

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH

Excise Appeal No. 85949 of 2020

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-013 to 14/2020-21 dated 29.07.2020 passed by the Commissioner of Central Tax (Appeals-I), Pune.)

M/s. Saf Yesat Company Pvt. Ltd.Appellant
**419 Swastik Chambers,
Chembur, Mumbai – 400 071**

VERSUS

Commissioner of Central Excise, KolhapurRespondent
**Vasant Plaza, Commercial Complex,
Rajaram Road, Bagal Chowk,
Kolhapur, Maharashtra – 416 001**

APPEARANCE:

Shri Vishal Agarwal, Advocate alongwith
Shri Sunil Navandhar, Advocate for the Appellant

Shri P.K. Acharya, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85118/2024

Date of Hearing: 08.02.2024
Date of Decision: 27.02.2024

PER: DR. SUVENDU KUMAR PATI

Confirmation of duty demand of ₹50,16,878/- alongwith interest and penalty for the period from April, 2001 to July, 2005 by assessing the value of goods manufactured by the Appellant Company in terms of Rule, 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4 of the Central Excise Act, 1944 with an order for its

recovery made by the Additional Commissioner of Central GST, Kolhapur that got affirmed by the Commissioner of Central Tax (Appeals-I) Pune, by way of rejection of the appeal preferred by the Assessee-Appellant before him, has brought the dispute to the present forum.

2. Facts of the case, in brief, is that Appellant manufactures 'Yeast' and clears the same from its factory gate as well as from depots upon payment of applicable excise duty. Department's case is that Appellant had adopted incorrect valuation for goods cleared to its depot on normal transaction value which should have been cleared on the latest aggregate quantity of goods sold as against the price at which most number of goods were sold and thereby violated Rule, 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 describes above.

3. During the course of hearing of the appeal, learned Counsel for the Appellant submitted that the issue is no more *res integra*, in view of pronouncement of several decisions by this Tribunal which have also been affirmed even by the Hon'ble Supreme Court. Placing reliance on the judgment passed by this Tribunal in the case of *Steel & Metal Tubes (I) Ltd.* reported in 2017 (358) ELT 1193 (Tri. - All), *Bharat Petroleum Corpn. Ltd.* reported in 2010 (261) ELT 695 (Tri.- Chennai), *Bharat Petroleum Corpn. Ltd.* reported in 2007 (218) ELT 585 (Tri.- Bang.) as affirmed by the Supreme Court 2016 (335) ELT A26 (S.C.), *CCE & ST Vs. Merino Panel Product Ltd.* reported in 2023

(383) ELT 129 (SC), *Ispat Industries Ltd. Vs. Commissioner of Central Excise Raigad* reported in 2007 (209) ELT 185 (Tri.-LB), he submitted that Appellant had not only adopted correct valuation of goods cleared to its depots but also the same has been affirmed by this Tribunal in its order dated 11.01.2018, that was decided on the basis of an adjudication process initiated for the same set of facts for the same period but through another show-cause notice dated 04.01.2006, in which clear finding was given by the CESTAT that Section 4 of the Central Excise Act, 1944 would govern the field and not Section 4A. While challenging the invocation of extended period after Appellant was being subjected to special Audit under 14A and Seventeen numbers of other Audits for the period under dispute, he further submitted that department had parallelly pursued its demand by issuing two show-cause notices for the same period which is contrary to the observation made by Hon'ble Apex Court in the case of *Osaka Alloys And Steels Pvt. Ltd.* reported in 2007 (211) ELT 543 (P & H) and in *Lupin Ltd.* judgment reported in 2013 (293) ELT 354 passed by the Hon'ble Gujarat High Court, for which the order passed by the Commissioner (Appeals) is required to be set aside.

4. In response to such submissions, learned Authorised Representative for the Respondent-Department has argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and cited Circular No. 643/34/2002-CX dated 01.07.2002 to justify that price of greatest aggregate quantity is to be taken for which no error can be noticeable in the order of

Commissioner (Appeals). He further placed his reliance on the judgment of the Tribunal passed in the case of *E.I. DU Pont India Pvt. Ltd. Vs. Commissioner of Central Excise, Chennai* reported in 2005 (181) ELT 27 (Tri.-Del.) and *Bhuvalka Steel Industries Ltd. Vs. Commissioner of Central Excise, Bangalore-I* reported in 2007 (213) ELT 149 (Tri.-Bang.) to support the stand taken by the department.

5. We have gone through the case record and submissions made by the parties As could be noticed from the written submission filed by the Appellant before the Adjudicating Authority, its para 2 authenticates the submissions of the Appellant that show-cause notice dated 04.01.2006 was issued for the same period demanding MRP based assessment under Section 4A of the Central Excise Act, 1944 and subsequently the present show-cause notice dated 04.05.2006 was issued for determination of value under Section 4(1)(b) of the Central Excise Act, 1944 read with Rule, 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and both the notices were issued for the same clearance made from the factory Interestingly also it is to be noticed that after adjudication order in respect of first show-cause notice was issued that had attained finality by dropping the demand by the CESTAT on 11.01.2018, the other show-cause notice was pursued and adjudication order was passed subsequent thereto. It seems that ignoring all legal provisions including the constitutional right of protection against double jeopardy that is being tried repeatedly for the same act of alleged omission despite a clear finding of the

Hon'ble Supreme Court made in *Osaka Alloys And Steels Pvt. Ltd. cited supra* that even without adjudication of the first show-cause notice, issue of second show-cause notice raising the demand is without jurisdiction, besides being time barred and in *Lupin Ltd. case cited supra* it was also held that issue of another show-cause notice without any new material would be wholly futile and prejudicial to the Assessee and would be an abuse of the process of law. In carrying forward the judicial precedent set on the issue, the following order is passed.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Central Tax (Appeals-I), Pune *vide* Order-in-Appeal No. PUN-EXCUS-001-APP-013 to 14/2020-21 dated 29.07.2020 on the basis of a subsequent show-cause notice, after the first was held to be not sustainable by the CESTAT, is without jurisdiction and the same is, therefore, set aside with consequential relief, if any.

(Order pronounced in the open court on 27.02.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)