CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Excise Appeal No. 52166 / 2019

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-025-19-20 dated 16.05.2019 passed by the Commissioner (Appeals), CGST, Bhopal]

BIRLA CORPORATION LIMITED **APPELLANT**

Vs.

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, JABALPUR **RESPONDENT**

APPEARANCE:

Shri Bipin Garg, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: August 17, 2021
DATE OF DECISION : 09.11.2021

FINAL ORDER No. 51925 /2021

PER RACHNA GUPTA

The appellant herein is engaged in the manufacture of cement and cement clinker. They are availing the CENVAT credit facility on inputs, capital goods and input services of Rule 2 & 3 of CENVAT Credit Rules, 2004 (CCR, 2004).

2. The appellants were discharging their duty liability on the manufacture of Cement in terms of Notification No. 4/2006-CE

dated 01.03.2006 and under Notificaton No. 12/2012 dated 17.03.2012. The appellants were also using the manufactured cement for their own consumption. On this part of cement also, they were discharging the duty liability on the basis of local prevailing market rate till 31.3.2011. With effect from 01.04.2011, the definition of industrial consumers got modified in Legal Metrology (PC) Rules, 2011. The appellant undertook the discharge of liability for the cement for own consumption in terms of Rule 8 with effect from 01.04.2011. Since the Central Excise duty as was paid on the basis of MRP and prevailing local market rate was higher than the valuation in terms of Rule 8, the appellant filed refund claim dated 30.4.2012 for an amount of Rs. 6,54,220/-. However, vide Show cause notice No. 4256 dated 27.7.2012, the refund claim was proposed to be rejected on the ground that Rule 8 of Valuation Rules is not applicable on such case of own consumption of the manufactured final product, where such consumption is for further production. The said rejection was confirmed vide Order-in-Original No. 49/2018-19 dated 28.12.2018. The appeal thereof has been rejected vide Order under challenge. Being aggrieved, the appellant is before the Tribunal.

3. It is submitted by Shri Bipin Garg, learned Counsel appearing on behalf of the appellant that in terms of entry No. 5 of Circular No. 6/39/2000-CX 1 dated 01.07.2000, the valuation of cement manufactured by them but used for own consumption has to be made in terms of Rule 8 of CCR, 2004. Since the valuation arrived at under the said Rule is less as compared to the amount of duty as has been paid by the appellant based upon the prevalent MRP, that the refund was rightly filed by the appellant and has been wrongly rejected by the Department. It is mentioned that the Adjudicating Authority below have failed to appreciate the change in the

definition of Industrial consumer. The order is accordingly, prayed to be set aside and appeal is prayed to be allowed.

4. Per contra, learned Departmental Representative Shri Mahesh Bhardwaj appearing for the Department impressed upon paragraph 7 of order under challenge where learned Commissioner (Appeals) has appreciated that Rule 8 of Valuation Rules is not applicable to the appellants' case as the Rule is applicable only in case where the goods are used in the manufacture of other goods. However, the appellant has consumed the manufactured goods (cement) in construction of immovable property instead of using the same in manufacture of other articles and other goods. Hence, there is no infirmity in the order under challenge. Therefore, order under challenge is prayed to be upheld and appeal is prayed to be rejected.

5. After hearing the rival contentions of the parties and perusing the entire record, I observe and held as follows:

The appellant was discharging his tax liability on the basis of local prevalent market rate till 31.3.2011 and stopped the said practice with effect from 01.04.2011, rather has prayed for the refund of the amount as is higher if paid on the basis of local prevalent market rate instead of being paid under Rule 8 of Valuation Rules.

The moot controversy to be adjudicated in the facts and circumstances is as to whether any change in the definition of Industrial Consumer under Rule 3 of Legal Metrology (PC) Rules, 2011 as came into effect from 01.04.2011 has caused any change as far as the duty liability of appellant herein is concerned. The definition of Industrial consumer prior to 01.04.2011 is as follows:

> " b) Industrial consumer – Means those consumers who buy packaged commodities directly from the manufacturers /

> packers (for using the product in their industry for production, etc.) substituted by for use in industry."

Post 1.4.2011, the definition stands amended as under:

> "Rule 3. Applicability of the chapter
>
> b) (ii) "industrial consumer" means the industrial consumer who buy packaged commodities directly from the manufacturer for use by the industry (instead of use for production or manufacture)."

6. No doubt due to this change, the appellant can be categorised industrial consumer but still he is consumer of such product as has been manufactured by him, i.e. the appellant is using the cement manufactured by him but for the construction of his own premises. This admitted fact is sufficient to hold that Valuation Rules, 2008 shall not be applicable to the appellant's case. Rule 8 reads as follows:

> " (i) Rule 8 of the Central Excise Valuation (Determination of price of excisable goods) Rule, 2000 is as under:-
>
> "where the excisable goods are not sold by the assessee but used for consumption by him or on his behalf in the production or manufacturing of other articles, the value shall be (100% and 10%) of the cost of the production or manufacture of such goods."

7. Thus Rule 8 will be applicable if and only if the own consumption of the final manufactured product is for the manufacture of any other product. Apparently and admittedly same is not the fact of the present case. Though the appellant has relied upon the Circular of 01.07.2002, but perusal of the entry No. 5 thereof shows that same is for arriving at the valuation cost of captive consumption. The entry reads as follows:

5. How will valuation be done in cases of captive consumption (i.e. consumed within the same factory) including transfer to a sister unit or another factory of the same company /firm for further use in the manufacture of goods ?	For captive consumption in one's own factory, valuation would be done as per rule 8 of the Valuation Rules i.e. the assessable value will be 115% of the "cost of production" of the goods. If the same good are partly sold by the assessee and the goods sold would be assessed on the basis of "transaction value" [provided they meet the conditions of sec.4(1)(a)] and the goods captively consumed would be valued as per Rule 8 of the Valuation Rules. This is because, as per new section 4, transaction value has to be determined for each removal. Where goods are transferred to a sister unit or another unit or another unit of the same company valuation will be done as per the proviso to rule 9.

8. It becomes clear that the appellant still fall under the said Rule if and only if manufactured cement is used by him for manufacture of his another industrial product. From the above discussion, I hold that the applicability of Rule 8 of Valuation Rules has rightly been denied by the Adjudicating Authorities below. The appellant is therefore, not entitled for refund, claiming the said applicability. Order under challenge is accordingly, upheld.

9. As a result, the appeal stands dismissed.

(Pronounced in the open Court on 09.11.2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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