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

Excise Appeal No. 86109 of 2016

(Arising out of Order-in-Original No. 69/SHH/PC/RGD/2015-16 dated 04.02.2016 passed by the Commissioner of Central Excise, Raigad)

M/s. Unichem Laboratories Ltd. **Appellant**
99, MIDC Industrial Area, Dhatav, Roha 402 116.

Vs.

Commissioner of CE & ST, Raigad **Respondent**
Plot No.1, Sector 17,
Khandeshwar, Navi Mumbai 410 206.

Appearance:

Shri Parth Parikh, Advocate, for the Appellant
Shri Xavier Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 03.03.2023
Date of Decision: 03.03.2023

FINAL ORDER NO. 85723/2023

PER: SANJIV SRIVASTAVA

This appeals is directed against order in original No 69/SHH/PC/RGD/2015-16 dated 04.02.2016. By the impugned order Commissioner has held as follows:

"ORDER

a) I confirm the demand of Rs 51,34,493/- (Rupees Fifty one lakhs thirty four thousand four hundred & ninety three only) under the proviso to Section 11A(1) of CEA 1944 & Section 11A(5) of CEA 1944 as applicable during the relevant period and order its recovery from them under the provisions of Section 11A (2)/ Section 11A(10) of the Central Excise Act 1944.

b) I order recovery of interest at the appropriate rate on the amount confirmed at Sr. No. (a) above, under the provisions of erstwhile Section 11AB of the Central Excise Act, 1944.

c) I impose a penalty of Rs.8,83,563/- (Rupees Eight lakhs eighty three thousand five hundred & sixty three only) under the *provisions of Section 11AC of CEA 1944 for the period from October 2009 to 7.04.11.*

d) I impose a penalty of Rs.21,25,465/- (Rupees Twenty one lakhs twenty five thousand four hundred & sixty five only) under the provisions of Section 11AC(1)(b) of CEA 1944 for the period from 8.04.11 to Nov. 2013.

e) After taking into consideration the amounts confirmed as reflected at (a) above, if the entire duty & interest determined at (a) & (b) above is paid within 30 days of the date of communication of this order, then the total amount of penalty to be paid shall be 25% of the duty determined at (a) above provided the said penalty is also paid within the above specified period of 30 days as per the provisions of proviso to Section 11AC of CEA 1944/Section 11AC(1)(c) of CEA 1944."

f) I drop the remaining demand of Rs 13,53,608/-(Rupees Thirteen lakhs fifty three thousand six hundred & eight only) in view of re- quantification.

2.1 Appellant are manufacturer of excisable goods falling under CH. 29 & 38 of the Central Excise Tariff Act, 1985 (CETA,1985). For the purpose of payment of Central Excise duty on their manufactured goods they availed Cenvat Credit of the Central Excise duty paid on the inputs as well of the Service Tax paid on the input services received by them, in terms of the facility extended to the manufacturers of excisable goods under the provision of Cenvat Credit Rules (CCR), 2004.

2.2 During the course of the scrutiny of the records at the time of EA-2000 Audit, it was observed that the assessee had been transferring their finished goods to their sister units - Unichem Laboratories" Goa- I, Goa-II, Ghazaiabad, Baddi, Baddi II, Sikkim etc., where the same were consumed for further manufacture by the transferee units. Appellant were Central Excise duty on transaction value, determined on the basis of the price at which the similar goods were cleared to independent buyers. However revenue was of the view that they should have paid duty on the value determined as per Rule 8 of the Valuation Rules, 2000.

2.3 Appellant vide their letter dated 06-10-2014 informed that:

i) they have a practice to clear the goods at last available price at which it was sold to independent buyer for captive consumption and

ii) when such independent buyer's price was not available, then they obtained CAS-4 certificate from Chartered Accountant. CAS-4 certificate was based on the figures available on the latest (last) Balance Sheet.

2.4 Revenue was of the view that since the clearance was to their units, the valuation of the goods had to be determined under Rule of 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4(1)(b) of central excise act 1944. It appeared that the assessee had contravened the provisions of Section 4(1)(b) of Central Excise Act, 1944, Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 in as much as they failed to determine correct value of their goods cleared to their units; Rule 6 of Central Excise Rules, 2002 in as much as they failed to determine and assess correct duty payable on their goods; Rule 8 of Central Excise Rules, 2002 in as much as they failed to determine and pay correct duty on due date. Since the assessee did not produce the proper CAS-4 Certificate / value and proof of payment, invoice value was adopted as the cost of production.

2.4 A show cause cum demand notice dated 31.10.14 was issued them asking them to show cause as to why:

i. The differential Central Excise Duty of Rs. 64,88,101/- Rs. Sixty four lakhs eighty eight thousand one hundred one only (Rs. 62, 99, 127/- BED + Rs. 1,25,983 Ed. Cess +62991 - SHEC) for the period from 2009-10 to Nov 2013. should not be demanded and recovered from them under proviso to Section 11A(1) of Central Excise Act, 1944 as it stood during the relevant time and Section 11A(4) of the Central Excise Act, 1944;

ii. Interest, at the appropriate rate should not be demanded and recovered from them under section 11AA/11AB of the Central Excise Act 1944;

iii. Penalty should not be imposed upon them, under section 11AC of the Central Excise Act, 1944 and/or Rule 25 of CER, 2002.

2.5 This show cause notice has been adjudicated as per the impugned order. Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Parth Parikh, Advocate for the appellant and Shri Xavier R Mascarenhas, Superintendent Authorized Representative for the revenue.

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

4.2 We find that issue involved in the present case is in respect of the determination of the value of the goods cleared by the appellant to their sister concerns on stock transfer basis for use in further production of finished goods, when the same are also sold by the appellant to independent buyers. The issue is no longer res-integra. A larger bench of tribunal has in case of Ispat Industries [2007 (209) ELT 185 9T-LB)] held as follows:

"7. We also agree with the submission of the assessee that even if both the rules, i.e. Rule 4 and Rule 8, were applicable, it would only be logical to read and apply the various rules in the Central Excise Valuation Rules in a sequential manner. Though the Central Excise Valuation Rules, 2000 do not specifically prescribe such sequential application of various rules, the same, in our view, is the only reasonable way to read these rules. Any other interpretation would only lead to confusion and chaos. Since the applicability of Rule 4 is not really in dispute, there was no need to look further and regardless of the applicability or otherwise of Rule 8, the assessable value should have been determined in terms of Rule 4 of the Valuation Rules.

8. The conclusion that we are drawing in the present case would lead to determination of a value which, in our view, will not only be reasonable but also consistent with the provisions of Section 4 of the Central Excise Act. We would, at this stage, draw support from the judgment of the Supreme Court in the assessee's own case, as reported in 2006 (202) E.L.T. 561, wherein the Court applied "The Gunapradhan Principle" in interpreting the Customs Valuation Rules. We have kept in mind the following observations of the Court in coming to our above conclusion :

"26. In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the

former, because adopting the latter will make the rule ultra vires the Act.

27.................

36. In our opinion, the Gunapradhan principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14. We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9 (2) are the 'accessories'. The 'accessory' must, therefore, serve the 'primary'."

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

(a) the provisions 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 provisions 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 Rules 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."

4.3 Following the said decision we do not find any merits in the impugned order and set aside the same.

5.1 Appeals is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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