

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1386 of 2010

(Arising out of Order-in-Appeal No. SB/56/Th-I/2010 dated 22.04.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s Gharda Chemicals Ltd.

D1/2, MIDC, Lote Parshuram, Khed,
Ratnagiri, Maharashtra - 415709

.... Appellant

Versus

Commissioner of Central Excise, Thane-I

4th Floor, Navprabhat Chambers, Ranade Road,
Dadar, Mumbai - 400028

.... Respondent

Appearance:

Mr. Punkit Shah, C.A. for the Appellant

Shri A.B. Kulgod, AC Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.A/88524/2018

Date of Hearing: 11.12.2018

Date of Decision: 11.12.2018

Per: S.K. Mohanty

This appeal is directed against the impugned order 22.04.2010 passed by the learned Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of excisable goods falling under Chapter 29 and 38 of the Central Excise Tariff Act, 1985. During

the disputed period, on an intelligence, the Central Excise Officers searched the records/documents maintained by the appellant in its two plants located at Lote Parshuram and Dombivali. On detailed investigation into the matter, the officers found that the appellant had evaded payment of central excise duty on account mis-declaration and by suppressing the proper assessable value on stock transfer of goods from one plant to the other. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 29.09.2006, wherein central excise duty demand of Rs.8,91,129/- was confirmed along with interest and also equal amount of penalty was imposed on the appellant. On appeal, learned Commissioner (Appeals) vide the impugned order 24.02.2010 has upheld the adjudged demands confirmed on the appellant, holding that valuation provisions contained in Rule 8 of the Valuation Rules, 2000 read with Circular No. 643/34/2002 – Cx. dated 01.07.2002 have not been complied with by the appellant. It has further been held that the appellant had adopted the wrong practice of payment of duty on the basis of selling price of goods, instead of adoption of 115% of cost of production of goods, which were stock transferred for further conversion in the other plant.

3. The learned Advocate appearing for the appellant submitted that the Lote unit (Ratnagiri) of the appellant had cleared products namely "Chloropyriphos 20" and "Hamla" to independent buyers and to toll packers for further conversion and that the excise duty on the goods cleared to the toll packers was paid adopting comparable sale price of the goods sold to the independent

buyers. Thus, he submits that adoption of Rule 8 of the Valuation Rules, 2000 by the department for computation of the additional duty liability cannot be sustained. In this context, the learned Advocate has relied upon the Final Order No. A/86011/2018 dated 15.03.2018 passed by this Tribunal in the case of appellant itself, to state that the provisions of Rule 8 *ibid* cannot be applied for determination of the transaction value, when the same were sold to the independent buyers.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. We find that the issue arising out of the present dispute is no more *res integra*, in view of the order dated 13.04.2018 passed by the this Tribunal in the case of the appellant, for the earlier period. By placing reliance upon the Larger Bench judgment in the case of Ispat Industries Ltd. Vs. CCE, Raigad [2007 (209) E.L.T. 185 (Tri.-L.B.)], this Bench of the Tribunal has held that the method of valuation adopted by the appellant is correct. The relevant paragraphs recorded in the order dated 13.04.2018 are extracted herein below:

"4. We have carefully considered the submissions made by both sides. The fact of the case is not in dispute that the respondents have cleared the same goods partly to various customers on sale basis and partly on their own unit for repacking. In case of independent sale of the goods, the duty was paid on transaction value. As per Section 4(1)(a), the duty is chargeable on the transaction value. However, as per Section 4(ii)(b) and rules made thereunder, if the price is not ascertainable under Section 4(1)(a) then the value should be arrived at on the basis of Central Excise Valuation Rules, 2000. In

the present case, in respect of the same goods since part of the said goods was sold independently to unrelated buyer, the transaction value of the said goods is available. Therefore, the said transaction value will prevail over the value in terms of Rule 8 of Central Excise Valuation Rules, 2000. This issue has been considered by the Larger Bench of this Tribunal in the case of Ispat Industries Ltd (supra), wherein the Larger Bench has observed that Rule 4 of Central Excise Valuation Rules, 2000 in any case to be preferred over provisions of Rule 8 ibid, not only for the reason that they occurred first in sequential of Valuation Rules but also for the reason that in a case where both rules are applicable, application of Rule 4 ibid will lead to 4 determination of value, which will be more consistent and in accordance with parent statutory provisions of Section 4 of Central Excise Act, 1944.

5. Following the ratio of the aforesaid Larger Bench's decision, the valuation adopted by the respondent i.e. the transaction value of the same goods sold to independent buyer is a correct value. Hence, the valuation under Rule 8 of Central Excise Valuation Rules, 2000 is not applicable in the facts of the present case. Accordingly, the impugned order is upheld and Revenue's appeal is dismissed."

7. In view of the above settled position of law, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant.

(Operative portion of the order pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(S. Srivastava)
Member (Technical)

Hemant