CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87134 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/217/15-16 dated 01.07.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Nagpur)

M/s Gupta Metallics & Power Ltd. **.... Appellant**
6th Floor, Gupta House, RNT Marg,
Civil Lines, Nagpur – 440 001

Versus

Commissioner of Central Excise, Nagpur **.... Respondent**
Civil Lines, Telangkhedi Road, Nagpur – 440 001

Appearance:

Shri P.V. Sadavarte, Advocate for the Appellant

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85727/2024

Date of Hearing: 29.07.2024
Date of Decision: 29.07.2024

Per: S.K. Mohanty

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of Sponge Iron, falling under Tariff Item No. 7203 10 00 of the First Schedule to the Central Excise Tariff Act, 1985. For the purpose of manufacture of excisable goods, the appellant got itself registered with the Central Excise Department. During the process of manufacture of the said finished product, the impurities in the form of lumps and fines were also generated, which the appellant removed on payment of Central Excise duty. The

appellant removes those sponge iron lumps and fines, owing to the reason that those products are no more usable for manufacture of the resultant final product and ultimately, would also affect the process of manufacture. During the disputed period, the appellant had cleared lumps and fines to M/s Nandkishor Steel Industries (P) Ltd., Butibori, who is a related concern of the appellant. The Department conducted an investigation at the factory of the appellant on the ground that in the guise of the high grade sponge iron, the appellant had removed low grade sponge iron lumps and fines to the said related party. On the basis of investigation, a show-cause notice dated 07.06.2013 was issued to the appellant, proposing for recovery of the differential Central Excise duty liability. The matter arising out of the show-cause notice dated 07.06.2013 was adjudicated by the Additional Commissioner of Central Excise, Customs & Service Tax vide order dated 30.06.2014, wherein Central Excise duty demand of Rs.15,81,077/- along with interest was confirmed and equal amount of penalty was imposed on the appellant. On an appeal against the said adjudication order dated 30.06.2014, the learned Commissioner (Appeals) vide the impugned order dated 01.07.2015 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submitted that the show-cause proceedings are barred by limitation of time. In this context, he submitted that the Department was aware of the transactions made between the appellant and its related party and has also recorded the statement of the appellant on 30.09.2008. Thus, the SCN dated 07.06.2013 issued for the period May, 2008 to

September, 2009 is clearly barred by limitation of time, having been issued beyond the normal period of one year. He further submitted that in the subsequent statement recorded from the authorized signatory of the appellant, it has been stated that M/s Nandkishor Steel Industries (P) Ltd. is not related to the appellant. Thus, the learned Advocate submitted that since the transaction value is ascertainable in terms of Section 4(1)(a) *ibid*, there was no requirement of invoking the provisions of Section 4(1)(b) *ibid,* for determination of the value of goods, by referring to the provisions contained in the Central Excise Valuation Rules.

4. On the other hand, learned AR appearing for the respondent submitted that in the statement recorded under summon on 13.09.2008, the authorized signatory of the appellant had clearly stated that the buyer of the goods M/s Nandkishor Steel Industries (P) Ltd. is related. He has stated that since the statement was voluntary in nature and having not been retracted at any point of time, such statement alone can be considered to hold that the buyer of the goods is related party. Thus, he submitted that the authorities below have correctly applied the provisions of the Valuation Rules for determination of the transaction value.

5. We find that valuation of excisable goods for the purpose of charging of duty of excise is contained in Section 4 *ibid*. Sub-section (1)(a) *ibid* provides that in a case, where the goods are sold by the assessee, for delivery at the time and place of the removal, and that the assessee and the buyer of the goods are not related, then such price charged should be considered as the transaction value. The situation of sale of goods to a related party is separately governed

under the provisions of clause (b) in sub-section (1) of Section 4 *ibid*. In such a scenario, it has been provided that by taking recourse to the provisions of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the proper transaction value shall be determined. We find that the appellant has categorically stated in the statement dated 30.09.2008 recorded by the Department that the buyer of the fines and lumps, M/s Nandkishor Steel Industries (P) Ltd. is related to the appellant. Since, the buyer of the said goods are related to the appellant, the case does not fall under the purview of Section 4(1)(a) *ibid* and provisions of sub-section 1(b) of Section 4*ibid* shall be applicable for determination of the correct transaction value. We find that for ascertainment of the correct value, the department has invoked the Valuation Rules, 2000. The adjudicating authority has also gone through the provisions under the Valuation Rules, 2000 and concluded that Rule 4 *ibid* shall be appropriate rule for determination of the correct value of goods for the purpose of payment of central excise duty thereon. On reading of the statutory provisions vis-à-vis the case of the appellant, we find that the goods in question, removed to M/s Nandkishor Steel Industries (P) Ltd., containing Iron/Ferrous Metallic (FeM) of 91% or more is contradictory to the claims made by the appellant that impugned goods were of low grade quality. However, at no point of time the appellant had declared in the statutory records/returns that it has supplied higher grade of sponge iron fines and lumps to the related buyer. Thus, in such circumstances, the *proviso* clause appended to Section 11A *ibid* is applicable and since the appellant had suppressed the material facts about removal of higher quality of sponge iron lumps and fines to the related party, the show-cause proceedings are not barred by limitation of time. We further find that the original authority has correctly applied the provisions of Rule 4*ibid* for confirmation of the duty demand on the appellant. The appellant has not submitted any documentary evidence to show that the higher quality of impugned goods were supplied to other buyers at the lower price than the price at which the goods were removed to the related party. Therefore, we are in agreement with the orders passed by the lower authorities that the appellant is liable to pay the differential duty along with interest and penalty.

6. In view of the foregoing discussions, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Accordingly, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha