

Judgt. dt.9.9.2020 in CMA 2/2020  
Commr. of GST & Central Excise v.  
JSW Steel Ltd.

1/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.9.2020

CORAM

**THE HONOURABLE DR.JUSTICE VINEET KOTHARI  
AND  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

**C.M.A.No.2 of 2020**

The Commissioner of GST and  
Central Excise, Salem.

Appellant

Versus

M/s.JSW Steel Limited,  
Pottaneri Post, Mecheri,  
Mettur Taluk, Salem 636 001.

Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944 against the Final Order No.40700 of 2019 (Appeal No.E/525/2011-DB) dated 29.4.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mrs.Hema Muralikrishnan,  
Senior Standing Counsel

For Respondents : Mr.R.Parthasarathy for  
M/s.Lakshmi Kumaran Associates

**JUDGMENT**

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Revenue has filed this Appeal under Section 35G of the Central Excise Act aggrieved by the order dated 29.4.2019 of the learned CESTAT,

South Zonal Bench, Chennai allowing the Appeal of the Respondent/Assessee JSW Steel Limited

2. On the issue of extended period of limitation under Section 11A of the Act, the Tribunal held in favour of the Assessee that the Assessee could not be attributed with any suppression of relevant facts in regard to the valuation under Rule 8 of the Central Excise (Valuation) Rules 2000 in respect of Steel Bars, Rods etc. transferred by them to their Sister Concerns during the period in question viz., 2007-2008 to 2009-2010 by the show cause notice issued on **19.8.2010** as Section 11A of the Central Excise Act, 1944 which permits only one year prior to the issuance of show cause notice to be covered by it, there is a case of suppression of facts made out against the Assessee and therefore, the extended period of limitation of 5 years cannot be applied.

3. The relevant para viz., 13.2 to 14.3 of the Tribunal's order dated **29.4.2019** are quoted below for ready reference:-

*"13.2. The period that has been sought to be covered in these proceedings is from 2007-08 to 2009-10. The Show Cause Notice was issued on 19.08.2010. The CERA Audit had been conducted in October 2007, based on which the Department had vide letter dated **17.01.2008** advised the appellants that value of goods inter alia transferred to*

*associate companies should be based on CAS-4 Valuation and as per Rules 8 and 9 of the Central Excise Valuation Rules, a margin of 10% by way of profit should be added up with the assessable value. A Departmental Internal Audit had also been conducted in October 2009 based on which the Spot Memo dated **10.10.2009** was issued.*

*14.1. Such practice followed by them was reiterated in the statement of the Vice-President recorded on **07.10.2008**, wherein it had been clarified that the valuation adopted for such sales prior to 07.10.2008 has been at arm's length; that however, the value adopted for transfer of steel products to other units of M/s.JSW Steel Ltd. is based on the cost of production plus 10%.*

*14.2. We then find ourselves in agreement with the contention of the appellants that the Department was fully aware of the methodology followed by the former in respect of clearances made for captive use and also made on stock transfer basis to sister units right from October 2007.*

*14.3. In the circumstances, the allegations of suppression, misstatement, etc., cannot be made on the*

*appellants and in consequence, **extended period of limitation cannot be invoked based on such allegations.** This being so, we find that the Show Cause Notice dated **19.08.2010** is hit for the most part by limitation and that the demand can only survive for the normal period from the date of issuance of the Show Cause Notice. So ordered."*

4. The learned Senior Standing Counsel for the Revenue, Mrs.Hema Muralikrishnan, reiterating the grounds raised in the Memorandum of Appeal, urged that the Assessee did not disclose the facts to the Department that the goods in question were transferred by them to their Sister Concerns for captive construction and not for manufacture of further excisable goods and therefore, in the absence of such a disclosure, the Assessee was guilty of suppression of material facts in this regard and therefore, the extended period of limitation can be invoked by the Adjudicating Authority in the present case. She, therefore, submitted that the Tribunal has erred in allowing the Appeal filed by the Assessee and holding that the Adjudicating Authority cannot invoke the extended period of limitation under Section 11A of the Act.

5. Per contra, Mr.R.Parthasarathy, learned counsel for the Respondent/Assessee submitted that the Appeal filed by the Revenue does

not give rise to any question of law as the submission made at Bar against the Assessee about the suppression of material facts is factually incorrect. He drew our attention to the communication dated **17.1.2008** of the Superintendent of Central Excise, Mettur Range II, Mettur Dam himself addressed to M/s.Siscol, Pottaneri, Mettur, which Company later on merged with the Respondent/Assessee M/s.JSW Steel Limited under the orders of the High Court under the Companies Act and in the said communication dated **17.1.2008**, vide para 1/IIB, quoted below, it is clearly stated by the said Central Excise Authority itself that during the year 2005-2006 and 2006-2007, the Assessee had transferred Bars and Rods for self consumption for use in the construction work as payment on duty and the value of goods so consumed by the Assessee and also transferred to the Associated Company should be strictly based on CAS 4 valuation and duty paid accordingly.

6. The learned counsel Mr.R.Parthasarathy, therefore, submitted that on the basis of the Audit objection only, the said Authority of the Central Excise Department viz., Superintendent of Central Excise had advised the Assessee to adopt the method of valuation of such goods transferred to the Sister Concerns as per Rule 8 viz., as per CAS 4 valuation method viz., 10% over and above the cost or in other words at the rate of 110% of the transferred cost, as against the transactional value with unrelated parties of

the transferred goods under Rule 4 of the Rules. Therefore, he submitted that the Assessee changed its valuation method to CAS 4 on the advice of the Department itself under the said communication dated **17.1.2008** subsequently, and therefore, by issuance of show cause notice dated **19.8.2010**, the Additional Director General of Central Excise could not have levelled allegation against the Assessee that the Assessee had suppressed the relevant facts in this regard and therefore the extended period of limitation was available to the Revenue to be invoked and therefore, directed to pay not only duty but imposed penalty on the Assessee.

7. The relevant extract of the communication dated **17.1.2008** is quoted below for ready reference:-

**"PARA 1/IIB** : *Non-adoption of cost construction method CAS-4 under Rule 8 Valuation Rules for captively consumed excisable goods - Rs.1.91 Crores.*

*The value of goods which are captively consumed in the factory of production or by the related party **shall be taken at 110% of the cost of production** of goods even if identical or comparable goods are manufactured and sold by you. The concept of deemed profit for notional purpose has also been done away with and a margin of 10% by way of*

*profit prescribed in the Rule itself for case of assessment of goods used for captive consumption. **The cost of production of captively consumed goods** will be done strictly in accordance with CAS-4 vide Board Circular No.632/08/2003 CX dated 31.10.2003.*

*During, the year 2005-06 and 2006-07, you have transferred Bars and Rods to M/s.JSW Steel Ltd Associated Company vide disclosure of related party as per accounting standard 18 in Annual Report of the Company for the year 2006-07. Even as per the status report (16.05.2007) of Joint MD & CEO, of the company. The JSW Group acquired the shares of M/s.SISCOL declared as sick from the erstwhile promoter viz., LMW, in the year 2004 recently the SISCOL has been merged with JSW Iron Steel (Jindal group) vide resolution passed in your Board meeting on 25th October 2007. **Therefore, the valuation of re-rollable products (chapter heading 72) to Jindal Steel works should be valued based on CAS 4 value of the standard prescribed by the Institute Cost & Works Accounts of India vide Board circular cited.***

*During the year 2005-06 and 2006-07, **you have***

***transferred Bars & Rods for self consumption for use in the construction work as payment of duty. The value of goods so consumed by you and also transferred to this associated company, should be strictly based on CAS 4 valuation and duty paid accordingly."***

8. The learned counsel for the Respondent/Assessee further submitted that though the said communication is very much available in the record of the Revenue and subsequently submitted through the reply filed by the Assessee before the Adjudicating Authority on **29.11.2010**, which is quoted in **para 6** of the Adjudication Order dated **29.9.2011**, the learned Assessing Authority has not made any reference to the said communication dated **17.1.2008** of the Superintendent of Central Excise and invoked the extended period of limitation and levied duty on the Assessee. He further submitted that the learned Tribunal, after referring the said communication date **17.1.2008** has rightly granted the relief to the Assessee and has not allowed the extended period of limitation to the Adjudicating Authority in the afore-quoted para 13.2. of the order of the Tribunal. In the order of the Tribunal, the said communication dated **17.1.2008** is clearly referred and the veracity and existence of the said document is not even disputed by the learned counsel for the Revenue before us also.

9. In these circumstances, having heard the learned counsel for the



parties, we are of the clear opinion that the extended period of limitation in the present case was not available to the Revenue Authorities and therefore, the Show Cause Notice issued to the Assessee on **19.8.2010** could not cover the period in question viz., 2007-2008 to 2009-2010 except to the extent of one year from the date of issuance of Show Cause Notice on **19.8.2010** and therefore, the learned Tribunal was justified in holding in favour of the Assessee to that extent.

10. We fail to understand that when the Assessee had changed its method of valuation on the advice of the Department's Authority himself based on some Audit objection as indicated in the communication dated **17.1.2008**, how by turning the tables on the Assessee, the Adjudicating Authority, without referring to the said communication dated **17.1.2008**, could invoke the extended period of limitation and hold that the Assessee is guilty of suppression of relevant facts viz., the Steel Bars were supplied to their Sister Concerns for the construction work and not for further manufacture of excisable goods, and thereby impose the duty following the Rule 4 Valuation and not Rule 8 Valuation as advised by the Department's Authority itself, while the Assessee had followed the said advice/suggestion of the Department and changed its valuation method from Rule 4 to Rule 8 (110%) of the cost of transfer of goods.

11. The Revenue Authority cannot be allowed to take a different stand

at different point of time to suit their convenience and impose Additional Duty on the Assessee without establishing any suppression of facts on the part of the Assessee. The Revenue Authority, in the present case, could not disown or ignore the communication dated **17.1.2008** issued by the Superintendent of Central Excise which, very much supports the case of the Assessee that based on the Audit Objection, the Assessee was advised to adopt the valuation method of duty as per Rule 8 of CAS 4 basis and therefore, the Assessee cannot be blamed for suppression of facts in the present case and the extended period of limitation cannot be invoked by the Authority concerned under the impugned Show Cause Notice.

12. Therefore, we do not find any question of law to be arising in the Appeal filed by the Revenue which is without any merit and the same is liable to be dismissed and accordingly, it is dismissed. No orders as to costs.

सत्यमेव जयते

(V.K.,J.)(K.R.,J)

9.9.2020

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Internet:Yes  
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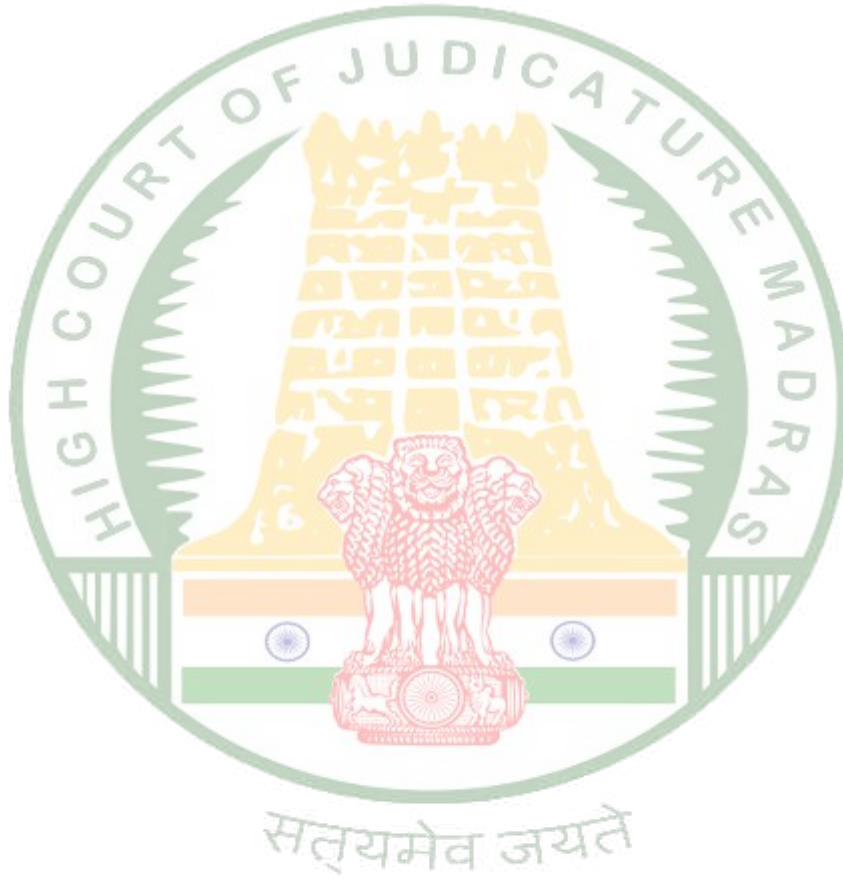
To:

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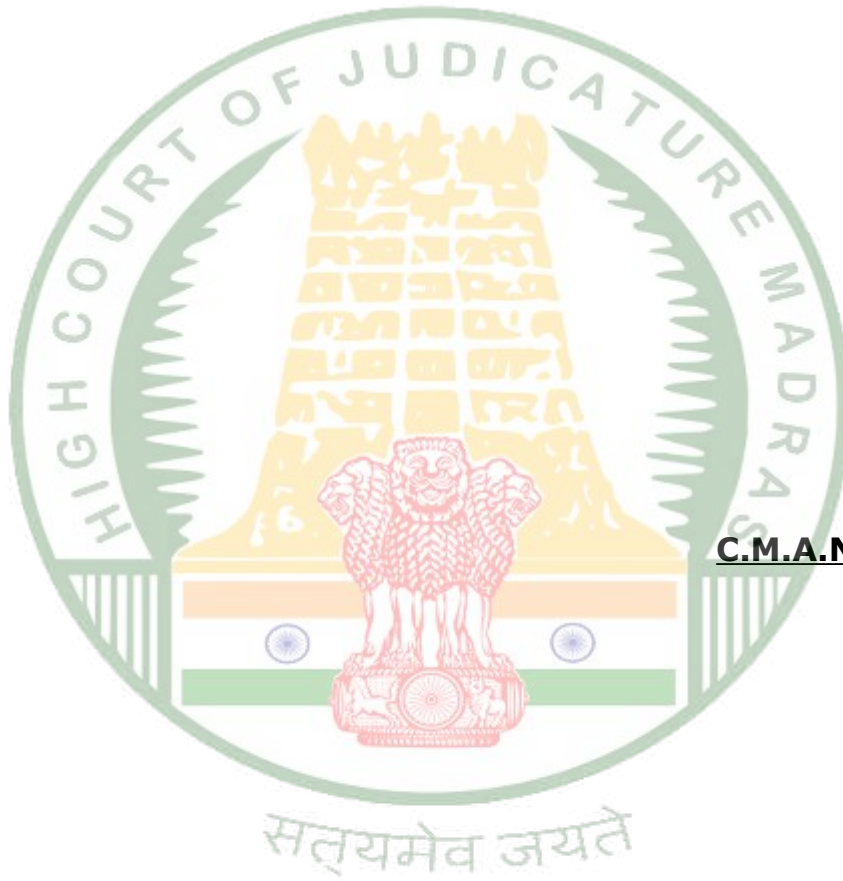
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