

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75377 of 2015

(Arising out of Order-in-Original No. 05/COMMR/BOL/15 dated 15.01.2015 passed by the Commissioner of Central Excise and Service Tax, Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District – Birbhum (W.B.), PIN – 731 204)

M/s. Steel Authority of India Limited : **Appellant**
IISCO Steel Plant,
Burnpur Works, Burnpur,
District – Burdwan, West Bengal

VERSUS

Commissioner of Central Excise and Service Tax : **Respondent**
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur, District – Birbhum(W.B.),
PIN – 731 204

APPEARANCE:

Shri Rahul Tangri, Advocate for the Appellant
Assisted by Smt. Payal Bharwani, Chartered Accountant for the Appellant

Shri P.K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 75629 / 2024

DATE OF HEARING / DECISION: 02.04.2024

Order : [PER SHRI RAJEEV TANDON]

The appellants have filed the impugned appeal assailing the Order-in-Original No. 05/COMMR/BOL/15 dated 15.01.2015 passed by the Ld. Commissioner of Central Excise and Service Tax, Bolpur whereby he has confirmed the demand of Rs.7,51,62,600/- (Rupees Seven Crore Fifty One Lakh Sixty Two Thousand and Six Hundred only) under Section 11A(10) [erstwhile Section 11A(2)] of the Central Excise Act, 1944¹ along with interest under

1 - The Act.

Section 11AA of the Act, besides imposition of penalty of equal amount under Section 11AC of the Act *ibid*.

2. The short question in the impugned appeal concerns the alleged contravention of the provisions of Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000² read with Section 4(1)(b) of the Act.

3. The appellant is a manufacturer of iron and steel articles like pig iron, ingots, blooms, angles, channels, etc., falling under Chapter 72 and Chapter 73 of the Central Excise Tariff Act, 1985³. The products manufactured by the appellants are sold by them at the factory gate as well as through their depots / Branch Sales Offices (BSOs) by way of stock transfers for onward sale. The appellant submits that the pricing of the goods is determined by their Central Marketing Organization (CMO) which decides the prices at which the goods are required to be sold from the plant as well as the depots / BSOs and accordingly releases the price lists for the various goods for sale. The appellant contends that apart from the price list, the CMO allows the plant as well as the depots / BSOs to provide further discounts uniformly to all buyers on the prices indicated in the price lists so as to match the price of the competitors located at various places. Thus, at the time of sale of goods from the depots / plants / BSOs, the list price is adjusted by giving different rebates / discounts referred to as Movement Plan Rebate (MPR). This adjustment of prices, by way of MPR, is worked out by a high-powered committee comprising of the Director-Finance, Director-Commercial and CEOs of all the five integrated steel plants of the appellants,

2 - The Valuation Rules

3 - The Tariff Act

besides other representatives such as ED (Mktg.), ED (F&A), etc. The appellant submits that the MPR working out is a very scientific and commercial process and is nothing but a uniformly allowed trade discount which can also be understood as a rebate; this rebate amount is actually conveyed through the MPR.

3.1 They further submit that as per the system in vogue, for stockyard dispatch, at the time of raising of invoices for stockyard clearance, the system searches for transaction value for the past two months and in case no such transaction value is available, then the system raises an invoice based on the price circular less rebate indicated in the MPR.

3.2 The Ld. Advocate, Shri Rahul Tangri, appearing on behalf of the appellant, submits that the rebate is allowed in the normal course of trade, both on direct sales as well as dispatches to the stockyards and is not refundable by the buyers. Also it is shown separately on the invoices issued under Rule 11 of the Central Excise Rules, 2002⁴.

3.3 The Ld. Advocate points out that such provisioning of rebate in the MPR is not intended to undervalue the goods but to arrive at the realistic price of the material. He submits that during the period from 2008-09 to 2009-10, during the course of audit, the Department felt that such MPR was arbitrary and variable resulting in undervaluation of the manufactured goods. He submits that, accordingly, an appropriate response was tendered to the Department *inter alia* pointing out that the price circulars as issued by the CMO indicated the base price

4 - The Rules, 2002

of the material applicable to all units absolutely and as it is not possible to issue a fresh price circular for every transfer of material to stockyards, the prices in the circular are adjusted by way of providing rebate in the Movement Plan (known as MP). A copy of the impugned communication dated 01.02.2011 is scanned and reproduced hereinbelow for ready reference: -



STEEL AUTHORITY OF INDIA LIMITED
HISCO STEEL PLANT
BURNPUR

Annexure-4

Ref. No.: MA/14/05/147

Date: 01.02.2011

To
The Superintendent,
Central Excise,
Hirapur Range
X-10, South Road, Burnpur,
Dist. Burdwan(W.B.)

Dear Sir,

Sub: Rebate on Normal Transaction Value; Furnishing of particulars thereof; Reg.

Please refer to C No. Ce-20/ISP/Misc./2010-11/02 dated 06.01.2011, wherein it has been alleged that ISP has transferred goods to various stockyards during the period April'2009 to October, 2009 after allowing rebate on the price circular price of the concerned depot, which has resulted in undervaluation of goods leading to short levy of duty to the tune of Rs. 2,82,84,711.00. In this connection we would like to submit that:

1. Price Circulars are issued by Central Marketing Organisation (CMO) an unit of SAIL, which controls all the stockyards of SAIL;
2. Prices mentioned in the price circulars are the base price of material, which are applicable to all the units of SAIL.;
3. For every transfer of material to stockyard, it is not possible to issue a fresh price circular;
4. In order to arrive at the transaction value i.e. the value at which said goods will be sold from the stockyard, prices mentioned in the price circular are adjusted by way of providing rebate in the Movement Plan (known as MP). This rebate is filled by respective stockyard where the goods will be transferred.
5. The purpose of providing rebate in the MP is not to undervalue the goods, but to arrive at the realistic price of the material in order to ensure that correct excise duty is paid to the ex-chequer.

From the above discussion, it is clear that by way of allowing a rebate on the price circular price, ISP has not undervalued the goods and consequently there is no short payment of excise duty.

Praveen Nigam
(Praveen Nigam)
Asst. General Manager(F)
Excise Accounts.

3.4 It has been clarified by the appellant that the individual BSOs / depots allowed the MPRs based on the prevalent market conditions and requirements and accordingly, invoices were raised, passing on such discounts to the customers at the time of ultimate sale. The salient features of the MPRs are as under: -

- i. The MPR is in the nature of trade discount, which is allowed for both direct sales from factory gate as well as dispatches to BSOs and is not refundable by the buyers under any circumstances.
- ii. The MPR is communicated to all the plants and BSOs for further communication to the customers. In order to arrive at the normal transaction value i.e., the value at which goods are sold from BSOs, prices mentioned in the price circular are adjusted by way of providing MPRs. Further, as per the system in vogue, for dispatch to BSOs, at the time of issuance of invoice, the system searches for transaction value for the past two months and if no transaction value is available, then the system raises invoices based on the price circular less MPRs.
- iii. The MPRs are shown separately on the invoices.
- iv. The purpose of providing the MPRs is to arrive at a realistic price prevalent in the market and correctly assess the excise duty thereon.

3.5 The appellant also assails the adjudication order on the grounds of limitation invoking the extended period as the Show Cause Notice was issued on 16.05.2013 proposing demand for duty for the period from 29.05.2008 to 07.01.2013 based on audit

records, *inter alia* contending that the proviso to Section 11A of the Act is not invocable as there has been no intent to evade payment of duty and that the returns duly filed by them did not provide for indicating the rebates or discounts adjusted towards payment of excise duty.

3.6 The appellant further submits that the issue involved in the present case has been decided in their own case in their favour for an identical scheme of "Across-the-Board Rebate" (ABR) and therefore, the demand for the period from May 2008 to April 2012 is even otherwise barred by limitation. They placed reliance on the Hon'ble Apex Court's pronouncements in the cases of: -

- i. Pushpam Pharmaceuticals Company v. Collector of C.Ex., Bombay*⁵
- ii. Collector of Central Excise v. Chemphar Drugs & Liniments*⁶

4. It is noticed that essentially, the adjudication order confirms the demand of duty for the following six reasons: -

- a. In case of transfer to BSOs, the final customers are not known at the time of such transfer and as such discount is not possible at the time of removal.
- b. CA certificate produced by the appellant does not satisfy the requirement clarified by CBIC Circular No. 643/34/2002-CX dated 01.07.2002.

5 - [1995 (78) E.L.T. 401 (S.C.)]

6 - [1989 (40) E.L.T. 376 (S.C.)]

- c. When normal transaction value was available at different depots, providing additional MPRs was irregular and inadmissible in terms of provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
- d. By enforcing such pricing pattern, the appellant did not follow the guidelines framed by Circular No. 251/85/96-CX dated 14.10.1996 for removal of goods to BSOs.
- e. The favourable decision of the CESTAT in the appellant's own case, in respect of Across-the-Board Rebate ('ABR'), is distinguishable.
- f. The fact of undervaluation of goods to the extent of such MPRs was not disclosed in the ER-1 returns and the same came to the knowledge of the Department only as a result of audit.

5. Shri P.K. Ghosh, Ld. Authorized Representative for the Revenue, however supports the adjudication order and submits that the price adopted for the purpose of valuation by the appellants cannot be construed as the normal transaction value for the reasons as enumerated hereinabove. He therefore supports the adjudication order and reiterates the findings.

6. We have heard the rival contentions of the two sides and perused the case records.

7. To appreciate the admissibility of discounts, it would be necessary to refer to Section 4(1) of the Act as well as Rule 7 of the Valuation Rules. The same are therefore enumerated hereunder: -

▪ **Section 4(1) of the Central Excise Act, 1944:**

"SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall

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(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

...."

▪ **Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:**

"RULE 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

7.1 It can be seen from the wordings as used in Section 4(1) that the assessable value is the transaction value at which goods are sold by an assessee for delivery at the time and place of removal, whereas transaction value is the price actually paid or payable for the goods. In the instant case, as the goods are not sold from the factory gate and the depot / BSO is the actual place of sale, the assessable value would therefore be required to be determined in terms of Section 4(1)(a) of the Act in accordance with the provisions of Section 4(1)(b) *ibid.*, read with Rule 7 of the Valuation Rules, which caters to sale of goods from a depot to non-related buyers and price being the sole consideration for sale. As pointed out above, the BSOs allow discounts to final customers beyond the price circulars that are duly known to the appellant at the time of removal of goods from the factory (conveyed through the internal communications of the CMO). Such discounts are allowable as deduction from the price of the goods for the purpose of determination of duty due thereon.

8. The appellant has also submitted on record a Chartered Accountant's certificate to that effect, pointing out that the BSOs have passed on a higher MPR to the final customers as against the MPR deducted by the appellant for determining the assessable value. A copy of such a certificate issued by the Chartered Accountant is scanned and reproduced hereinbelow, confirming the said statement made: -

Annexure-2

To Whom It May Concern

It is certified that Central Marketing Organisation (CMO) a unit of Steel Authority of India Limited, has given following discount/dispensation in respect of sale of steel Material pertaining to IISCO Steel plant, having central excise registration Number AAACS7062FXM028.

Financial Year	Turnover Discount (Rs./Lakhs)	Amount of Dispensation (Rs./Lakhs)	Total turnover Discount+ Dispensation (Rs./Lakhs)
2008-2009	355.84	2983.15	3338.99
2009-2010	335.06	6352.79	6687.85
2010-2011	498.21	7094.6	7592.88
2011-2012	387.36	3286.71	3674.07
2012-2013	267.36	4646.09	4913.45
Grand Total	1843.83	24363.41	26207.24

C-105, Parbati Residency

(Baraf Kal)

S.B. Gorain Road

Asansol-713301

Mob.No:8348046275

S. C. MAJI & ASSOCIATES
Chartered Accountants
SANTOSH KUMAR GHOSAL, A.C.A.
Partner, M. NO.- 054831

9. In terms of Rule 7 of the Valuation Rules, any discount given at the time of clearance of goods ought to be allowed for assessment of goods transferred to the BSO when the same is passed on to the final customers. We note that with reference to an Across the Board Rebate (equivalent to MPR), this Tribunal in the appellant's own case⁷ had held as under: -

"8. With regard to the second ground of demand i.e. ineligibility of ABR for deduction while

7 - Steel Authority of India Ltd. v. Commr. [2006 (199) E.L.T. 112 (Tri. - Del.)]

fixing/assessing the value, we find that the appellant had established before the lower authorities that the price realized from the buyers of the goods from the depots were invariably lower than the price at which the goods had been assessed to duty at the time of their removal from the factory. The ABRs in question were determined by the Central Marketing Organisation of the steel plant on a monthly basis and conveyed to the sales depots. It is seen that the sales depots either charged sales prices after deducting the ABRs or the ABRs are passed on to the customers through credit notes. The appellant had also produced the certificate from the Chartered Accountant showing that the ABR has actually been passed on. Before us also, the learned Counsel has produced sample invoices as well as credit note register showing the passing on of ABRs in the invoices themselves or through credit notes. The submission of the learned Counsel for the appellant is that, as a matter of fact, as against an ABR of over Rs. 681 crores, reduction claimed while assessing the goods was only Rs. 449 crores. The law with regard to the valuation of the goods is that the goods should be assessed at the net price, i.e. minus the discount, to Central Excise duty. In the present case, it is clear that the valuation adopted by the appellant was only more than the net realisation at the depot stage. That being the factual position, the finding of the Commissioner that the rebate was not passed on and that differential duty is payable by the appellant is not sustainable.”

9.1 We find that the law with regard to valuation of the goods is quite clear and in terms of the law, the valuation of goods under clearance is to be done on the basis of sale price prevailing on the date of removal at the time of removal, which in the present

case is the depot. To this effect is also enunciated by the Tribunal in the case of *Castrol India Ltd. v. Commissioner of Central Excise, New Delhi*⁸. Paragraph 5 of the said decision is reiterated below: -

"5. "Time of removal" has also been defined with reference to the place of removal, namely, depot by sub-clause (ba) to clause (iv) of Section 4. That definition reads :

" "time of removal" in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b), shall be deemed to be the time at which such goods are cleared from the factory."

So, in the case of removal of goods from depot the time of removal should be the time at which such goods were cleared from the factory. In other words, time and place of removal provided by Section 4(1)(a), in relation to goods removed from the depot will be the factory gate and depot, respectively. Whenever goods are removed from depot, such goods are to be valued with reference to the time when it was removed from the factory."

The said case was maintained by the Hon'ble Apex Court [ref. 2000 (121) E.L.T. A224 (S.C.)].

9.2 Therefore, the rebate as was known by way of MPR and uniformly passed on would be required to be taken note of for determination of the assessable value.

9.3 We also note that there is a complete similarity in the factual matrix of the appellant's own case, with the present issue at hand inasmuch as the CMO determined the ABRs (in the present case, MPRs) and indicated the same to the plant as well as depots. The goods were sold from the depots after allowing such ABRs (in the present case, MPRs) indicated on the face of the invoice. Also, the Chartered Accountant's certificate furnished both in the said case and the present case referred to *supra*, establishes that the

8 - [2000 (118) E.L.T. 35 (Tribunal)]

cumulative value of the ABRs (in the present case, MPRs) allowed from the depot exceeded the ABRs (or MPRs) as claimed by the appellant.

10. The Hon'ble Apex Court's decision in the case of *Purolator India Ltd. v. Commissioner of Central Excise, Delhi-III*⁹ has also upheld the admissibility of discounts that were passed on to the buyers and were known at the time of clearance of goods as eligible deduction for the purpose of determination of the assessable value.

11. In support of their proposition, the appellant has also drawn support to the ratio of the law as pronounced in the case of *Biochem Pharmaceutical Industries v. Commissioner of C.Ex., Mumbai-III*¹⁰ pointing out that such discounts were clearly admissible.

12. For the reasons foregoing and the settled position of law, we do not find sustenance in the order of the Ld. Commissioner under challenge herein. We therefore set aside the same and allow the appeal filed by the assessee.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sdd

9 - [2015 (323) E.L.T. 227 (S.C.)]

10 - [2016 (337) E.L.T. 276 (Tri. – Mumbai)]