(2016) 01 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 2219 Of 2007

C.C.E., Bhopal — APPELLANT

Vs

Lupin Ltd. — RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Central Excise Tariff Act, 1985 — Section 29, 30
Valuation Rules, 2000 — Rule 11
Cenvat Credit Rules, 2001 — Rule 3(4)

Citation : (2016) 01 CESTAT CK 0003

Hon'ble Judges : S.K. Mohanty, J;B. Ravichandran, Technical Member

Bench : Division Bench

Advocate : R.K. Grover, Rahul Tangri

Final Decision : Dismissed

Judgement

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1. Revenue is in appeal against the impugned order dated 30.04.2007 passed by the Commissioner (Appeals), Customs and Central Excise, Bhopal.",,

2. Brief facts of the case are that the respondent is engaged in the manufacture of Bulk Drugs, P & P medicines falling under Chapter 29 and 30 of",,

the Central Excise Tariff Act, 1985. The respondent avails cenvat credit of Central Excise duty paid on the inputs and capital goods, used in the",,

manufacture of final product under the Cenvat Credit Rules, 2001/2002. During the disputed period, the respondent had removed input as such to its",,

sister units and other units for manufacturing of excisable goods on its behalf on payment of Central Excise duty. The appellant had discharged the,,

duty liability on the transaction value claimed by the input supplier in its invoices, instead of 115% of landed cost of inputs. Payment of duty on",, transaction value was disputed by the Department and the matter was adjudicated against the appellant vide order dated 19.01.2007, holding that value",,

of input cleared as such should be determined in the manner prescribed under Valuation Rules, 2000, which should be 115% of landed cost of inputs.",,

On appeal against the said adjudication order, the ld. Commissioner (Appeals) has allowed the appeal of the Respondent, holding as under:-",,

â??Para 11. From the above discussion, it follows that there are two ways of finding out the transaction value of the inputs cleared as such",,

under Rule 3(4) ibid. If the clearances are both to sister units as well as to other unrelated units, then the sale price of the inputs cleared to",,

the unrelated units can be adopted for the purpose of paying duty on the inputs cleared as such to the sister units. Applying this principle,",,

the lower authority would calculate the Central Excise duty to be paid by the appellant. If, however, the clearance of such inputs is only to",,

the sister units then taking recourse to Rule 11 of the Valuation Rules, 2000, the assessable value mentioned on the invoice on which the",,

appellant had purchased the inputs will have to be adopted for the purpose of payment of duty under Rule 3(4). However, in this case, the",,

appellant has also paid the duty on the value shown on the input invoice. In such a situation, no Central Excise duty will be demandable",,

and accordingly no penalty or interest can be charged.â??,,

3. Heard the ld. Counsel for both sides and perused the records.,,

4. We find that the Commissioner (Appeals) has relied on the CBEC Circular No.643/34-202-CX dated 01.07.2002 to hold that in case of removal of,,

inputs or capital goods by the appellant as such to its sister unit or to any of its factory the Central Excise duty availed as cenvat credit should only be,,

considered for reversal in terms of Rule 3(4) of the Cenvat Credit Rules, 2001/2002. The relevant clarification in the said Circular is extracted herein",,

below:-,,

14.,"How will valuation be done when inputs

or capital goods, on which CENVAT

credit has been taken, are removed as

such from the factory, under the

erstwhile sub-rule (1C) of Rule 57AB of
the Central Excise Rules, 1944, or
under Rule 3(4) of the Cenvat Credit
Rules, 2001 or 2002 ?","Where inputs or capital goods, on which credit
has been taken, are removed as such on sale,
there should be no problem in ascertaining the
transaction value by application of Sec. 4(1)
(a) or the Valuation Rules. [provided tariff
values have not been fixed for the inputs or
they are not assessed under Section 4A on the
basis of MRP].
There may be cases where the inputs or capital
goods are removed as such to a sister unit of
the assessee or to another factory of the same
company and where no sale is involved. It may
be noticed that sub-rule (1C) of Rule 57AB of
the erstwhile Central Excise Rules, 1944 and
Rule 3(4) of the Cenvat Credit Rules, 2001
(now 2002), talk of determination of value for
â??such goodsâ? and not the â??said
goodsâ?. Thus, if the assessee partly sells the
inputs to independent buyers and partly
transfers to its sister units, the transaction
value of â??such goodsâ? would be available
in the form of the transaction value of inputs
sold to an unrelated buyer (if the sale price to
the unrelated buyer varies over a period of
time, the value nearest to the time of removal
should be adopted).
Problems will, however, arise where the

assessee does not sell the inputs/capital goods to any independent buyer and the only removal of such input/capital goods, outside the factory, is in the nature of transfer to a sister unit. In such a case proviso to Rule 9 will apply and provisions of Rule 8 of the valuation rules would have to be invoked. However, this would require determination of the â??cost of production or manufactureâ??, which would not be possible since the said inputs/capital goods have been received by the assessee from outside and have not been produced or manufactured in his factory. Recourse will, therefore, have to be taken to the residuary Rule 11 of the valuation rules and the value determined using reasonable means consistent with the principles and general provisions of the valuation rules and subsection (1) of Sec. 4 of the Act. In that case it would be reasonable to adopt the value shown in the invoice on the basis of which CENVAT credit was taken by the assessee in the first place. In respect of capital goods adequate depreciation may be given as per the rates fixed in letter F. No. 495/16/93-Cus.-VI, dated 26-5-93, issued on the Customs side.

