(2024) 03 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No: 86227 Of 2014

Savita Oil Technologies Ltd APPELLANT

Vs

Commissioner Of Central Excise And Customs Belapur RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Central Excise Valuation (Determination Of Price Of Excisable Goods) Rules, 2000 — Rule 8
Central Excise Act, 1944 — Section 4A, 11A, 11AB, 11AC

Citation : (2024) 03 CESTAT CK 0011

Hon'ble Judges : C J Mathew, Member (T);Ajay Sharma, Member (J)

Bench : Division Bench

Advocate : Mehul Jivani, Amarendra Kumar Jha

Final Decision : Allowed

Judgement

C J Mathew, Member (T)

A dispute that commenced with proposal, in show cause notice dated 28th February 2003 issued to M/s Savita Oil Technologies Ltd (then under the name and style of M/s Savita Chemicals Ltd) for recovery of short-paid duty of Rs. 1,06,31,797 and Rs. 23,47,167 under section 11A of Central Excise Act, 1944 on clearances effected on clearances of a category between July 2000 and March 2002 and between April 1999 and March 2002 respectively to other establishments owing to non-inclusion of ?royalty? and ?administrative overheads? in computation of cost of production computation as well as arising from alleged misclassification enabling abatement in ?retail sale price? under section 4A of Central Excise Act, 1944 that exceeded the difference thereto of the said price vis-à-vis ?transaction value? and from irregular availment of CENVAT credit, was, at the end of second round of adjudication prompted from remand by the Tribunal on a former occasion, whittled down to Rs. 66,37,251 while retaining ☐ 23,47,167 limiting the challenge to order [[order-in-original no. Bel/122-129/Bel-III/R-II/COMMR/KA/2013-14 dated 23rd January 2014]] of

Commissioner of CGST and Central Excise, Belapur, in addition to charging of applicable interest under section 11AB of Central Excise Act, 1944 as well imposition of penalty of Rs. 89,84,418 under section 11AC of Central Excise Act, 1944, only to the inclusions. .

2. The dispute concerns three undertakings of the appellant, among which, that at Thane, and is the subject of the proceedings, manufactures several downstream hydrocarbon products, including lubricating oil, which are then either re-packed at the unit in Kukshet for supply to distributors or subjected to further processing at Silvassa for emergence of new products. The goods so cleared, and being to their own undertakings, are, in terms of rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, to be valued by reference to cost of production and the exclusion of the two expenses supra, is all that continues to plague this assessment dispute.

3. Learned Chartered Accountant submitted that disputed ?royalty?, payable on sales of finished and packaged products under agreements with M/s Indemitsu International, M/s Toyota Kirloskar Motors Ltd and M/s Honda Seil Cars Ltd as their distributor, is not includible in ?cost of production? despite which the adjudicating authority held that manufacture, being a prerequisite for any sale, mandates such expense to be includible in value of goods at that stage itself. It was further argued that for inclusion of any cost, it must devolve before the goods are subjected to further manufacture ? actual or deemed ? which is not in evidence in the present fact of liability to principals arising only by sale in the market. Relying upon

?5.3 Direct Expenses

Direct expenses are the expenses other than direct material cost and direct employees costs which can be identified with the product. Direct expenses include:

(i) Cost of utilities such as fuel, power, water, steam etc

(i) Royalty based on production

(ii) Technical Assistance / know ?how fees

(iii) Amortized cost of moulds, patterns, patents etc

(iv) Job charges

(v) Hire charges for tools and equipment

(vi) Charges for a particular product designing etc? in CAS4 Guidance Note, it was submitted that inclusion of ?royalty? in assessable value is restricted to such becoming liable upon production only. Reliance was also placed on decision of the Tribunal in Glaxo Smithkline Cons Health Care Ltd v. Commissioner of Customs & Central Excise, Vizag [2009 (245) ELT 572 (Tri-Bang)] which attained finality upon departmental appeal before the Hon?ble Supreme Court being dismissed along with others to which it was tagged.

4. As far as the other additions of ?administrative overheads?, such as ?house rent allowance?, ?staff welfare expense?, and ?medical expenses?, was concerned, it was submitted that nexus with production being of essence, as espoused in principles governing CAS4, and especially clause 5.7 therein, the inclusion by adjudicating Commissioner was faulty. Besides, several other issues, which are more of procedural requirements and pre-requisites, were raised by Learned Chartered Accountant.

5. We have heard Learned Authorized Representative.

6. It is evident from the submissions of Learned Chartered Accountant that rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2002 is appropriate recourse for valuation of clearances in the impugned circumstances. It is no less apparent that CAS4 is to be the basis of computation for which purpose the insight afforded by the Guidance Notes is adequate justification. That this aspect was not considered by the adjudicating authority at all, insofar as the two additions supra are concerned, is amply evident and, for remedying that want in fresh proceedings, it is necessary that the impugned order be set aside. Accordingly, the appeal is allowed by way of remand to the original authority.

