v. S Kumars Ltd [2005 (190) ELT 145 (SC)]* and the sales invoices effecting clearance of the same finished goods to independent parties at rates entirely different from that in the impugned transactions to establish that the respondent was acting as contract manufacturer with a special relationship. It was also pointed out that similar demands for subsequent periods had been dropped by the original authority without challenge by Revenue according finality to the binding precedent of valuation under rule 8 in terms of the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Hyderabad v. Novapan Industries Ltd [2007 (209) ELT 161 (SC)]*. Placing reliance on circular no. 643/34/2002-CX dated 1st July 2002 of Central Board of Excise & Customs which, in item no. 5, directed the manner in which valuation of captively consumed goods was to be computed, she contends that the impugned order cannot be faulted. Reliance was also placed by her on the decision of the Tribunal in *Commissioner of Central Excise, Hyderabad v. Aquamall Water Solutions Limited [2008 (223) ELT 385 (Tri-Bang)], Commissioner of Central Excise, Nagpur v. PC Pole Factory [2006 (199) ELT 865 (Tri-Mumbai)]* and

KV Rao v. Commissioner of Central Excise & Customs, Visakhapatnam [2008 (222) ELT 267 (Tri-Bang)].

4. The respondent is a subsidiary of M/s Steel Authority of India Ltd; that they are related is not in doubt. Respondent is also a speciality manufacturer and, while operating as an independent manufacturer, their expertise was resorted to by the parent company on their raw materials for a process where product was to be used in the steel plant. The invoices submitted by Learned Counsel make it amply clear that the cost of conversion is not market-determined but specifically agreed upon by the two entities. In such circumstances, the special provision of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to be invoked to the exclusion of all others. Rule 11, read with rule 6, of the same rules are intended to cover situations of clearances in the normal course to independent buyers and hence not applicable in the present instance. In the circular dated 1st July 2002, relied upon by Learned Counsel, it is clearly indicated that

> *'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.'*

and the said *proviso* requires that the value shall be determined in the manner specified in rule 8 where the related person does not sell the goods but consumes such goods in the production or manufacture of articles. The assessment adopted by the original authority is strictly in consonance with this. The decisions relied upon by Learned Counsel to support the valuation adopted by the respondent also sustain recourse to rule 8 in these particular circumstances.

5. Not unsurprisingly, there is no allegation that the computation of value under rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 has ignored or excluded any includable element. Indeed, the cost of the raw material, subsumed in the 'slag' has, undoubtedly, been included in the computation under rule 8 and with such inclusion the discharge of duty liability on the goods cleared to the principal manufacturer incorporates the cost of the material subsumed in the 'slag' that has emerged during the process of manufacture. It could also be said that 'slag' is not a distinct product but is a remnant of the manufacturing process liable to appropriate duty on clearance as such. There is, therefore, no merit in the grounds adduced by Revenue.

6. Accordingly, the appeal of Revenue is dismissed.

(Pronounced in Court on 10/12/2018)

(S K Mohanty)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as0712*