
(2024) 07 CESTAT CK 1533

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Excise Appeal No. 54688 of 2023

Principal Commissioner, CGST & Central Excise, Raipur (CG)
@APPELLANT @Hash M/s Khyati Ispat Private Limited @RESPONDENT

Date of Decision : 22-07-2024

Acts Referred:

Central Excise Act, 1944 — Section 4, 4(1)(b), 4(3)(b), 4(3)(b)(i), 11A(4)
Central Excise Valuation Rules 2000 — Rule 8, 9, 10, 10(b), 11
Companies Act 1956 — Section 2, 2(41), 6

Citation : (2024) 07 CESTAT CK 1533

Hon'ble Judges : Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Bhagwat Dayal, Ashish Vaish

Final Decision : Dismissed

Judgement

Dilip Gupta, J

1. This appeal has been filed by the department to assail the order dated 25.01.2023 passed by the Commissioner (Appeals). The order sets aside the order dated 28.07.2021 passed by the Joint Commissioner confirming the demand of central excise duty upon M/s Khyati Ispat Private Limited, Khyati Ispat and ordering for a recovery of the said amount under section 11A(4) of the Central Excise Act, 1944, the Central Excise Act with penalty and interest.
2. Khyati Ispat claims to have sold or cleared finished goods like angles, channels and joist to independent buyers as well as to a related buyer M/s Shri Ashutosh Engg. Industries, Ashutosh Engg. Industries, which is engaged in the manufacture of fabrication and galvanization of iron and steel items. Khyati Ispat and Ashutosh Engg. Industries are owned or controlled by the same persons or group.
3. It appeared to the department that the assessable value of goods sold or cleared to the related party i.e. Ashutosh Engg. Industries for the period April, 2014 to March, 2014 should have been determined in accordance with section 4(1)(b) of the Central Excise Act read with rules 8,9,10 & 11 of the Central

Excise Valuation Rules 2000, 2000 Valuation Rules up to 31.11.2013 and as per Notification dated 22.11.2013 with effect from 01.12.2013. Thus, according to the department, the value of the goods cleared or sold by the Khyati Ispat to the related party should have been 110% of the cost of production or the cost of manufacture of such goods.

4. Accordingly, a show cause notice dated 07.02.2019 was issued to Khyati Ispat proposing demand of central excise duty under section 11A(4) of the Central Excise Act. The Joint Commissioner, by order dated 28.07.2021, confirmed the demand. Feeling aggrieved, Khyati Ispat filed an appeal before the Commissioner (Appeals), which appeal has been allowed by order dated 25.01.2023 and the order passed by the Joint Commissioner has been set aside. The relevant paragraphs of the said order passed by the Commissioner (Appeals) will not only clarify the factual dispute but also provide the reasons given by the Commissioner (Appeals) for setting aside the order passed by the Joint Commissioner. They are reproduced below:

"11. In this case, it is undisputed that the buyer M/s. Shri Ashutosh Engg. Industries is owned by M/s. Shri Ashutosh Structures Pvt. Ltd. which has four Directors, two of whom are the same as the Directors of the appellant. In other words, Shri Virender Kumar Agarwal and Shri Basant Kumar Agarwal who are the two Directors of the appellant are also the Directors of M/s. Shri Ashutosh Structures Pvt. Ltd., whose subsidiary is buyer M/s. Shri Ashutosh Engg. Industries. xxxx xxxx It is also not disputed that the buyer M/s. Shri Ashutosh Engg. Industries is a subsidiary of M/s. Ashutosh Structures Pvt. Ltd. In view of this, I find that the appellant as well as the buyer M/s. Shri Ashutosh Engg. Industries are controlled by the same persons Virender Kumar Agarwal and Basant Kumar Agarwal. Therefore, I find that the appellant and M/s. Shri Ashutosh Engg. Industries are interconnected undertakings in terms of Section 4(3)(b) (i) of the Act.

11.1. Rule 10(b) deals with situations where the appellant and the buyer are interconnected undertakings as per sub-clause (i) of Section 4(3) (b), but they are also not related persons in terms of sub-clause (ii), (iii) or (iv) nor is the buyer holding for a subsidiary company of the appellant. I find that there is no change in Rule 10(b) of the Valuation Rules even after changes have been brought in w.e.f. 2013. As per Rule 10(b) when goods are sold to inter-connected undertakings, as per sub-clause (i) of sub-section 3 of Section 4 of the Act but is not related as per sub-clause (ii) to (iv) the value shall be determined as if they are not related persons for the purpose of sub-section (1) of Section 4 of the Central Excise Act, 1944.

12. I further find that in the identical issue of the appellant itself for the earlier period April 2010 to March 2014, the Principal Commissioner, CGST & Central Excise, Raipur in his Order-in-Original No.RPR/EXCUS/000/COM/CE/022/2019 dated 15.05.2019 had dropped the demand of Rs.2,85,26,865/- and confirmed the demand of Rs. 42,64,132/-. The appellant had filed appeal in the CESTAT

against the confirmed amount of Rs. 42,64,132/- and the department had filed appeal against dropping Rs. 2,85,26,865/-. The Principal Bench, CESTAT, New Delhi vide their Final Order No. A/50209-50210/2022-EX(DB) dated 02.03.2022 has decided both the appeals, and has rejected the appeal filed by the department and allowed the appeal filed by the appellant. My above views gets support from the decision dated 02.03.2022 of Principal Bench of CESTAT, New Delhi supra.

13. In view of the above discussions and provisions of law, I hold that the findings of the adjudicating authority that the valuation of the goods is to be governed in terms of Section 4(3)(b) of the Central Excise Act, 1944 read with Rule 8 & 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is not correct. The goods are sold to inter-connected undertaking, as per sub-clause (i) of sub-section 3 of Section 4 of the Act but is not related as per sub-clause (ii) to (iv), as discussed above, therefore, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of Section 4 of the Central Excise Act, 1944 read with Rule 10(b) of the Valuation Rules, 2000. In view of this legal position, the value on which goods are sold to M/s Shri Ashutosh Engg. Industries is correct transaction value in terms of Section 4(1)(a) of the Central Excise Act, 1944 read with Rule 10(b) of the Central Excise Valuation Rules, 2000. Therefore, I hold that the impugned order confirming the demand of Rs. 54,26,469/- is not sustainable in law. As the demand itself is not sustainable, the question of recovery of interest and imposition of penalty does not arise. Held Accordingly."

(emphasis supplied)

5. It is seen from the aforesaid order that the Commissioner (Appeals) has relied upon the decision rendered by the Tribunal on 02.03.2022 in M/s Khyati Ispat Private Limited (Rolling Mill Division) vs. Principal Commissioner, Central Tax & Central Excise, Excise Appeal No. 52120 of 2019 decided on 02.03.2022.

6. Shri Bhagwat Dayal made submissions on behalf of the department and Shri Ashish Vaish, learned Chartered Accountant made submissions on behalf of the respondent.

7. It is not in dispute that the facts pertaining to the present appeal and to the aforesaid decided appeal in the matter of the appellant are identical. Infact, the period involved in the appeal decided by the Tribunal is from April, 2010 to March, 2014, while the period involved in the present appeal is from April, 2014 to March, 2015. The decision of the Tribunal which has been relied upon by the Commissioner (Appeals) would, therefore, govern the issues raised in this appeal. The relevant portion of the decision of the Tribunal in the matter of the appellant, but for an earlier period, is reproduced below:

"19. In this case, it is undisputed that the buyer Ashutosh is owned by M/s Ashutosh Structures Pvt. Ltd. which has four Directors, two of whom are the same as the Directors of the assessee. In other words, Shri Virender Kumar

Agarwal and Shri Basant Kumar Agarwal who are the two Directors of the assessee are also the Directors of M/s Ashutosh Structures Pvt. Ltd. whose subsidiary is the buyer Ashutosh.

20. In fact, this aspect has come to light from the assessee's own disclosure under the head of "related party disclosure" as per the Accounting Standard 18 of Institute of Chartered Accountants of India in the assessee's balance sheet. Under the head "list of enterprises over it key managerial persons or the relatives have significant influence with whom transactions have taken place", the assessee had declared the name of M/s Ashutosh Structures Pvt. Ltd. It is also not disputed that the buyer Ashutosh is a subsidiary of M/s Ashutosh Structures Pvt. Ltd. In view of these facts, we find that the assessee as well as the buyer Ashutosh are controlled by the same persons Virender Kumar Agarwal and Basant Kumar Agarwal. When these facts were disclosed by the assessee in its own balance sheets, we find no reason to accept the contention of the assessee and that they are not inter-connected undertakings in these appeals before us. We, therefore, find that the assessee and M/s Ashutosh are inter-connected undertakings in terms with Section 4 (3) (b) (i) of the Act.

21. The next question is whether the assessee and M/s Ashutosh are also related persons in terms of clause (ii) or (iii) or (iv) of Section 4(3)(b).

22. We, find that the assessee has an interest indirectly in the business of the buyer Ashutosh as the directors of the assessee are also two of the four directors of the holding company of the buyer Ms/ Ashutosh Structurals Pvt. Ltd. However, there is no evidence to show that the buyer Ashutosh also has an interest in the business of the assessee. Therefore, while the interest has been established in one direction there is no evidence of business interest in the other direction namely that there is no evidence that the buyer was interested in the business of the assessee. Therefore, we find that they are not related persons in terms clause (iv) of section 4(3) (b).

23. We further proceed to see if the appellant and the buyer Ashutosh are related as per clause (ii) or clause (iii). The term "relative" in Section 4(3)(b)(ii) is explained in Explanation (vi) Clause (III) (ii) as follows:

"relative shall have the meaning assigned to it in Clause 41 of Section 2 of the Companies Act 1956."

24. Section 2 (41) of the Companies Act defines relative as "anyone who is related to such a person in any of the ways specified in Section 6 of the Companies Act and no others". Section 6 defines relative to mean members of a Hindu undivided family or husband and wife or related in the manner indicated in Schedule (1A) to the Act. A perusal of Schedule (1A) also shows that it deals with individuals, such as, father, mother, son, daughter, wife, husband etc. Nothing in the Companies Act suggests that two companies can be called relatives in terms of that Act. In this case, the assessee is a company and the buyer is a Proprietor firm owned by another company. Neither the assessee nor

the buyer is an "individual? and, therefore, they cannot be relatives. Hence, they cannot be related persons as per clause (ii) of section 4 (3) (b). Clause (iii) to section 4 (3) (b) applies to cases where the buyer is a relative and the distributor of the assessee or the sub-distributor of such distributor. There is no allegation that the distributor is the distributor or the sub-distributor of the assessee in this case. Therefore, the assessee and the buyer Ashutosh cannot be related persons as per clause (iv) to Section 4(3)(b).

25. To conclude, while we find that the assessee and M/s Ashutosh are interconnected undertakings and hence are related in terms of Clause (i) of Explanation to Section 4 (3) (b), they are not related in terms of Clause (ii) (iii) or (iv)."

(emphasis supplied)

8. Learned counsel for the respondent contended that in view of the decision of the Tribunal in the matter of the appellant rendered on 02.03.2022 in Excise Appeal No. 52120 of 2019, which decision has also been relied upon by the Commissioner (Appeals), the present appeal filed by the department deserves to be dismissed.

9. It cannot be doubted that the dispute in the present appeal is identical to the dispute raised in the appeal decided by the Tribunal.

10. Thus, in view of the decision of the Tribunal in the matter of the appellant itself, the present appeal filed by the department deserves to be dismissed and is dismissed.

(Order pronounced on 22.07.2024)