CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1166 of 2008

(Arising out of Order-in-Original No. 22/COMMR/M-II/08 dated 02.09.2008 passed by the Commissioner of Central Excise, Mumbai Zone-I)

Commissioner of Central Excise, Mumbai –II **.... Appellant**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel , Mumbai – 400 012.

Versus

M/s Bharat Sanchar Nigam Limited **.... Respondent**
Telecom Factory, Deonar, Mumbai – 400 012.

Appearance:

Shri C.S. Vinod, Authorized Representative for the Appellant

Shri Sachin Chitnis, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/85338/2025

Date of Hearing: 12.03.2025
Date of Decision: 12.03.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the respondents herein are engaged, *inter alia*, in the manufacture of telecommunication equipments, falling under Tariff Item No. 8517 30 00 of the Central Excise Tariff Act, 1985. The said goods manufactured by the respondents during the disputed period i.e. April, 2007 to January, 2008 were cleared to their own units and the assessable value was determined on the basis of cost of production and on the value so determined, they had discharged the Central Excise duty liability. However, determination of the assessable value by the respondents was not accepted by the Department on the ground that such value should have been adopted by taking recourse to the provisions of Rule 11 read with Rule 8 of the Central Excise Valuation

(Determination of Price of Excisable Goods) Rules, 2000. Accordingly, the Department had contended that the respondents were required to pay Central Excise duty @ 110% of the cost of production of the telecom equipments manufactured and cleared by them to their other units. The show-cause proceedings initiated by the Department were culminated into the adjudication order dated 02.09.2008, wherein the learned Commissioner of Central Excise, Mumbai-II has dropped the proceedings initiated by the Department, holding that the respondents were not required to pay central excise duty in terms of Rule 8 of the Valuation Rules, 2000. For arriving at such conclusion, the learned adjudicating authority has referred to the order passed by the co-ordinate Bench of the Tribunal in the case of *B.S.N.L. Vs. Commissioner of Central Excise, Haldia – 2007 (215) E.L.T. 127 (Tri-Kolkata).* The adjudication order dated 02.09.2008 (impugned herein) was appealed against by Revenue before the Tribunal, which was disposed of vide Final Order No. A/85173/2018 dated 29.01.2018. In the said order, considering various conflicting views expressed by the Tribunal on the subject issue, the matter was referred to the Hon'ble President for constitution of Larger Bench. The issue ultimately was resolved by the Larger Bench of the Tribunal vide Interim Order No. 24/2004 dated 28.10.2024 holding as under: -

> *"33. The reference made to the Larger Bench is, accordingly, answered in the following manner:*
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> > *"For the period after 01.07.2000, when the 2000 Valuation Rules came into effect, rule 8 cannot be invoked in a case where sale does not take place nor the goods are used for consumption by the assessee, in the production or manufacture of other articles, to determine the value at 110% of the cost of production or manufacture of such goods."*

3. On careful reading of the Interim Order dated 28.10.2024 (supra), we find that the issue with regard to consideration of the assessable value by taking recourse of Valuation Rules, 2000 is no more *res integra* in the facts and circumstances of the case, inasmuch as the period of dispute involved is from April, 2007 to January, 2008.

4. In view of the above, we do not find any merits in the appeal filed by the Revenue. Therefore, the same is dismissed.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha