CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1165 of 2012

(Arising out of Order-in-Appeal No. YDB/49/LTU/MUM/2012 dated 25.04.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai)

M/s. Lubrizol India Pvt. Ltd. **Appellant**
Plot No. T-6, MIDC,
Taloja, Dist. Raigad

Vs.

Commissioner of CE & ST (LTU), Mumbai **Respondent**
8th Floor, Centre-I, World Trade Centre,
Cuffe Parade, Mumbai 400 005.

Appearance:

Shri H.G. Dharmadhikari, Advocate, for the Appellant
Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 20.12.2022
Date of Decision: 20.12.2022

FINAL ORDER NO. A/86280/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. YDB/49/LTU/MUM/2012 dated 25.04.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No. 22/97-98/AC dated 20.11.1997 of the Assistant Commissioner of Central Excise, Panvel-I Dn., to the extent of confirming the demand and reducing the penalty to Rs.25,000/-,

1.2 The Assistant Commissioner by his order-in-original has held as follows:-

"*ORDER*

1. I confirm the demand of Rs.7,55,481.00 as the short paid duty on the excisable goods valued Rs.40,08,282.00 cleared by

M/s. Lubrizol India Ltd., Taloja during the period Jan'97 to May'97 under Section 11 A of Central Excise Act, 1944, read with Rule 9 and 49 of C.Ex. Rules, 1944.

2. I impose a penalty of Rs.1,00,000(Rupees One Lakh only) under rule 173 Q C.Ex. Rules, 1944.

3. I direct M/s. Lubrizol India Ltd., Taloja to pay interest @ 20% p.a. on the differential duty under Section 11 AA of CES Act, 1944."

2.1 Appellant is manufacturing EPA additives falling under Chapter 38. These goods were cleared by them to their sister concern for its consumption for further process and manufacture of finished goods. The assessable value of the goods so cleared for captive consumption to the sister concern was determined in terms of Rule 6(b)(ii) of the Central Excise Valuation Rules, 1975. Revenue was of the opinion that the appellant has undervalued to the extent of 9.9% on account of non-addition of profit margin and 2% on account of administrative overheads. Accordingly a show cause notice was issued to the appellant.

2.2 This show cause notice was adjudicated as per the order indicated in para 1.2 above. Appeal filed by the appellant was dismissed by the Commissioner (Appeals) vide his order dated 18.02.2000.

2.3 Against this order, appellant filed appeal to the Tribunal which remanded the matter vide order No. CI/1587/QZB/2001 dated 30.05.2001.

2.4 In the remand proceedings the Commissioner (Appeals) vide order dated 20.07.2001 allowed the appeal of the appellant taking note of the C.A. certificates produced.

2.5 Against this order, Revenue filed appeal to the Tribunal which vide order No. A/866-867/2007/C-I(EB) dated 22.11.2007 remanded the matter back to the Commissioner (Appeals).

2.6 In terms of this remand order, the Commissioner (Appeals) again adjudicated this matter as per the impugned order. Aggrieved by the impugned order, appellant has preferred this appeal.

3.1 We have heard Shri H.G. Dharmadhikari, Advocate for the appellant and Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:-

- The issue involved in the present case is with respect to determination of value under Rule 6(b)(ii) of the Valuation Rules.
- Appellants had produced the copy of C.A. certificates determining the value as per Rule 6(b)(ii). Tribunal had remanded the matter in earlier round for consideration of the C.A. certificates.
- No sustainable ground has been stated by the Commissioner (Appeals) in the remand proceedings for rejection of the C.A. certificates when the certificate itself records that it is based on the audited statement of accounts for the respective years. Further there is a note attached along with the said C.A. certificate stating that the certificates are based on financial and commercial principles. The rejection of C.A. certificates is untenable as has been held in the following decisions:-
    - Supreme Industries [2017 (358) ELT 318 (Tri.-Mumbai)]
    - Golden Tobacco Ltd. [2019 (370) ELT 629 (Tri.-Mumbai)]
    - Clariant India Ltd. [2017 (351) ELT 329 (Tri.-Mumbai)]
    - Chackolas Spinning and Weaving Mills Ltd. [2015 (322) ELT 167 (SC)]
    - Hindustan Zinc Ltd. [2008 (232) ELT 687 (Tri.-Del.)]
    - India Yamaha Motor Pvt. Ltd. [2014 (302) ELT 394 (Tri.-Del.)
- The situation is revenue neutral as whatever amount of additional duty would be available to their sister concern as Modvat credit. In fact they have deposited the duty as demanded and also availed the credit of the duty paid.

- Thus the present appeal is only in respect of the demand for interest and penalty imposed. Since on merits the demand cannot be sustained, the liability to interest would be waived off and also the penalty.

3.3 Learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Commissioner (Appeals) for deciding against the appellant has in para 9 of the order recorded as follows:-

"9. In de novo proceedings, the Commissioner (appeals), Mumbai-VII, vide Order No.ZBN/35/M.VII/2001 dated 20.7.2001, observed that the CA certificate revealed that the cost price was arrived on the basis of principles of costing, thereby including the administrative and other overheads including the notional profit, thus the price arrived at by the appellant was correct and in accordance with the requirements of the department. This was not accepted by the department, and it was contended that the Chartered Accountant's Certificate was not supported by any material evidence. The CESTAT vide Order dated 27.11.2007 agreed with the contention of the revenue that particulars/back up materials should also be examined before coming to the conclusion regarding acceptance of the cost declaration by the assessee. I have seen the two Chartered Accountant's certificates both dated 23.9.1998. It shows an inclusion of 9.9% notional profit and 2.2% administrative overhead expenses. However, the appellant has not produced any particulars or back up material to prove the basis of cost thus arrived at. It is seen that after such inclusion of the percentage of notional profit and administrative overhead, the value arrived at under Rule 6(b)(ii) as per the CA's certificate is less than the value declared. I do not find it convincing as the basis for arriving at the raw material cost and the administrative overhead and other expenses is not supported by material evidence. I, therefore, do not accept the determination of the cost determined on the basis of the Chartered Accountant

Certificate. It is also observed that the appellant has paid the differential duty demanded vide the impugned order, which is not disputed."

4.3 Appellant has produced the C.A. certificates which were produced before the Commissioner (Appeals) in the earlier proceedings and in the proceedings in remand. The said C.A. certificates are reproduced below:-

R. B. JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

Tel. Off. : 618 12 51
614 73 37
Fax : 618 12 51
Tel. Resi. : 616 12 47

108, Shyam Kamal 'C' Bldg.,
Agarwal Market, Vile Parle [E]
MUMBAI-400 057

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/S Lubrizol India Ltd T 6 M I D C Taloja had manufactured Extreme Pressure Additive (Chapter Sub Heading No. 3811.00) specifically known as 156.10 & 156.00 during the year 1.04.1996 to 31.03.1997 which they have cleared for their Captive Consumption at their plant at Turbhe.

The value of goods as determined under Rule 6(b)(ii) based on audited statements of accounts for the above referred year is as under :-

		156.10	156.00
		Rs.per Kg.	Rs.per Kg
Raw Material (Cost)		59.83	61.20
Overheads :			
Administrative	Rs. 2.24.		
Others	Rs. 7.39	9.63	9.63
Total Cost		69.46	70.83
Notional Profit @9.9% (As estimated by Excise Department)		6.87	7.01
Value of goods Under Rule 6 (b) (ii)		76.33	77.84
Value Declared		81.00	102.00

For R B Jain & Associates
Chartered Accountants

(Yogesh K.Chaturvedi)
Partner

Date: 23rd.Sept.1998.
Place Navi Mumbai.

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MUMBAI-400 057

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/S Lubrizol India Ltd T 6 M I D C Taloja had manufactured Extreme Pressure Additive (Chapter Sub Heading No. 3811.00) specifically known as 156.10 during the year 1.04.1997 to 31.03.1998 which they have cleared including a consignment of 140320 Kgs. exported to M/S Lubrizol Corporation France against which Rs. 10785785/- was received which works out to Rs. 76.87 per Kg. and balance for their Captive Consumption at their plant at Turbhe.

The value of goods as determined under Rule 6(b)(ii) based on audited statements of accounts for the above referred year is as under :-

		Rs.per Kg.
Cost of Materials		66.83
Overheads :		
Administrative	Rs. 2.66	
Others	Rs. 8.28	10.94
Total Cost		77.77
Notional Profit @9.9% (As estimated by Excise Department)		7.70
Value of goods Under Rule 6 (b) (ii)		85.47
Value Declared		87.50

For R B Jain & Associates
Chartered Accountants

Yogesh K. Chat

(Yogesh K Chaturvedi)
Partner

Date: 23rd,Sept,1998
Place Navi Mumbai.

R. B. JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

. : 614 73 37
618 12 51
x : 618 12 51
(R) : 616 12 47

108, Shyam Kamal, 'C' Building,
Agarwal Market, Vile-Parle (E),
Mumbai-400 057.
E-mail : rbjainassociates@vsnl.com

TO WHOMSOEVER IT MAY CONCERN

This has reference to the Certificates dt.23.9.98 and 12.1.99 issued by us on the request of the company certifying the value of Extreme Pressure Additive (EPA) manufactured by M/s. Lubrizol India Ltd. during the period 01.04.1996 to 31.03.1997, 01.04.1997 to 31.03.1998 and 01.04.1998 to 30.09.1998 at their Taloja Plant for Captive Consumption for their Turbhe Plant. We issue the following clarifications:-

1. The value of Extreme Pressure Additive was determined on the basis of costing practices, procedures and systems followed by the said company for financial accounting and valuation of stocks in accordance with the accounting policies adopted by the company and disclosed in their financial accounts. The Central Government has not prescribed the maintenance of cost records under Section 209(1)(d) of the Companies Act, 1956, for any of the products manufactured by the Company.

2. As the company has submitted to us that Taloja Unit was set up not only for the purpose of manufacturing intermediate comp[illegible] of Extreme Pressure Additive (EPA) for captive consumption but also for future expansion needs of the Company, there was under utilisation of [illegible]astructure facilities and production capacity created at the Taloja Plant. The allocation of overheads were done taking total overheads and total production of both the units together as one entity. Since the Taloja Unit is not a separate profit center but one of intermediate process plant and the activity carried out at Taloja is intermediate process integrated to final activity carried out at Turbhe where the entire process of manufacturing gets completed. Therefore, the costing is to be based on total and not on stand alone for Taloja Plant. Therefore, the overall management and control is exercised from out of Taloja Plant and related expenses are incurred at Turbhe Plant including the supervisory staff such as internal audit and statutory audit teams. It was appropriate for us to find merit in the arguments put before us by the company and which were finally accepted by us. The practice is deemed to be permitted unless specifically prohibited.

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CHARTERED ACCOUNTANTS

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3. It may be pertinent to mention once again that the company is engaged in the manufacture of finished chemical additives and Taloja unit produces only intermediates required for manufacture of finished chemical additives and no finished additive is manufactured at Taloja unit and all the intermediates of chemical additives is transferred to Turbhe unit for its captive consumption and the intermediates have no domestic markets.

Thus certificates issued were based on financial and commercial principles and standard principles of accounting and costing.

FOR R.B. JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS
Yogesh K. Chaturvedi
YOGESH K. CHATURVEDI
PARTNER

Place: Mumbai
Date: 24/08/2010

4.4 From perusal of the above C.A. certificates it is quite evident that these are based on audited statements of accounts for the referred years and include administrative costs and notional profit as referred to in the proceedings initiated against the appellant. The above C.A. certificates clearly show that the C.A. had issued these certificates only on the basis of audited financial records of the company. Accordingly in our view the C.A. certificates could not have been rejected for the reason stated in the impugned order.

4.5 The value declared for assessment as per these C.A. certificates throughout has been higher than the value as determined under Rule 6(b)(ii) after taking into account the addition proposed duty by the Revenue.

4.6 Be as it is as the appellant has already paid the duty as demanded, we are not inclined to pass any further order on the merits of the case in regard to determination of the value of the goods. In our view the value as determined by the appellant at the time of the clearance of the goods on the basis has now been certified to be above the value determinable under Rule 6(b)(ii).

4.7 Taking note of the above, we are of the view that there was no additional duty liability on the appellant. Accordingly the demand for interest cannot be sustained. However, as the appellant has paid the duty as demanded and claimed the credit of the duty paid in their sister concern, the demand made cannot be set aside for this reason.

4.8 As there is no violation of any provision of the Central Excise law and in view of the discussions as above, there is no case for imposition of any penalty on the appellant.

5.1 Appeal is allowed, modifying the impugned order to the extent of setting aside the demand for interest and penalty imposed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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