CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1260 of 2012

(Arising out of Order-in-Original No. 21/CEX/2012 dated 30.03.2012 passed by the Commissioner of Customs & Central Excise, Goa Commissionerate.)

Commissioner of Central Goods And Service Tax, Kolhapur ...**Appellant**
Vasant Plaza, Rajaram Road,
Kolhapur-416 003.

Versus

Fie Spherotech ....**Respondent**
Plot No. 6,7, 8.1 & 9,
Shree Laxmi Co. Op.Industrial Estate,
Hatkanangale, Kolhapur-416 001.

WITH

Excise Appeal No. 1268 of 2012

(Arising out of Order-in-Original No. 21/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Commissioner of Central Goods And Service Tax, Kolhapur ...**Appellant**
Vasant Plaza, Rajaram Road,
Kolhapur-416 003.

Versus

Rajendra Krishnaji Pujari ....**Respondent**
Excise Incharge of Fie Spherotech ,
Plot No.6,7,8, 1 & 9, Shree Laxmi Co. Op. Indl. Estate,
Hatkanangale, Kolhapur-416 314.

AND

Excise Appeal No. 1269 of 2012

(Arising out of Order-in-Original No. 21/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Commissioner of Central Goods And Service Tax, Kolhapur ....**Appellant**
Vasant Plaza, Rajaram Road, Kolhapur-416 003.

Versus

Chandrakant Vasudev Deshpande ....**Respondent**
Partner of Fie Spherotech ,
Plot No.6,7,8, 1 & 9, Shree Laxmi Co. Op. Indl. Estate,
Hatkanangale, Kolhapur-416 314.

APPEARANCE:

Shri M. P. Joshi, Advocate for the Appellant
Shri Xavier P.M. 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/87468-87470/2024

Date of Hearing: 12.12.2024
Date of Decision: 12.12.2024

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants herein, are engaged in the manufacture of excisable goods viz., castings for automobile components and other machinery parts, falling under Chapter 73, 84 & 87 of the First Schedule to the Central Excise Tariff Act, 1985. During the disputed period July 2004 to March 2008, the appellants had cleared the goods to the independent customers and also to the other related persons. In respect of clearances made to the independent buyers as well as the related persons, the appellants had determined the assessable value in terms of Section 4 of the Central Excise Act, 1944. However, as regards the clearances made to the related persons, the department had alleged that determination of assessable value under Section 4 of the Act of 1944 is not proper and correct, and the assessable value should have been determined under Rule 9 read with Rule 8 of the Central Excise (Valuation) Rules, 2000. On the basis of such allegation, show cause proceedings were initiated by the department, seeking for recovery of the differential amount of duty in respect of the finished goods cleared to the related persons. The show cause notice dated 22.07.2009 issued in this regard, was adjudicated by the learned Commissioner of Customs and Central Excise, Kolhapur vide the impugned order dated 30.03.2012, wherein the proposals levelled against the appellants were dropped. In the impugned order dated 30.03.2012, the learned adjudicating authority has held that since the goods were cleared to both the independent buyers as well as the related persons, the valuation

cannot be determined under Rule 9 read with Rule 8 of the Valuation Rules, 2000. Feeling aggrieved with the impugned order dated 30.03.2012, Revenue has preferred these appeals before the Tribunal. Revenue has assailed the impugned orders on the ground that in respect of the supplies effected by the appellants to the related persons, the provisions of Rule 9 read with Rule 8 of the Valuation Rules, 2000 should be applicable for determination of the assessable value for the purpose of discharge of the Central Excise duty liability thereon.

3. We have examined the case records, including the impugned order dated 30.03.2012 passed by the learned adjudicating authority. The issue dealt with by the learned adjudicating authority, relevant for consideration of the present appeal, is extracted herein below:

> *"On careful reading of the text of Rule 9, it can be seen that this rule explains the situation where the assessee sells goods exclusively through their related person and in such transaction the value shall be the normal transaction value at which the said related person sells such goods in retail. Further it provides that if the related person does not sell the goods but consumes the same for further manufacturing, then the value shall be determined as per Rule 11. In the instant case it is an admitted position that, as per the contents of the subject notice, the assessee has cleared the goods to both independent buyers as well as to related units. It means that, as per Rule 9, it is not the case of selling the goods only through the related units. Having admitted that there were clearances to both independent as well as related units it was further proceeded in the notice to ignore the said facts on the ground that since the goods cleared to the related units were used in further manufacture the matter requires examination in terms of valuation rules 9 read with 8. This is infact a wrong conclusion and the case should not have been further pursued. Therefore, there is no case for demand under rule 9. ..."*

4. On reading of the aforesaid findings recorded in the impugned order, we find that the learned adjudicating authority has dealt with the issue of supplies effected by the appellants to separate class of buyers viz., the 'independent buyers' and the 'related persons'. Since, Rule 9 read with Rule 8 of the Valuation Rules, 2000 has specifically provided that the said statutory provisions are applicable only when the goods are supplies exclusively to the related persons, the said provision shall not have the application in the case of appellants inasmuch as they had sold the goods also to the independent buyers, apart from selling the same to the related persons.

5. We find that the issue arising out of the present dispute is no more *res integra*, in view of the Larger Bench order of this Tribunal, passed in the case of *Ispat Industries Ltd. Vs. Commissioner. C.EX., Raigad* - 2007 (209) E.L.T. 185 (Tri.- L.B.). The relevant paragraph in the said order is extracted herein below:

> *"5. We have considered the rival submissions and are of the view that the assessee is correct in contending that provisions of Rule 8 would apply only in a case where its entire production of a particular commodity is captively consumed. This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under:*
>
> > *"Where the excisable goods are not sold by the assessee but are used for Consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods"*
> >
> > *(emphasis supplied).*
>
> *If the intention was not to restrict the applicability of Rule 8 to cases where the entire production was being captively consumed, the Rule would have simply stated "where excisable goods are consumed by an assessee himself or on his behalf in the manufacture of other articles" instead of preceding the above expression with the words "where the excisable goods are not sold'. This view is also supported by the judgment of the jurisdictional High Court in the case of Indian Drug Manufacturers Association v. Union of India, wherein the Court held that Rule 8 applies in a situation where goods are not sold but are cleared 'exclusively' to be used in consumption or for manufacture of other articles. We also agree with the contention of the assessee that Rule 8 will apply only in two situations, (a) where the goods are consumed by him in the same factory (captive consumption) or (b) where such goods are transferred to another factory for consumption in the manufacture of other articles on behalf of the assessee. In this case, it is not the case of the revenue that the goods were transferred to other units for manufacture of other articles on behalf of the assessee/appellant, i.e. the Dolvi Unit. We agree with the assessee's contention that the expression 'assessee', wherever it appears in the Central Excise Rules, applies to a particular factory, which is why different units belonging to one company are separately registered and separately assessed to duty. Since the assessee in the present case is the Dolvi plant and it is not the revenue's case that the other three units of the company to whom HR coils were transferred were undertaking further manufacturing operations on behalf of the Dolvi Unit, the provisions of Rule 8 will not apply. We, therefore, hold that Rule 8 is inapplicable in the instant case."*

6. We find that the Tribunal vide Final Order Nos. A/85643-85645/2022 dated 14.07.2022 had disposed of three numbers of appeals viz., E/1260/2012, E/1268/2012 and E/1269/2012. Against the said order

passed by the Tribunal, the respondent herein had filed the Miscellaneous Application for rectification of mistake in the said order dated 14.07.2022. The said application was allowed by the Tribunal, by way of recalling the Final Order dated 14.07.2022. Since, the Final Order in its entirety was recalled, Registry was confused about relisting of the matter for fresh hearing and accordingly, listed all the three appeals for hearing on 12.12.2024. However, on careful reading of both the Final Order dated 14.07.2022 and the Miscellaneous Order dated 25.07.2024, we find that appeal Nos. E/1268/2012 and E/1269/2012 have already been disposed of by the Tribunal, in rejecting the said appeals filed by Revenue. Hence, only one appeal being No. E/1260/2012 is pending for disposal and the present order is being passed only in respect of the said appeal filed by the Revenue. Since, Registry has not taken into account the other appeals Nos. E/1268/2012 and E/1269/2012 having been disposed of and listed the said appeals along with appeal No. E/1260/2012, we are also disposing of these three appeals for all practical and statistical purposes. It is pertinent to mention here that the appeal Nos. E/1268/2012 and E/1269/2012 have already been dismissed as per the Final Order dated 14.07.2022, and therefore, we are not dealing with the issues involved in those appeals, in the present order.

7. In view of the foregoing discussions, we do not find any infirmity in the impugned order dated 30.03.2012 passed by the learned adjudicating authority in support of dropping the show cause proceedings initiated against the respondents. Therefore, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM