CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH

Excise Appeal No. 87028 of 2013

(Arising out of Order-in-AppealNo. BR (151) Th-I/13dated 04.03.2013passed by the Commissioner ofCentral Excise (Appeals), Mumbai Zone-I)

Commissioner of Central Excise, Thane-I
4th Floor, Navprabhat Chambers, ...Appellant
Ranade Road, Dadar (West),
Mumbai – 400 028.

VERSUS

Clariant Chemicals (I) Ltd. ....Respondent
Sandoz Baug, Kolshet Road,
Thane – 400 607.

APPERANCE:

Shri Sunil Kumar Katiyar, Assistant Commissioner for the Appellant
None for the Respondent

CORAM:

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

FINAL ORDER NO. A/85851/2023

Date of Hearing:21.04.2023
Date of Decision:21.04.2023

PER: BENCH

This appeal is filed by the Revenue is directed against order-in-appeal no. BR (151)Th-I/13 dated 04.03.2013. By impugned order Commissioner (Appeals) held as follows:

'I set aside the Order-in-Original and hold that the assessment is to be finalised based on order of the Larger Bench of Hon'ble CESTAT in the case of Ispat Industries Ltd. vs Commissioner of C. Ex., Raigad [2007 (209) ELT 0185 Tri.-LB].'

1.2 Tribunal as vide Final Order No. A/252/2011/EB/C-II dated 11.03.2011 remanded the matter back to original authority for consideration of the matter on the basis of the cost data submitted by the appellant.

1.3 As per the remand order matter was again considered by the original authority holding as follows:

'In the facts and circumstances of this case, as has been noticed, analyzed, discussed and found upon -

i) I determine and confirm the differential payable duty liability of Rs. 1,22,06,690/- (Rupees One Crore Twenty Two Lakhs Six Thousand Six Hundred Ninety Only) under Section 11A(2) [now Section 11A(10)] of the Central Excise Act, 1944 and direct M/s Clariant Chemicals (India) Limited, Mumbai Agra Road, Balkum, Thane - 400 607 to pay them forthwith alongwith accrued interest in terms of and in accordance with Section 11AB [now Section 11AA] of the Central Excise Act, 1944; and

ii) I order appropriation of Rs. 18,38,334/- (Rupees Eighteen Lakhs Thirty Eight Thousand Three Hundred Thirty Four Only) against the demand confirmed at sr. no. 1 above.

iii) I impose a penalty of Rs. 1,22,06,690/- (Rupees One Crore Twenty Two Lakhs Six Thousand Six Hundred Ninety Only) under Section 11AC [now Section 11AC(1)(a)] of the Central Excise Act, 1944 upon M/s Clariant Chemicals (India) Limited, Mumbai Agra Road, Balkum, Thane - 400 607.'

1.4 This order was challenged by the appellant before Commissioner (Appeals). The Appeal filed was disposed of by Commissioner (Appeals) as per the impugned order.

2.1 Revenue has filed this appeal on following grounds:

(A) The Order-in-Original has come to be passed following the CESTAT order No. A/252/11/EB/C-II dated 11.03.2011 wherein hon'ble CESTAT has directed the original authority to examine the cost data supplied by the appellants for the year 2004-05 and 2005-06 and thereafter to pass appropriate order in accordance with law. It was further directed that he shall re-examine the dispute afresh for all the periods involved in the matter after giving a reasonable opportunity to the appellants to present their case. It is submitted that the Adjudicating authority followed the directions of the Hon'ble CESTAT and after according the opportunity to the assessee to

present their case afresh, has confirmed the duty liability of Rs. 1,22,06,690/- along with penalty and interest as applicable.

(B) Commissioner (Appeals) has erred in setting aside the Order-in-Original with the directions to finalise the assessment based on order of the Larger Bench of Hon'ble CESTAT in the case of Ispat Industries Ltd. vs Commissioner of Central Excise, Raigad [2007 (209) ELT 0185 Tri.-LB] when infact, the Adjudicating authority followed the directions of the Hon'ble CESTAT given vide order No. A/252/11/EB/C-II dated 11.03.2011 and finalised the assessment.

3.1 None appeared for the Respondent as the issue is in very narrow compass. We have heard the Shri Sunil Kumar Katiyar, Assistant Commissioner (AR) for the Revenue.

4.1 Respondent are having two factories one at Thane and another at Roha. From their Thane factory they are clearing goods for captive consumption on the basis of stock transfer to Roha unit on payment of duty. The value as determined for the stock transfer for these goods on which the Central Excise duty was paid is disputed by the revenue and it was observed that the excisable value to be determined as per Section 4(1)(b) of the Central Excise Act, 1944 read Rule 8 of the Central Excise Valuation Rules, 2000. In the initial round when the matter was considered by the Tribunal following was observed

'Considering the submissions made by both sides we find that during the course of adjudication the appellants have supplied the cost data supported by Chartered Accountant's Certificate for the period 2004-05 and 2005-06. We have also examined the adjudication order as well as the appellate authority's order, there is no whisper about the certificates and cost data supplied by the appellants for these periods. Therefore, the matter needs examination at the end of the adjudicating authority to consider the cost data supplied by the appellants during adjudication.'

4.2 On the same issue Larger Bench of Tribunal in the case of Ispat Industries Ltd. Vs. Commissioner of Central Excise, Raigad [2007 (209) ELT 0185 Tri. – LB]. Tribunal has observed as follows :

'(a)Hon'ble CESTAT in the case of Ispat Industries Ltd. vs Commissioner of C. Ex., Raigad 2007 (209) ELT 0185 Tri.-LB after taking into consideration CBEC Circular No. 643/34/2002- CX., dated 1-7-2002 issued under F. No. 6/39/2000-CX 1 had held that:

"i) 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.

ii) 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".*

iv) 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 & 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 Taking note of the above observation made by the Larger Bench of Tribunal. Commissioner (Appeal) has directed adjudication authority to reconsider the issue in line of above decisions which is declaration of law on the subject.

4.4 We do not find any merits in grounds taken by the Revenue for filing this appeal.

5.1 Appeal filed by the Revenue is dismissed.

(Dictated &Pronounced in open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr.Suvendu Kumar Pati)
Member (Judicial)

Sujeet