

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**EXCISE Appeal No. 12848 of 2018 - DB**

(Arising out of OIA-CCESA-SRT-APPEAL-PS-264-2018-19 dated 16/08/2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax- SURAT-I)

**Alok Masterbatches Ltd.**

(presently M/s Alok Masterbatches Pvt Ltd.),  
Survey No. 248/1 & 249/1, Valsad Falia,  
Near Jain Temple, Dadra,  
Silvassa, Dadra & Nagar Haveli (UT)

**.....Appellant**

*VERSUS*

**Commissioner of C.E. & S.T.-Daman**

3rd Floor...Adarsh Dham Building,  
Vapi-Daman Road, Vapi  
Opp.Vapi Town Police Station,  
Vapi, Gujarat- 396191

**.....Respondent**

**APPEARANCE:**

Shri R P Jindal, Advocate for the Appellant

Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 12054/2024**

DATE OF HEARING: 05.06.2024

DATE OF DECISION: 18.09.2024

**RAMESH NAIR**

The brief facts of the case are that the appellant have cleared the goods to their sister concerned on the value arrived at following the cost construction method i.e. 110% of the cost of production in terms of Rule 8 & 9 of the Central Excise Valuation Rules, 2000. As per the case of the department in the present matter, since, the appellant did not submit CAS-4 Certificate issued by the Cost Accountant to the department, various show cause notices were issued. In the present case the relevant show cause notice is 02.03.2016 for the period February-2015 to November-2015, wherein the value was proposed to be determined as per 110% of value mentioned in the invoice raised to the sister concerned. In other

words the show cause notice presumed that the invoice value is cost of manufacture and 10% was added over and above the said invoice value. Accordingly, the differential duty demand was confirmed by adjudication of the said show cause notice. Being aggrieved by the Order-In-Original the appellant filed appeal before the Commissioner (Appeals), which was rejected upholding the Order-In-Original. Therefore, the present appeal filed by the appellant.

2. Shri R P Jindal, Learned Counsel appearing on behalf of the appellant submits that the demand was confirmed only on the basis that the appellant have not submitted CAS-4 certificate. It is his submission that it is recorded in the Order-In-Original as well as it was before the Commissioner (Appeals) that the appellant have submitted the CAS-4 certificate but the same was not considered. He submits that as per the calculation of duty the duty payable as per CAS-4 and the actual duty paid there is excess payment. Therefore, there is no question of any differential duty demand.

2.1 He submits that even if the department is of the doubt about the correctness of the value computed by the appellant, the Revenue could not have straight away loaded 10% additional profit on the invoice value without carrying out the actual cost of the product manufactured by the appellant. Therefore, the show cause notice is clearly defective. Consequently, the adjudication order confirming the demand is also suffered from serious infirmity. Hence, the same is not sustainable. He placed reliance on the following judgments and Board circulars:-

- Jeevan Diesels & Electricals Ltd., Unit li Puducherry Versus Commissioner Of Gst & Central Excise, Puducherry-2019 (3) Tmi 26 - Cestat Chennai
- M/S National Aluminium Company Limited Versus Commissioner Of Cgst & Excise, Bhubaneswar-2024 (4) Tmi 1088 Cestat Kolkata

- M/S. Tega Industries Limited Versus Commissioner Of Central Excise, Kolkata-2024 (4) Tmi 899 - Cestat Kolkata
- M/S. Jsl Limited Versus Commissioner Of Central Excise, Bhubaneswar-I-2024 (3) Tmi 488 Cestat Kolkata
- M/S. Hindalco Industries Limited Versus Commissioner Of Central Excise, Bhubaneswar-II-2023 (5) Tmi 720 Cestat Kolkata
- M/S. Jeevan Diesels & Electricals Ltd. Versus Commissioner Of Gst& Ce, Puducherry-2019 (5) Tmi 1284 Cestat Chennai
- M/S Sri Gayatri Minerals Private Limited Vs. Commissioner Of Cgst & Cx, Bolpur-2023 (8) Tmi 700- Cestat Kolkata
- M/S Shri KRSNA Urja Project Pvt Ltd Vs. CCE Jaipur I-2018(10)TMI 817- CESTAT NEW Delhi
- Jindal Steel & Power Ltd. Vs. Commissioner Of C. Ex., Raipur-I-2016 (342) E.L.T. 253 (Tri. - Del.)
- CBEC Circular 979/3/2014-CX Dated 15.01.2014
- CBEC Circular 692/8/2003-CX Dated 13.02.2003
- CBEC Circular 206/01/2017-CX.6 Dated 16.02.2017

2.2 He also submits that in the appellant own case in respect of the other show cause notices after considering the CAS-4 certificate, the demand was dropped.

3. Shri R K Agarwal Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that the limited issue on fact in the present case is that whether the value at which the appellant have paid the duty is 110% of cost of manufacture of the excisable goods or otherwise. The appellant admittedly worked out the cost keeping in mind that the same is 110% of cost of the manufacture. However, the appellant have on the safer side calculated higher value since the CAS-4 is always available only after the completion of the year. Subsequently, during the adjudication the appellant have submitted CAS-4 certificate for the entire period, the same was rejected by the Adjudicating Authority stating that the said certificate is Xerox copy. This approach of the adjudicating authority is arbitrary, absolutely illegal and in violation of principles of natural justice. When the adjudicating authority have seen Xerox copies of the CAS-4 certificate, before the rejecting the same on the ground that it is a Xerox copy, he

must have asked original from the appellant. Therefore, he gravely erred is not complying the principles of natural of justice.

4.2 We further find that since the adjudicating authority has observed that due to Xerox copy, a CAS-4 certificate cannot be accepted, at least the Learned Commissioner (Appeals) before him the original certificates were produced should have considered the same and after verification, the appeal could be decided accordingly. Therefore, the commissioner (Appeals) also gravely erred is not complying the principles of natural justice. In this scenario, we are of the view that the as per CAS-4 certificate now before us, no differential duty demand arise, particularly when department in support of its allegation of undervaluation not adduced a single evidence.

5. In view of our above discussion and finding, the impugned order is not sustainable, hence the same is set aside and appeal is allowed.

*(Pronounced in the open court on 18.09.2024 )*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Raksha