CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12759 of 2014-DB

[Arising out of Order-in-Original/Appeal No DMN-EXCUS-000-APP-23-25-14-15 dated 29.04.2014 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Vita Biopharma Pvt Limited **.... Appellant**
141 & 143 Pandhal Udyog Nagar,
Bhimpore, Nani Daman,
DAMAN, U T OF DADRA & NAGAR HAVELI

VERSUS

Commissioner of Central Excise & ST, Vapi **.... Respondent**
3rd Floor, Adarsh Dham Building, Vapi-Daman Road,
Vapi, Opp.Vapi Town Police Station,
Gujarat-396191

WITH

(i) EXCISE Appeal No. 12760 of 2014 (Vita Biopharma Pvt Limited)
(ii) EXCISE Appeal No. 12823 of 2014 (Colgate Palmolive India Ltd)
(iii) EXCISE Appeal No. 12872 of 2014 (Colgate Palmolive India Ltd)
(iv) EXCISE Appeal No. 10254 of 2017 (VVF India Limited)

[Arising out of Order-in-Original/Appeal No DMN-EXCUS-000-APP-26-28-14-15 dated 29.04.2014 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN, Arising out of Order-in-Original/Appeal No VAD-EXCUS-003-APP-95-16-17 dated 29.09.2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-III(Appeal)]

APPEARANCE :

Shri Anand Nainawati, Shri Mrugesh G. Pandya and Shri Ishan Bhatt, Advocates for the Appellants
Shri Ajay Kumar Samota, Superintendent (AR), for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 14.02.2024
DATE OF DECISION: 12.06.2024

FINAL ORDER NO. 11280-11284/2024

C.L. MAHAR :

The brief facts of the matter are that the appellant is engaged in the manufacture of Pharmaceuticals/ Cosmetics falling under Chapter

30, 33 and 34 of the first schedule to the Central Excise Tariff Act, 1985. It is a matter of record that the appellant is engaged in 'Contract Manufacturing Agreement' under which they are manufacturing Mouth Washes for and on behalf of M/s. Colgate Palmolive Limited and M/s. Cadila Pharmaceuticals Limited using their brand names and as per the specifications provided by M/s. Colgate Palmolive Limited and M/s. Cadila Pharmaceuticals Limited.

2. The department during the course of audit observed that the appellant were manufacturing the goods as per 'Contract Manufacturing Agreement' using brand name of M/s. Colgate Palmolive Limited and M/s. Cadila Pharmaceuticals Limited. It is contended by the department that the transaction between the appellant and the principal manufacturers namely M/s. Colgate Palmolive Limited and M/s. Cadila Pharmaceuticals Limited were not in orginary course of trade or business as there was significant difference in the value of the goods cleared at the factory gate of the appellant and goods sold by the principals namely M/s. Colgate Palmolive Limited and M/s. Cadila Pharmaceuticals Limited from their depots or Clearing and Forwarding agent. The department is of the view that Central Excise duty charged and paid on transaction value by the appellant in terms of Section 4(1)(a) of the Central Excise Act, 1944 at the factory gate was not correct as the goods were actually not sold and the price charged by the appellant was not the sole consideration for sale. It has further been mentioned in the impugned order-in-appeal as well as order-in-original that the goods should have been assessed and value should been determined in terms of Rule 10A of Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000 read with

Section 4(1)(b) of Central Excise Act, 1944. Accordingly, three show cause notices came to be issued to the appellant for demanding duty and for other appellants, for imposition of penalties. The details of show cause notices are given hereunder:-

Appeal	SCN dated	Order-in-Original dated	Impugned Order-in-Appeal No.	Period	Duty demand	Penalty Imposed
E/12759/ 2014	24.07. 2012	24.10. 2013	DMN-EXCUS- 000-APP-23 to 25-14-15 dated 29.04.2014	18.12.2007 to 30.08.2011	Rs. 13.43.432 (to be further re-quantified based on partial relief in Order-in-Appeal)	Rs 13,43,432 (to be further re-quantified based on partial relief in Order-in-Appeal)
E/12760/ 2014	14.09. 2012	29.11. 2013	DMN-EXCUS- 000-APP-26 to 28-14-15 dated 29.04.2014	31.08.2011 to 31.07.2012	Rs. 12.08,398 (to be further re-quantified based on partial relief in Order-in-Appeal)	Rs.1,50,000
E/10254/ 2017	31.01. 2014	31.08. 2015	VAD-EXCUS-003-APP-95-16- 17 dated 29.09.2016	01.08.2012 to 23.08.2013	Rs. 13,085/-	Rs 5000/-

Penalty of Rs. One lakh was imposed against M/s. Colgate Palmolive Limited which is under consideration in Appeal No. E/13823/2014 and penalty of Rs. 75,000 has also been imposed on M/s. Colgate Palmolive Limited under Rule 26(1) of Central Excise Rules, 2002, which is under challenge by Appeal No. E/12872/2014. The appellant approached the learned Commissioner (Appeals) who vide his order dated 29.04.2014 has ordered for recalculation of amount of duty demanded under Section 11A(i) of Central Excise Act, 1944. The amount of penalty on M/s. Colgate Palmolive Limited was reduced from Rs. two Lakhs to Rs. One lakh. The appelaltns are before us against the above mentioned order-in-appeal.

3. Learned advocate appearing on behalf of the appellant has contended that 'Mouth Washes' manufactured by the appellant were sold to M/s. Colgate Palmolive Limited at a price applicable at the factory gate. It has been submitted that provisions of Rule 10A of Central Excise Valuation Rules, 2000 are not applicable in the present case since the appellant have not manufactured mouth washes on behalf of M/s. Colgate Palmolive Limited. It has further been added that appellant have sold mouth washes to M/s. Colgate Palmolive Limited on payment of applicable sales tax. Therefore, there is sale of 'mouth washes' on job work basis for M/s. Colgate Palmolive Limited as contemplated under Section 4 of Sales of Goods Act, 1930 and Section 2(h) of Central Excise Act, 1944.

3.2 Learned advocate has taken us through definition provided under Section 2(h) of Central Excise Act, 1944 which defines 'sale' as transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration. In the instant case, it is agitated that there is transfer of possession of 'mouth washes' from the appellant to M/s. Colgate Palmolive Limited for consideration being the price of manufactured product namely 'Mouth washes'. It is submitted that the appellant sold the mouth washes to M/s. Colgate Palmolive Limited for mutually agreed price and such price is the amount payable by M/s. Colgate Palmolive Limited for taking possession of these goods from the appellant in the ordinary course of trade. It has further been mentioned by the learned advocate that impugned show cause notice does not allege relationship between the appellant and the buyer M/s. Colgate Palmolive Limited or flow back of any additional consideration from the buyer to the seller and therefore, the price alone should be the basis for determination of the assessable value since all the conditions for application of Section 4(1)(a) of the Central Excise Act, 1944 are fulfilled in the present matter.

3.3 The learned advocate has mentioned that it is matter of record that M/s. Colgate Palmolive Limited has assisted the appellant in sourcing the vendors of the raw materials so that the 'mouth washes' manufactured by the appellant are of the quality and standard required by M/s. Colgate Palmolive Limited. It is also matter of record that all the basic raw materials for manufacture of mouth-washes have been purchased by the appellant themselves and paid the price to the vendors. It has further been argued that M/s. Colgate Palmolive Limited has not provided any raw material to the appellant for manufacturing mouth-washes and all the raw material have been purchased by the appellant themselves and cost of such raw materials has formed the part of the price which have been charged by the appellant from M/s. Colgate Palmolive Limited on principal to principal basis and the price of mouth-washes charged by the appellant from M/s. Colgate Palmolive Limited was only sole consideration for sale and the department has not adduced any evidence to suggest that there have been any additional consideration flowing back from M/s. Colgate Palmolive Limited to the appellant.

3.4 The appellant have further submitted that the provision of Rule 10A of Central Excise Valuation Rules, 2002 read with Section 4(1)(b) of Central Excise Act, 1944 are only invokable where the conditions for valuation under Section 4(1)(a) of the Central Excise Act, 1944 are not satisfied. However, in the present case, all the conditions as provided under Section 4(1)(a) of the Central Excise Act, 1944 stand fulfilled and therefore invoking of Rule 10A of the Central Excise Valuation Rules, 2000 is legally not sustainable. It has further been mentioned that the provisions of Rule 10A of Central Excise Valuation Rules are not invokable since the appellant have not manufactured goods "on behalf of" M/s. Colgate Palmolive Limited. The learned advocate has taken us through the provisions of Rule 10A of Central Excise Valuation Rules, 2000 which reads as follows:-

> **RULE 10A**. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then,
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> - (i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;
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> (ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;
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> (iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods :

> **Provided** that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.
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> **Explanation.** - For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him."

The learned advocate has drawn our attention that 'on behalf of a person' is primarily refers to principal manufacturer however as per explanation to Rule 10A of the Central Excise Valuation Rules, 2000, a job worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by principal manufacturer. It is being contended that in the present case, no inputs have been supplied by M/s. Colgate Palmolive Limited or through any person authorised by them. The goods have been manufactured by the appellant on his own account using the brand name of M/s. Colgate Palmolive Limited from the inputs and raw material purchased by them for their use and manufactured all the excisable product.

3.5 The learned advocate has taken us through the following case laws to support his contention:-

(a) Poona Bottling Company Limited & Anr. vs. UOI – 1981 (8) ELT 389 (Del) – Affirmed by Hon'ble Supreme Court reported in 2003 (154) ELT A240 (SC) and the Hon'ble Madras High Court in Spencere and Company Limited vs. ACCE – 1983 (14) ELT 2098 (Mad)

(b) Steel City Beverages Pvt. Limited vs. UOI – 1986 (23) ELT 147 (Pat.)

(c) Tata Engineering and Locomotive Company Limited vs. UOI – 1998 (35) ELT 617 (Pat)

(d) Nilkamal Limited vs. CE, Raipur – 2018 (2) TMI 1305 CESTAT New Delhi.

3.6 The learned advocate has further mentioned that provisions of Rule 10A of Central Excise Valuation Rules, 2000 would only apply where all the raw materials are supplied free of cost by the principal manufacturer to the job worker, the contention of the learned Commissioner (Appeals) in the impugned order-in-appeal that vendors supplied raw material on behalf M/s. Colgate Palmolive Limited is factually incorrect. Further, it has been the contention of the learned advocate that there is no clause in the 'Contract Manufacturing Agreement' that mandatorily requires the appellant to purchase raw material from any fixed vendor selected by M/s. Colgate Palmolive Limited. It is not a case of the department that vendors who provided various kinds of raw material to the appellant are in any way related to M/s. Colgate Palmolive Limited. The learned advocate has again reiterated that it is a settled low that provisions of Rule 10A of Central Excise Valuation Rules, 2000 can only be invoked where raw materials have been supplied free of cost to the job workers. In the present case, it is matter of record that the appellant have not received any raw material free of cost from vendors or from M/s. Colgate Palmolive Limited. Learned advocate has relied upon following decisions in this regard:-

(a) Sujhan Instruments vs. CCE, Chennai-II - 2019 (368) ELT 135

(b) Prestige Engineering (India) Limited vs. CCE, Meerut 1994(73) ELT 497 (SC)

(c) Coromandel Paints Limited vs. CCE 2010 (260) ELT 440 (Tri.)

(d) CCE vs. Innocorp Limited 2013 (289) ELT 172 (Tri.)

(e) Miraj Drymix Pvt. Limited vs. Commissioner of CGST 2019-TIOL-758-CESTAT-DEL

3.7 The learned advocate appearing for the M/s. Colgate Palmolive Limited against imposition of penalty under Rule 26 of Central Excise Rules, 2002 submitted that no penalty under Rule 26 of Central Excise Rules, 2002 can be imposed on artificial juristic persons. He has relied upon the Larger Bench decision of the Tribunal in the case of Steel Tubes of India Limited vs. CCE – 2007 (217) ELT 506 (Tri. LB) as well as following other decisions:-

(a) Norris Medicines Ltd. and Wintac Limited vs. C.C.E. & S.T. - Surat-II - 2023 (5) TMI 383-CESTATE AHMEDABAD.

(b) Apple Sponge and Power Limited vs. Commissioner of Service Tax, Audit-1- 2018 (362) E.L.T. 894 (Tri. Mumbai).

(c) Commissioner vs. Woodmen Industries-2004 (170) E.L.T. A307 (S.C.).

(d) Aditya Steel Industries vs. Commr. of Central Excise, Hyderabad - 1996 (84) E.I.T. 229 (Tribunal).

It has also been submitted by the learned advocate appearing for the M/s. Colgate Palmolive Limited that the provisions of Rule 26(1) of Central Excise Rules, 2002 are not invokable as the appellant have not dealt with any goods which are liable for confiscation as the manufactured goods namely 'mouth-washes' were purchased by them from M/s. Vita Biopharma Pvt. Limited (Now M/s. VVF (India) Limited) on principal to principal basis.

3.8 In the end, learned advocate has submitted that transaction between the appellant and M/s. Colgate Palmolive Limited with regard to purchase of 'mouth-washes' is on principal to principal basis and value charged by them fulfills the basic ingredients as enshrined under Section 4(1)(a) of the Central Excise Act, 1944.

4. We have also heard Shri Ajay Kumar Samota, Superintendent (AR) who reiterated the findings as given in the impugned order-in-appeal.

5. After hearing the rival submissions in this regard, we feel that it is relevant to reproduce the basic contention on which the learned Commissioner (Appeals) has confirmed Central Excise duty resorting to the provisions of Rule 10A of Central Excise Valuation Rules, 2000. The learned Commissioner (Appeals) has observed as follows:-

> "**14.** The provisions of Rule 10A has been brought into the said Valuation Rules 2000 w.e.f. 01.04.2007, which provided for payment of duty on the assessable value derived from the normal transaction value at which the goods sold by the principal manufacturer to independent buyers. The same is squarely applicable to the facts of the case. The case laws relied upon by the appellants do not rescue them as this case in hand is based on the incriminating evidences in the form of e-mails as above, which were not found in the cases relied upon by them. I am of the opinion that each such case has to be appreciated on the evidences and facts involved in each individual case and the facts of other case which are not similar or identical cannot be applied to another case as per settled law.
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> **15.** Thus, I do not find any infirmity in the decision of the adjudicating authority on merit that the duty is to be discharged on assessable value of the goods at which principal manufacturer sells the goods from their depots to various independent customers."

Thus it can be seen that the Commissioner (Appeals) has found that the provisions of Rule 10A of Central Excise Valuation Rules, 2000 squarely applicable in the given facts and circumstances of this case. It will be relevant to have a glance of provisions of Rule 10A of Central Excise Valuation Rules, 2000 reproduced (supra). Explanation to 10A mentions that "*For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him*".

5.2 We find from the record that it is a undisputed fact that the appellant have purchased all the inputs and raw materials on his own and manufactured "mouth washes" for M/s. Colgate Palmolive Limited from such inputs. The appellant has cleared the goods so manufactured on the basis of the transaction value as per the provisions of Section 4(1) of the Central Excise Act, 1944. We find that basic contention of the department has been that the appellant is engaged in the manufacture of "mouth washes" for M/s. Colgate Palmolive Limited and M/s. Cadila Pharmaceuticals Limited on job work basis and therefore valuation adopted by them as per Section 4(1) of Central Excise Act, 1944 should have been as per the Rule 10A of Central Excise Valuation Rules, 2000 read with Section 4(1)(b) which provides for valuation of goods in case of goods cleared by job worker to principal manufacturer. We find that as per explanation to Rule 10A, principal manufacturer or his agent has to provide inputs or raw materials free of cost to the job workers and in that case, the provision of Rule 10A need to be applied for the purpose of arriving at the assessable value of the excisable goods. It is a matter of record that the appellant has been purchasing various raw materials on his own i.e. to say that inputs or raw materials were not supplied by the principal manufacturer free of cost and therefore, we are of the view that appellant does not fall under the category of a job worker and the entire transaction though it is based on 'contract manufacture agreement' the transaction remains on principal to principal basis between the appellant and the principal manufacturer.

5.3 This Tribunal in the case of *Ravikiran Plastics Pvt. Limited vs. CCE & ST – 2014 (303) ELT 144 (Tri.)* has decided a similar issue which reads as follows:-

> "**2.** As the issue involved in all the above appeals is the same, therefore, applications for early hearing of appeal Nos. E/970 and 907 of 2011 are allowed and all the above appeals are being taken up for disposal under this common order. Appellants at Srl. No. (i), (iii) to (vi) above (hereinafter referred to as OEMs) are manufacturers of Coolers of 'Symphony' brand and sell the same to the Brand name owner M/s. Symphony Comforts Systems Limited (hereinafter referred to as the 'M/s. Symphony'. The case of the Revenue is that OEMs are showing purchase of various raw materials from various suppliers (hereinafter referred to as the 'Vendors') approved by M/s. Symphony. Even the negotiations of the price, at which the raw material should be purchased by the OEMs, is also done by M/s. Symphony. In addition to the above, for the payment of amounts to Vendors concerned OEM manufacturers have to depend upon M/s. Symphony for making available money as advances. Some of the moulds and assembly lines are also made available to the OEMs by M/s. Symphony. It is thus, the case of the Revenue that valuation of the coolers and duty payments by OEMs was required to be done under Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and not under Section 4(1)(a) of the Central Excise Act, 1944. It was agreed by both sides that the agreements and documents relied upon in all these appeals are identical.
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> ………. ………… ……..
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> **11.** In the light of the observations made above, the transactions between the appellants and M/s. Symphony are held to be Sales transactions. Under Section 4(1) of the Central Excise Act, 1944 even if the price is not the sole consideration but still certain additions are required to be made then also Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 6 of the Valuation Rules, 2000 has to be pressed into service when the transactions are one of Sales and parties are not 'related persons' or inter-connected undertakings. In all the situations where price is not the sole considerations, it does not mean that invariably valuation has to be done as per Rule 10A of the Central Excise Valuation Rules. The first distinction in the valuation of excisable goods required to be made is whether under Section 4 of the Central Excise Act, 1944, the transaction is one of sale or a case of manufacture of goods from inputs and goods supplied by principal manufacturer. In the latter option, the manufacturer should get only the job charges for converting the inputs/goods but the predominant part of the inputs or goods is required to be supplied free of charge by the principal manufacturer to the job-worker. Such supply of inputs/goods free of charge has not been established by the Revenue. Any amount of initiation taken and monitoring done by M/s. Symphony does not make M/s. Symphony as the free supplier of inputs or goods either directly or through any approved person. As per the language of Rule 6 of the Central Excise Valuation Rules, 2000

also the money value of additional considerations flowing directly or indirectly from the buyer and seller is required to be quantified and added to arrive at the assessable value. Explanation 1 to Rule 6, as reproduced in Para 8 above, make it further clear that any such additional money value in the form of materials, components, parts, tools, dies, moulds, drawings, blue prints, technical maps, charts, value of engineering, development, art work, design work, plans and sketches, etc., can be added to the assessable value if the transaction is one of sale. The forms of all these items specified in Rule 6 of the Valuation Rules, are in the nature of inputs or goods which are determinable. If the interpretation given by the Revenue is accepted to be correct then all the situations where buyer is providing all the above inputs/goods, the assessments will be required to be made under Rule 10A of the Valuation Rules, 2000. This interpretation will thus make Rule 6 of the Central Excise Valuation Rules, 2000 redundant. Harmoniously reading both Rule 6 and Rule 10A together, along with the explanations to these Rules, will mean that when inputs/goods are predominantly supplied free of charge by a person to the manufacturer of goods then only the valuation can be made under Rule 10A of the Valuation Rules, 2000. In a case of sale of goods where some inputs/goods are supplied free of charges, will still be a situation covered under Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation Rules, 2000. That interpretation will only be a harmonious construction for the valuation of Central Excise goods under Section 4 of the Central Excise Act, 1944, read with Rule 6 or Rule 10A of the Central Excise Valuation Rules, 2000. In the present proceedings Revenue has not able to establish that inputs are predominantly supplied by the brand name owner free of charge. It is not disputed by the appellants that additional value consideration with respect to moulds and assembly lines is not required to be added to the assessable value under Section 4(1)(b) read with Rule 6 of the Valuation Rules, 2000. Under Rule 6 money value of any additional consideration flowing directly or indirectly from the buyer; in the form of materials, components, parts, tools, dies, moulds, drawings, blue prints, technical maps, charts, engineering work, development, art work, design work, plans and sketches, etc., is required to be quantified and added to the assessable value. In the present appeals no doubt the effective control exercised by M/s. Symphony could raise suspicion regarding dummy nature of the OEMs but Revenue is not pressing into service the grounds that both OEMs and M/s. Symphony are related persons for valuation as per Rule 9 of the Central Excise Valuation Rules, 2000 or that the OEMs are actually dummy concerns. Further option of redemption fine is given by the adjudicating authority only to the OEMs which means that status of ownership of goods lying with the OEMs and elsewhere has been accepted by the Revenue.

12. Learned AR appearing on behalf of the Revenue strongly relied upon the case of Supreme Court in the case of *CCE, Mumbai* v. *Fiat India Pvt. Limited* (supra) to the effect that when the price is not the sole consideration of sale then valuation has to be done as per Rule 10A of the Central Excise Rules, 2000 which is more specific for valuation of goods in a job work contract. However, reliance placed by learned AR on *Fiat India Pvt. Limited* is misplaced because the Hon'ble Apex Court in *Fiat India Pvt. Limited* case (supra) interpreted a situation when an assessee was deliberately keeping the price of goods lower than the cost price to capture the market. Hon'ble Apex Court never said that if price is not the sole consideration then straightaway the valuation should be done under Rule 10A of the Valuation Rules, 2000. As discussed above, even if price is not the sole consideration then also as per Rule 6 of Central Excise Valuation Rules, 2000 more money equivalent of any additional consideration can be added to arrive at the assessable value. Any such addition made with respect to certain inputs/goods supplied free of charge provided by M/s. Symphony will not take the transactions out of the ambit of sale of goods for which the assessment machinery available is Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation Rules, 2000. Further OEMs are not making equipments/moulded parts only for M/s. Symphony but also for other persons and accordingly it cannot be said that all the OEMs are dummy manufacturers or related persons. There is no allegations by the Revenue to that effect or that OEM's were specially created to cater to the needs of M/s. Symphony.

13. After deciding the nature of transactions between the OEMs and M/s. Symphony as the transactions of sale of goods on principal to principal basis, the remaining arguments raised by the Revenue are squarely answered by the judgment passed by this Bench in the case of *M/s. Abhishri Packaging Pvt. Limited & Others* v. *CCE, Vapi* (supra), in Para 13 as follows :-

> *"13. We find that there is no dispute as to the fact that M/s. Symphony had supplied moulds to M/s. Abhishri for manufacturing of Air Coolers. Non-inclusion of the amortized cost of such moulds, in the value of Air Coolers sold by M/s. Abhishri to M/s. Symphony, would, at the most require redetermination of value, read with provisions of Rule 6 of Valuation Rules, which talks about determination of correct value, even for the transaction falling under the ambit of Section 4(1)(a) of Central Excise Act, 1944. When we apply the said rules, we find that the provisions of Rule 6 would apply in this case as the said provisions very clearly indicate that the cost of the free supply of moulds needs to be included in the transaction value, for the discharge of duty liability. The said cost of moulds has to be amortized and included in the value of goods manufactured and cleared by M/s. Abhishri. We find that the application of Valuation Rules, 2000 need to be done in sequential manner and specific Rule needs to be applied. We find that by applying such norm, Rule 6 of the Valuation Rules should the correct Rule, as it is more specific rule than the Rule 10A, for the purpose of valuation of the goods manufactured and cleared by M/s. Abhishri. This ratio is laid down by the Larger Bench Decision in the case of ISPAT Industries Limited - 2007 (209) E.L.T. 185 = 2007-TIOL-245-CESTAT-MUM-LB. Applying the said ratio, since Rule 6 covers the issue more specifically, invoking the provisions of Rule 10A of the Valuation Rules in this case, does not arise. The conditions which are required for invocation of provisions of Rule 10A are also not satisfied in this case. We are fortified in our views as to the agreement between M/s. Abhishri and M/s. Symphony is on principal to principal basis and interpretation of the provision of Rule 10A is not applicable in this case, by the decision that the coordinate Bench in the case of Innocorp Limited. In the said case of Innocorp Limited (supra), an identical issue was raised by the Revenue holding that M/s. Innocorp Limited being job worker of M/s. Tupperware is covered under the provisions of Rule 10A of the Valuation Rules, 2000. In that case, the first appellate authority had held in favour of the assessee and Revenue had preferred appeal before the Tribunal. The grounds taken in the appeal before the Tribunal in that case reads as under :-*
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> "4. The Grounds of appeal
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> 4.1 The Commissioner held that the impugned goods were manufactured from the moulds supplied by TUPPERWARE and that the raw material suppliers were authorized by TUPPERWARE. From these findings of the Commissioner, it is established that the manufacture of goods by

INNOCORP/DART for TUPPERWARE amounted to job work in terms of Rule 10A.

4.2 The facts of these cases are different from those of the cases of *Poona Bottling Co. Ltd. & Another* v. *UOI & Others* [1991 (8) E.L.T. 389 (Del.)], *UOI* v. *Citabul [sic-this is Cibatul] Ltd.* [1985 (22) E.L.T. 302 (S.C.)] 2002-TIOL-487-SC-CX-LB and *Teggas Industrial Development Ltd.* v. *CCE, Kanpur* [1989 (39) E.L.T. 151 (Tri.)] relied on by the adjudicating authority.

4.3 From the various clauses of the agreement between INNOCORP/DART and TUPPERWARE, it can be implied that the transactions were not at arms length [Clauses 6.5, 9, 11 and 12 of the INNOCORP-TUPPERWARE agreement and Clauses 6.4, 7.3, 9.2, 11 and 12 of the DART-TUPPERWARE agreement referred to by the appellant in this connection.] Some of the terms of the agreement implied that TUPPERWARE had proprietary interest in the goods manufactured by INNOCORP/DART, from the raw material stage itself. The agreement imposed many conditions on INNOCORP/DART and consequently they had very little liberty in the matters relating to production. Therefore the reliance placed by the Commissioner on the above case law is out of context.

4.4 The Commissioner held that the assessee was manufacturing the goods 'for' TUPPERWARE and not 'on behalf of' TUPPERWARE, without even attempting to justify such differentiation."

It can be seen from the above reading of the grounds of appeal before the Tribunal, the very same findings are recorded by the adjudicating authority in the case in hand. The Bench, after considering the grounds of appeal and submissions made by the Revenue and also analyzing the agreement made by M/s. Innocorp Limited with M/s. Tupperware recorded the following findings.

"7. Our findings.

7.1 We have given careful consideration to the submission of both sides. For the above rule to apply, the subject goods should be shown to have been produced or manufactured by the assessees *qua* job workers on behalf of TUPPERWARE. According to the appellant, the manufacturing activities carried out by the assessees under the relevant agreements constituted job work for TUPPERWARE who is sought to be presented as principal manufacturer. The appellant considers the assessees as job workers of TUPPEERWARE. As per Explanation to Rule 10A, job worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorized by him. According to this definition, any person to enter within its ambit of the definition should satisfy three requirements *viz.*

(i) he should manufacture or produce goods;

(ii) he should do it on behalf of a principal manufacturer;

(iii) he should do it from any inputs or goods supplied by the principal manufacturer or by any other person authorized by him.

In the present case, INNOCORP and DART satisfied the first condition, which is not in dispute. Whether they satisfied the remaining conditions has to be ascertained from the terms and conditions of the agreements entered into between INNOCORP/DART and TUPPERWARE.

7.2 The terms and conditions of the two agreements are undisputedly similar. The relevant provisions of one of the agreements have been recorded in sub-para (2.1) of para 2 of this order. The parties to this agreement declared that neither of them was an agent of the other, that their relationship was at arms length on a principal-to-principal basis, that neither of them had any interest in the other and that they had a buy-an-sell relationship only vide clause 23 of the agreement. It was also declared that TUPPERWARE was the purchaser of the products manufactured by DART. On a perusal of other clauses of the agreement; we have found these declarations contained in clause 23 to be true.

7.3 It is easily discernible from the agreement (a) that the assessee was appointed by TUPPERWARE, on a principal-to-principal basis, to manufacture the products as per the latter's specifications and to sell the goods to TUPPERWARE, (b) that TUPPERWARE was liable to pay to the assessee the price of the goods invoiced by the latter as per the settled cost quotations for the product, (c) that the raw materials and packing materials required for the manufacture of the goods were to be sourced by the assessee from suppliers named by. TUPPERWARE, (D) that none of the suppliers was authorized by TUPPERWARE to supply the raw materials or packing materials to the assessee, (e) that the moulds supplied by TUPPERWARE to the assessee for manufacture of the goods were returned after use (without availing Cenvat credit), (f) that the brand name of TUPPERWARE was affixed on the products by the assessee as required by the buyer, (g) that the assessee indemnified TUPPERWARE against any losses, damages, liabilities etc. which might arise from the former's negligence or wilful misconduct in manufacturing, assembling, handling, storing or shipping the products, and TUPPERWARE indemnified the assessed against any claim arising out' of consumer's use of the products in accordance with TUPPERWARE's instructions, (h) that the assessee had to use their own equipments, labour and know how to manufacture. Assemble the products, to carry out quality control tests on the products and to pack and sip the products in terms of the Purchase" Orders of TUPPERWARE, (i) that the agreement left the assessee free to manufacture goods not similar to the products for third parties and (j) that TUPPERWARE was free to source that products from other manufacturers. All these features of the contract would clearly indicate that the assessee was manufacturing the goods for TUPPERWARE and selling the goods to them for a price at arms length on principal-to-principal basis. Therefore, the contention of the appellant that the respondents were manufacturing the goods as job workers "on behalf of" TUPPERWARE cannot be accepted. The second requirement noted in para (7.1) was, therefore, not satisfied in this case.

7.4 It is true that stringent quality standards were prescribed by TUPPERWARE to be strictly maintained by the manufacturers at every stage of the manufacture. TUPPERWARE could inspect the process of manufacture to ensure that the specified quality standards for the products were being maintained. They also had to liberty to reject the finished goods which did not conform to the specified standards. These things are part of normal commercial practice in respect of business houses who insist on the quality of their merchandise. These cannot be considerations to hold that the manufacturing activities of the assessees were under extensive control of

TUPPERWARE reducing the status of the manufacturers to job workers. That the brand name of TUPPERWARE was affixed on the finished goods by the assessees is also immaterial. In this context, in our view, the learned Commissioner is justified in having claimed support from the decisions in the cases of *Poona Bottling Co. Ltd.* etc.

7.5 The third requirement [vide para (7.1) supra] for the assessees to be job workers of TUPPERWARE has also not been satisfied in this case inasmuch as the goods were not manufactured from any inputs supplied by TUPPERWARE or by any other person authorized by them. It is not in dispute that the necessary raw materials and packing materials were procured by the assessees from suppliers named by TUPPERWARE. The cost of these materials were expressly recognized as expense of the assessees. That the suppliers were chosen by the assessees from a panel furnished by TUPPERWARE does not mean that the actual suppliers were authorized by TUPPERWARE to supply the materials to the assessees. In so far as the moulds are concerned, undisputedly, they were returned by the assessees to TUPPERWARE after use (without availing Cenvat credit) and the amortised value thereof was included in the assessable value of the finished goods. On these facts, it has to be held that the third condition also remains unfulfilled in this case. In the result, the respondents in these appeals were not manufacturing the subject goods as job workers “on behalf of” TUPPERWARE. Needless to say, therefore, that Rule 10A was not applicable to the assessment of the subject goods.

7.6 We have also perused the text of the order passed by this Bench in the case of *Coromandel Paints Ltd.* (supra). The assessee in that case was engaged in the manufacture of paints, varnishes and thinners. They entered into an agreement with *M/s. Sigmakalon India Pvt. Ltd.* (SIPL) for manufacture and supply of paints to SIPL. COROMANDEL accordingly manufactured paints and sold the same to SIPL. They paid duty on the transaction value (the value shown in the invoice raised on SIPL by COROMANDEL) of the goods under Section 4(1)(a) of the Central Excise Act, 1944. The invoice amounts were adjusted against the advances paid by SIPL. The work undertaken by COROMANDEL appeared, to the Department, to be a job work and therefore show-cause notices were issued to them demanding differential duty on the basis of Rule 10A of the Valuation Rules, 2000. The assessee resisted this demand mainly on the ground that they were not job workers and that the transaction between them and SIPL was on principal-to-principal basis. This contention of the assessee was rejected by the adjudicating authority which held that the assessee was job worker of SIPL and hence liable to pay the differential duty on the basis of Rule 10A. the orders of the adjudicating authority came to be upheld by the Commissioner (Appeals). Aggrieved, the assessee approached this Tribunal. After examining the various clauses of the “Agreement for Manufacture and supply of Paints”, between COROMANDEL and SIPL, this Bench found (a) that both parties had understood the arrangement to be on principal-to-principal basis, (b) that COROMANDEL procured the raw materials and packing materials and manufactured paints as per SIPL’s specification and sold the paints to SIPL, (c) that there was nothing on record to indicate that SIPL had supplied raw materials or other goods to COROMANDEL and (d) that certain general equipments such as computers, printers etc. supplied by SIPL were never installed in the factory or used by COROMANDEL. On these facts, this Bench took the view that the relationship between COROMANDEL and SIPL was not that of a principal manufacturer and job worker. In COROMANDEL’s case, they were also required to select suppliers named by SIPL because the raw materials from those suppliers were of the special kind required for the manufacture of the paints for which purchase orders were placed by SIPL on COROMANDEL. This fact pleaded by the Department was not accepted as a ground for holding COROMANDEL to be a job worker of SIPL.

7.7 The learned Addl. Commissioner (AR) picked on aspect of *COROMANDEL's* case to distinguish it from the present case. In that case, this Bench had noted that there was no evidence of return of unused materials, scrap etc. to SIPL. In the present case, such materials were to be returned to TUPPERWARE. But, then, the cost of these materials could be billed by the manufacturer to be paid by TUPPERWARE vide clause (11) of TUPPERWARE-DART agreement, which arrangement also reflected a seller-and-buyer relationship between the parties.

7.8 In *COROMANDEL's* case, this Bench also found that their case. Was supported by the decision of a coordinate Bench in the case of *Gillete Diversified Operations Ltd.* v. *CCE, Chennai* [2007 (217) E.L.T. 551 (Tri.-Mad.) = 2007-TIOL-2341-CESTAT-MAD]."

It can be seen from the above reproduced finding that the issue involved in this case is squarely covered by the decision of the Tribunal in the case of Innocorp Limited (supra). We would hasten to hold that in the case of Innocorp Limited, the agreement clauses as reproduced in paragraph 2.1 of the said order are more stringent than the clauses of agreement in the case in hand, inasmuch as the Tupperware had strict quality control procedure set up, were also controlling and directing M/s. Innocorp Limited for control of the cost of the production, M/s. Innocorp Limited were also required to return the balance goods back to M/s. Tupperware immediately. We find that despite such terms and conditions, Tribunal had held in favour of assessee M/s. Innocorp as per the reasoning reproduced herein above, which would squarely apply in the case in hand. In our considered view, the ratio of the order of the Tribunal is that, if any assessee manufacture final products, independently procuring inputs, paying for the same, utilizing his own manpower and sells the finished products to a purchaser based upon the price agreed between them, the said transaction will be covered by Section 4(1)(a) of the Central Excise Act, 1944. Trying to bring such type of transactions under provisions of Rule 10A of Valuation Rules, is not in consonance with the settled law, even if the finished products are sold at higher price by the buyer.

14. In view of the above, it is held that valuation of goods has been correctly determined by the appellants. On the other issue of limitations, the Bench is not recording any reasons once on merits the issue is decided in favour of the appellants. Further, there is no point in confiscation of goods or imposition of penalties upon the appellants when issue on merits has been decided in favour of the appellants. Appeals filed by the appellants are allowed by setting aside the orders passed by the adjudicating authority with consequential relief, if any.

A similar view has also been taken by this Tribunal in the case of *Symphony Comforts System Limited vs. CCE – 2016 (334) ELT 82 (Tri. Ahmd)*, which is as follows:-

“2. After hearing both the sides and on perusal of the records, we find that the M/s. Prince Containers Pvt. Limited (in short ‘the assessee’ are engaged in the manufacture of Air Coolers of ‘Symphony Brand’. The assessee cleared the goods of Symphony Brand Air Coolers to M/s. Symphony Comfort Systems Limited (in short ‘Symphony’), on payment of duty on transaction value under Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The adjudicating authority held that the assessees are liable to pay duty under Rule 10A of the Valuation Rules, 2000 and confirmed the demand of duty along with interest and penalty and also imposed penalties on M/s. Symphony.

3. We find that the issue is no more *res integra* in view of the decision of the Tribunal in the assessee’s own case, for the earlier period, in the case of *Ravikiran Plastics Pvt. Limited* v. *Commissioner of Central Excise, Vadodara* - 2014 (303) E.L.T. 144 (Tri.-Ahmd.). The Tribunal set aside the impugned order on the identical issue and allowed the appeals filed by the appellants. It has been held that transaction between the assessee and M/s. Symphony are sales transaction, predominant supply of inputs or goods free of charge to assessee not established. It is further held that initiations, monitoring and supervision of the manufacturing activities is purely a professional and commercial approach on the part of the brand owner to sustain his business, profitability and also to maintain the quality and timely supply of finished goods to the market to fulfill its sales commitments. It cannot be treated as job work under Rule 10A of the Valuation Rules.

4. In view of the above, following the Tribunal’s earlier decisions, impugned order is set aside, all the appeals filed by the appellants are allowed.”

6. The facts of the present case are similar to one which is decided in the above mentioned cases. Therefore, also following the above decisions we hold that the impugned order-in-appeal is without any merit therefore and therefore we set-aside the same, the appeals are allowed.

7. Since the main charge of under invoicing, against the appellant M/s. Vita Biopharma Pvt. Limited (now VVF India Limited) is legally not sustainable, the question of imposition of penalty on M/s. Colgate Palmolive Limited does not arise. Therefore, all the appeals are accordingly allowed.

(Pronounced in the open court on 12.06.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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