CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 90000 of 2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/089-92/14-15 dated 28.08.2014 passed by the Commissioner, Central Excise & Customs, Nagpur (Appeals))

M/s Vinar Ispat Ltd.
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur-440 001
........Appellant

VERSUS

Commissioner of Central Excise, Nagpur
Telangkhedi Road, Civil Lines,
Post Box No. 81, Nagpur-440 001
........Respondent

WITH

Excise Appeal No. 90001 of 2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/089-92/14-15 dated 28.08.2014 passed by the Commissioner, Central Excise & Customs, Nagpur (Appeals))

M/s Vinar Ispat Ltd.
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur-440 001
........Appellant

VERSUS

Commissioner of Central Excise, Nagpur
Telangkhedi Road, Civil Lines,
Post Box No. 81, Nagpur-440 001
........Respondent

AND

Excise Appeal No. 90002 of 2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/089-92/14-15 dated 28.08.2014 passed by the Commissioner, Central Excise & Customs, Nagpur (Appeals))

M/s Vinar Ispat Ltd.
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur-440 001
........Appellant

VERSUS

Commissioner of Central Excise, Nagpur
Telangkhedi Road, Civil Lines,
Post Box No. 81, Nagpur-440 001
........Respondent

AND

Excise Appeal No. 89998 of 2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/089-92/14-15 dated 28.08.2014 passed by the Commissioner, Central Excise & Customs, Nagpur (Appeals))

Mr Vishnu Kumar Ratanlalji Oza
(Managing Director of M/s Virnar Ispat limited) ....Appellant
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur-440 001

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
Telangkhedi Road, Civil Lines,
Post Box No. 81, Nagpur-440 001

AND

Excise Appeal No. 89999 of 2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/089-92/14-15 dated 28.08.2014 passed by the Commissioner, Central Excise & Customs, Nagpur (Appeals))

Mr Vishnu Kumar Ratanlalji Oza
(Managing Director of M/s Virnar Ispat limited) ....Appellant
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur-440 001

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
Telangkhedi Road, Civil Lines,
Post Box No. 81, Nagpur-440 001

APPERANCE:

Shri Rajesh Oswal, Advocate with
Ms Hanisha Jatania, Chartered Accountant for the Appellant

Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 87220-87224/2023

Date of Hearing: 07.11.2023
Date of Decision:

PER: DR. SUVENDU KUMAR PATI

Conformation of demand by the Commissioner (Appeals) Central Excise & Customs, Nagpur by adding scrap value to the assessable value, at which Appellant job worker had cleared the intermediate product to the input supplier cum Principal manufacturer, along with proportionate interest and penalty is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a manufacturer of angels, channels, flat bars, round, Joints (Rolled Products for short) of Iron and Steel and it used billets/blooms/slabs as input/ raw material. It had also manufactured rolled products on job work basis. During the disputed period between October 2009 and February 2013 it had manufactured rolled products on job work basis for Larsen & Toubro (L&T) and KEC International Ltd. (KEC). For the period up to July 2012, Appellant had paid Excise Duty on clearance of rolled products to the input suppliers/ principal manufacturer on assessable value determined in terms of Rule 8 of the Valuation Rules, 2000 by adding 10% to the cost of production and from August 2012 onwards, at the instance of Respondent-Department, it had cleared rolled products to the input supplier by determining assessable value as per the formula developed in Ujagar Prints decision but department did not agree with such mode of payment and made a demand by including scrap value with conversion charges and re-determining assessable value accordingly.

On that basis it had raised demand periodically through several Show-cause notices. The matter was adjudicated by Order-in-Original dated 31.01.2011, 07.01.2013 and 20.02.2014 where-in demand of Rs.14,24,946/-, Rs.45,30,735/- and Rs.57,97,823/- along with interest and equal penalty got confirmed in disposing of six Show-cause notices. Personal penalty was also imposed on Mr. Vishnu Kumar Ratanlalji Oza, Managing Director in Order-in-Original dated 07.01.2013 and 20.02.2014. Unsuccessful attempts by the Appellant Company and its Managing Director before the Commissioner (Appeals) resulted in filing of the above referred five appeal before this Tribunal against common Order-in-Appeal dated 28.08.2014, as noted above.

3. During course of hearing of the appeal, Learned Counsel for the Appellant Shri Rajesh Ostwal Advocate, by referring to this Tribunals Final Order No. 85749-85750/2023 dated 15.02.2023 involving period from F.Y. 2003-2004 to F.Y. 2008-2009, has argued that identical facts and allegations as in the present appeals, were also dealt by this Tribunal in these appeals of the Appellant and following Judicial precedent set by this Tribunal in the case of *Raaja Magnetics Ltd. [2017-TIOL-1420-CESTAT-Bang], Reclamation Welding ltd. [0214(308)ELT 542 9T-Ahmd], Osho Forge Ltd. [2017(3) TMI 1442-CESTAT Chandigarh], P R Rolling Mills [2010 (249) ELT 232 (T-Bang) affirmed at [2010(260)ELT A84 (SC)]*, the issue was set at rest in setting aside the demand raised with inclusion of sale price of scrap in the assessable

value. He further submitted that since input suppliers/manufacturers did not resale the goods received from the job worker as they have further processed the same, determination of the assessable value on the basis of provision contained in Rule 10A(iii) of the Valuation Rules, 2000 was rightly applied in taking the assessable value at 110% in terms of Rule 8 which is in conformity to the Circular of the Central Board of Excise & Customs issued Vide F. No. 6/15/2009-CXI dated 31.03.2010 as the manufacturers (input suppliers) had capitively consumed the goods supplied by the job workers. Alternate argument of the Learned Counsel for the Appellant was that no part of the demand was sustainable if the procedure mentioned under Rule 4(5)(a) of the CENVAT Credit Rules, 2004 was to be followed as has been held by the Hon'ble Supreme Court in its judgment on *International Auto* reported in *2005 (183) ELT 239 (SC)* that finds approval also in the case of *P. R. Rolling Mills Ltd. Vs CCE, 2010 (260) ELT A84 (SC),* which is consistently followed since 2010 till date for which the order of the Commissioner(Appeals) is unsustainable in both law and facts. With reference to Judicial decision of *Ad-manum Packaging Vs. CCE-2016 (341) ELT 348 (T), CCE Vs. Reclamation Welding Limited-2014 (308) ELT 542 (T), CCE Vs. Raja Magnetic Limited-2017-TIOL-1420-CESTAT-BANG, Standard Drums and Barrels Vs. CCE-Final Order No. A/86853-86854/2018 dated 28.06.2018, Sigma Punch Vs. CCE 2018-TIOL-1347-CESTAT-BANG, CCE Vs. Rane Brakes Lining-2018-TIOL-1058-CESTAT-MAD, Ghatge Patil Vs. CCE-2014-TIOL-1760-CESTAT-MUM, Makwuds India Vs. CCE-*

2018 (6) TMI 707 (T), Dymos Lear Automotive Vs. CCE-2018 (4) TMI 1229 (T), he rests his case in requesting to follow the Judicial precedent that has held in clear terms that the value of scrap need not be included in the assessable value. Concerning personal penalty on Managing Director Mr Oza, he took a stand that without an order for confiscation of the goods when determination of the assessable value of goods at job workers end was being in hegemony, imposition of personal penalty on the Managing Director was unsustainable.

4. In response to such submission, Learned Authorised Representative for the Respondent-Department Shri Sunil Kumar Katiyar AR, argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and drawn our attention to the fact that following the decision of the Hon'ble Supreme Court passed in the case of *General Engineering Works Vs. CCE* reported in *2007 (212) ELT 295 (SC),* learned Commissioner (Appeals) had given his finding that needs no interference by this Tribunal. Learned Counsel for the Appellant objected to the argument by saying that after General Engineering Works judgment, in the same month on 17.03.2005 judgment of the Hon'ble Supreme Court in International Auto [2005 (183) ELT 239 (SC)] case was pronounced that has been followed in other subsequent judgments and referring to the said General Engineering Works only, CESTAT passed P.R. Rolling Mills order that got its final affirmation by the Hon'ble Supreme Court settling the dispute

at rest in declaring that value of scrap retained by job worker need not be included in the assessable value as by following procedure of Rule 4(5)(a) of the CENVAT Credit Rules, 2004, no duty was required to be paid at the job workers end.

5. We have gone through the case records and took note of the submissions as made above with reference to Judicial decisions of this Tribunal. We have already passed an order in the Appellant's own case for its earlier period holding that money value of the scrap retained by the Appellant does not represent additional consideration for the Appellant and it is not liable to be included in the assessable value of the job worked goods, being cleared on payment of duty to the manufacturer. There is no substantial change of law in the meantime except inclusion of Rule 10(A) which CBEC have clarified vide its Circular dated 31.03.2010 that once goods manufactured by job workers are not sold by the Principal Manufacturer but are consumed by the Principal manufacturer, Provision of Rule 8 of Valuation Rules, 2000 that provides for determination of value on the basis of 110% of the cost of production is required to be adopted, besides the facts that ever since the judgment of P.R. Rolling Mills passed way back in 2010, it has been consistently held by the Judicial Authorities that additional scrap value would not determine the final assessable value. Therefore, in carrying forward the Judicial precedent set by this Tribunal that got its affirmation by Hon'ble

Supreme Court and in furtherance of our findings given for the earlier period in respect of the assesse appellant, we pass the following order.

THE ORDER

6. The appeals are allowed and the order passed by the Commissioner (Appeals) in Order-in-Appeal No. NGP/EXCUS/000/APPL/089-92/14-15 dated 28.08.2014 is here by set aside with consequential relief, if any.

(Order pronounced in the open court on ……………...)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Kajal