FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 11/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70779-70780/2017-EX[DB] dated 16/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2537/2012	**East India Udyog Limited** 145, G T Road, Sahibabad, Ghaziabad(up)
2	E/2538/2012	**Sh N K Lohia** Chairman M/s East India Udyog Ltd, 145, G T Road, Sahibabad, Ghaziabad.
		Name and Address of Respondent
3		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
4		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Anurag Mishra
117/10 SK APARTMENT
SARVODAYA NAGAR,
KANPUR,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com).FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/2537 & 2538/2012-EX[DB]

(Arising out of Order-in-Original No. 08/Commr./GZB/2012-13 dated 23/05/2012 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

East India Udyog Ltd., Sahibabad, Ghaziabad &

Shri N.K. Lohia **Appellants**

Vs.

Commissioner of Central Excise & S.T., Ghaziabad **Respondent**

Appearance:

Shri Anurag Mishra, Advocate for Appellants
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 16/05/2017
Date of Decision : 16/05/2017

FINAL ORDER NOs. 70779-70780/2017

Per: Anil Choudhary

These two appeals have been preferred by the appellants-assessee against Order-in-Original No. 08/Commr./GZB/2012-13 dated 23/05/2012 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad. The appellants are manufacturer of

Transformers and it parts, against levy of duty and penalty, invoking the extended period of limitation.

2. The brief facts of the case, as per the show cause notice dated 28th March, 2011 demand of duty, relating to the period 2007-08 to 2010-11. The appellants have got units at Ghaziabad (UP) and also at Roorkee (Uttrakhand). The unit at Ghaziabad was engaged in manufacturing components of transformers on job work during the period 2007-08, 2008-09 for the unit at Roorkee. The unit at Roorkee was availing 'Area Based Exemption' under Notification No.50/2003-CE dated 10.06.2003. On scrutiny of records, it appeared that the Ghaziabad unit had manufactured complete transformers on job work basis on behalf of their said Roorkee unit whereas on paper M/s EIUL have shown manufacturing and supply of various parts of transformers/semi finished transformers on job work basis for their said Roorkee unit. Further, in terms of condition of Notification No. 214/86-CE, it appeared that the Ghaziabad unit was liable to pay Central Excise duty on the said transformers manufactured by them on job work, since neither the goods manufactured by them on job work were used in or in relation to the manufacture of final products not the said goods have been cleared on

payment of duty from the Roorkee unit. It also appeared that the Ghaziabad unit have also manufactured some transformers at Ghaziabad unit and cleared the same to their customer directly from Ghaziabad unit during 2009-10 & 2010-11 without payment of duty on the invoice of their Roorkee unit, showing the production at Roorkee.

3. A search operation were conducted in the factory premises at Ghaziabad unit (EIUL) and their other two sister units concerned namely M/s EIUL at Anand Industrial Estate, Mohan Nagar, Ghaziabad & M/s Jyoti Udyog Ltd. at Loni Road, Mohan Nagar, Ghaziabad, simultaneously on 20.08.2010. During the course of search of the premises of the said unit, various records maintained by the said units were checked and some records were also resumed. Further Pancnamas was drawn at the respective premises and statements of the various persons were recorded under Section 14 of the Central Excise Act, 1944.

4. Shri Surendra Gupta, Chief Marketing Manager of M/s EIUL in his statement dated 20.08.2010 interalia, stated that-

He is working as Chief Marketing Manager of M/s EIUL and in this capacity he is looking after marketing & sales work of the company under the direction of Shri N.K. Lohia, Direector of M/s EIUL. He further stated that they are manufacturing power & Distribution Transformers upto 10 MVA, 33 KV class and their main inputs are CRGO, Aluminum Conductors, Copper Conductors, M.S. Steel, Transformer Oil, CRCA, etc. Their main customers are UPPCL & its discoms, MSEDCL, Orisa State Electricity Board, etc. He further stated that they have got some work done on job-work basis from their sister's company M/s Jyoti Udyog Ltd., situated at Loni Road Mohan Nagar (UP) & M/s East India Udyog Ltd. also situated in Mohan Nagar (UP). From M/s Jyoti Udyog Ltd., they got parts or complete transformer manufactured by them on job work basis, for which they supply raw materials on job-work challans. As regards their unit at Arthala, they got Tank & Radiator fabricated on job work basis. They under take manufacturing of complete transformer on job work basis on behalf of their two units located at Roorkee and such transformers are removed from their Ghaziabad unit on invoices of Roorkee unit without payment of duty and that the transportation of such transformers are arranged by them from local Road Lines situated at Ghaziabad. He also tendered a Challan/Transfer invoice No.94 dated 08.08.10 along with GR No.3 dated 08.08.10 of Yadav Road Lines, Ghaziabad and stated that the said Challan/transfer invoice was prepared in their Ghaziabad unit and supplied the goods directly from Ghaziabad to customer on behalf of Roorkee unit. Their unit at Salempur Rajputan Industrial Area, Roorkee is functioning since 2007-08 and the unit at Lakeshwari Industrial Area, Roorkee is functioning since 2009-10.

5. Statement of Shri Ajay Vats, Senior Executive (Marketing) of M/s EIUL in his statement dated 20.08.2010, interalia, stated that-

He is working in this company since 1st January, 2009 and his responsibilities are to develop software and preparing of bills. He is preparing tax invoice & sale invoice of M/s East India Udyog Ltd. Sahibabad, Ghaziabad and also preparing sale/tax invoice of M/s EIUL situated at Lakeshwari Industrial Area, Roorkee & M/s EIUL situated at Salempur Rajputan Industrial Area, Roorkee. For preparing invoices for Roorkee units, he received information through Fax (challan copy) from Roorkee unit and some time received information on phone and on the basis of information received on phone or challan copy received on Fax, he prepares tax/ sale invoice of the Roorkee unit. He prepared tax/sale invoices of Roorkee units on the direction of Shri Surender Gupta, Director, Marketing of the company and he reports to him as and when required.

6. Statement of one Shri Lalit Mohan Jha, Production In-charge of M/s Jyoti Udyog Ltd., Ghaziabad in his statement dated 20.08.2010 interalia, stated that-

He is looking after the work of production since July, 09 in this unit under the direction of Shri Sushil Sharma, Production Manager of M/s EIUL. Prior to July'09, he was working in M/s EIUL. They are manufacturing Distribution Transformers of various capacities on job-work basis for M/s EIUL and all the raw materials except tanks are being sent by M/s EIUL under job-work challans. MS Sheet cuttings for manufacture of Tanks are being received from M/s EIUL, Mohan Nagar, Ghaziabad. After manufacture complete Transformers, they fix the name plate of M/s EIUL on the transformers manufactured by them on job work. Thereafter, the transformers are being sent to M/s EIUL on Challan/transfer invoice.

7. Another statement of Shri S.P. Singh, Testing Engineer of M/s Jyoti Udyog Ltd. Mohan Nagar, Ghaziabad was recorded on 20.08.2010, he interalia, stated that-

He is working in this unit for last 03 months and looking after the work of testing of transformers. Earlier he was working in M/s EIUL and received salary from M/s EIUL. For manufacturing of transformer, MS sheets are cut in shape and fabrication of tanks are done. CRGO sheets are cut and assembled. Coiling is prepared using insulated wire of Copper or Aluminum. Coil assembly is fitted in the transformer tank. Ceramic bushings are fitted and filled with transformer oil. Thereafter the serial number is punched on transformer and name plate is fixed on the transformer. They manufacture complete finished transformer which are cleared after testing from their unit to M/s EIUL. All the raw materials except tank are sent from M/s EIUL and MS sheet in cut & mold shape are sent by M/s EIUL, Mohan Nagar. All the documents/records for clearing the transformers are prepared at M/s EIUL and the same are sent to M/s EIUL.

8. Statement of Shri Raj Kumar Sharma, Supervisor of M/s EIUL, Mohan Nagar in his statement dated 20.08.2010, interalia, stated that-

He is working as supervisor since last one year and he looks after the work of production of goods and their clearances from the factory. Head office of their unit is situated in M/s EIUL and he reports to Shri Sushil Sharma, production Manager & Shri Mohit Saravgi, General Manager, both of M/s EIUL. They manufacture tanks and radiators for transformer. They receive all the raw materials from M/s EIUL and no materials are being purchased in their unit. They manufacture tanks and radiators only for their other units M/s EIUL and M/s Jyoti Udyog Ltd. Mohan Nagar.

9. Summons were issued to Shri Sushil Sharma (Production In-charge, Ghaziabad unit), who was involved in the activity of production of transformer on job work for Rorkee unit, and also to Shri V.S. Tomar (Authorized Signatory) who was dealing with documentation and transportation of the transformers manufactured on job work and Shri P. Banerjee (Manager Finance) all of M/s EIUL. In compliance of summon, Shri P. Banerjee appeared on 27.08.2010 and interalia stated that-

He is working as Manager Finance with M/s EIUL since July'2000 and looking after all the work related to finance/accounts. Accounts work is headed by Shri G. Aggarwal of all the five units of M/s EIUL, are being done at Sahibabad, Ghaziabad. Shri N.K. Lohia is head of the purchase department. However, accounts of purchase of raw materials are being maintained unit wise separately. Shri Surender Gupta is Chief Marketing Head of all the five units of M/s EIUL and other five Sales Executives are working under the direction of Shri Surender Gupta who looks after the sales of each unit separately. Excise invoice of the respective units are being prepared unit wise in the respective unit. However, other documents like sale bill/Challan of all the units are made by Shri V.S. Tomar.

10. Statement of Shri Sushil Sharma, Production In-charge of M/s EIUL recorded on 30.08.2010, who interalia stated that- Main manufacturing process of the transformers are (a) Windings of coils (b) Core Assembly (c) Core Coil Assembly (d) Baking/Setting (e) Tanking. They manufactured complete transformers on behalf of the Roorkee unit except L.T. fitting/Connection & testing. After receiving the materials from the store, (I) first they start winding of wire/strips for the coils on winding

machine. Then core coil assembly of wire/strip coils manually. Then ovening of core coils connection completed in Ovens (II) for Tanking, M.S Sheet/Slat/Flat are cut into sizes and mold. Then welding of parts and testing of tanks (III) for Radiator-CRCA Cutting, pressing and then welding and testing of Radiator (IV) for Lamination cutting-Roll cutting as per sizes. Then Annealing of cutting sizes in Annealing furnace. After completion of above various process stages, transformer is complete and sent for testing in the testing department. After testing, inspection of transformer is done by Inspecting Authority of Electricity Board. After Inspection, the Board forwards dispatch advice for dispatch of goods and then transformers are cleared from the factory. He also demonstrated the copy of one challan No. 544 dated 20.12.07 issued by Ghaziabad unit for removal of transformers manufactured by them on job work for Roorkee unit (as sample) and stated that parts of transformers shown on the said bill were complete transformer and manufactured in their unit at Sahibabad, Ghaziabad. He also stated that quantity of parts shown on the bills represent complete transformers and it multiples, except connection & testing.

11. Statement of Shri V.S. Tomar, Authorized Signatory of M/s EIUL was also recorded on 30.08.2010, who interalia stated that-

He is working as Sales Officer with M/s EIUL since 1982 and Authorized Manager for Central Excise compliances, for maintenance/issuance of records/documents/invoice/Challan for excise purpose. Shri Ajay Vats prepares the Challans for removal of goods from Roorkee unit in their office at Sahibabad, Ghaziabad. In absence of Shri Ajay Vats, some time he also prepares the Challan on behalf of their Roorkee unit from Ghaziabad office. After perusal of files containing copy of challans (RUD-12) issued by them for removal of goods manufactured by them on job work, he stated that these challans were issued by their Ghaziabad unit to their Roorkee unit situated at Salempur Rajputan Industrial Area, Roorkee. He also stated that during 2007-08 & 2008-09 they had manufactured transformers on behalf of their Roorkee unit on job work and these challans were issued for removal of said transformers manufactured on job work. They manufactured complete transformers except punching serial number of transformer on behalf of their Roorkee unit during 2007-08 & 2008-09. They had not sent the semi finished parts as shown on the said challans but they had sent the complete transformer to their Roorkee unit. He further stated that after perusal of GRs contained in the file resumed at S. No. 95 of Panchnama dated 20.08.2010 from M/s EIUL (RUD-16), he stated that GR No. 345 dated 04.06.2010, No. 319 dated 05.05.2010, 311 dated 05.05.2010 & 285 dated 05.05.2010 contained in this file were prepared by him in their office at Sahibabad, Ghaziabad. He also stated that in cases where GRs were prepared by him or other employee of their Ghaziabad unit, the goods were cleared from Ghaziabad unit and dispatches were shown from their Roorkee unit only on the paper.

12. Statement of Shri Lalit Mohan Jha, Production In-charge of M/s Jyoti Udyog Ltd. Mohan Nagar, Ghaziabad was recorded on 13.09.2010 under Section 14 of the Act, who interalia stated that-

He is working as Production Supervisor in M/s Jyoti Udyog Ltd. since July'09 and his responsibilities are to look after the production, availability of raw materials & dispatch of finished goods. He stated that all the raw materials are received from M/s EIUL, Ghaziabad through Challan. They manufacture complete transformers of the capacity of 10KVA to 250KVA for M/s EIUL and removed from the factory to M/s EIUL as per their direction. Some time they also clear the goods directly from their unit to customers, if the truck driver comes to their factory along with the documents issued for clearances from M/s EIUL. In case of sale of transformer directly from their premises, name plate & serial number of transformer is also received from M/s EIUL, Sahibabad, Ghaziabad.

13. Factory premises of M/s EIUL, Salempur Rajputan Industrial Area, Roorkee and M/s EIUL Lakeshwari Bhagwanpur, Roorkee were also visited on 16.09.2010. At the time of visit various records maintained by the said units were examined and some records which appeared relevant for further scrutiny were also resumed under Panchnama dated 16.09.2010 statements were also recorded of concerned persons found available under Section 14 of the Act.

14. In the statement recorded from Shri Sudhir Kumar Chauhan, Incharge of M/s EIUL Salempur Rajputan Industrial Area, Roorkee, who interalia stated that-

He is working as In-charge (Manager) in this unit since July'2007 and prior to July'2007 he was working as Store Supervisor in M/s EIUL, Ghaziabad. He looks after the work of administration, production and clearances of finished goods. He also prepares the daily production report and excise invoice & challans for clearances of finished goods. They manufacture distribution transformers of the capacities of 10KVA to 250 KVA and they are availing the exemption from payment of central excise duty under Area based exemption under Notification No.50/2003-CE. They started the said unit in October, 2007. All the raw materials except few consumable items are being purchased by their head office situated at Sahibabad Ghaziabad and supplied to them. Prior to February'09, no raw materials was received in their unit at Roorkee since all the raw material was supplied directly to M/s EIUL, Ghaziabad, by their head office for manufacture of transformers on job work basis. From, Feb '2009 they are receiving the raw materials from Ghaziabad for manufacture of transformers. Their head office sent the said transformers manufactured by M/s EIUL on job work after testing at Ghaziabad through Challans. They removed the said transformers from their unit after completing the fittings, bushings, oil tapping and painting of tanks. No document was sent to M/s EIUL from their Roorkee unit for job work. After perusal of challans No. 136 & 137 both dated 05.09.2009 in the file resumed at S. No. 21 (RUD-21) and Gate pass book resumed at S. No.32/3 (RUD-22) under Panchnama dated 20.08.2010 from M/s EIUL, he stated that the transformers which have been shown to be cleared from their Roorkee units under the said Challans No. 136 & 137 both dated 05.09.2009, were actually manufactured and cleared directly from M/s EIUL Ghaziabad. He prepared the invoices in such cases where transformers are cleared directly from Ghaziabad unit on the direction of their head office situated at Ghaziabad.

15. Statement of Shri Vivek Tiwari, Store In-charge of M/s EIUL, Lakeshwari Bhagwanpur, Roorkee, was recorded on 16.09.2010 who interalia stated that- there is no facility of testing of transformer in their unit.

16. After completing enquiries from the employees, summons were issued to Shri N.K. Lohia, Chairman of M/s EIUL and Shri Harsh Gupta, Director of M/s Jyoti Udyog Ltd. Mohan Nagar, Gaziabad. In compliance of summon, Shri N.K. Lohia appeared on 05.10.2010 and

statement of Shri N.K Lohia was recorded under Section 14 of the Act, who, interalia, stated that-

He looks after overall working of the company in particular the financial side. The other three directors are not actively involved in the functioning of the company. He is Chairman of the Board of directors looking after/supervising all the activities at different section of the company. They have total five units situated at-

(1) 145 G.T. Road, Sahibabad, Ghaziabad (Commodity-Transformer).

(2) 120 Anand Industrial Estate, Mohan Nagar (Commodity-Tanks & Radiators for Transformers)

(3) 1088, Salempur Rajputan Industrial Area, Roorkee (Commodity-Transformer)

(4) 144, Lakshwar Industrial Area, Bhagwanpur, Roorkee (Commodity-Transformer)

(5) 148 & 158 Raipur Industrial Area Roorkee (Commodity-ACSR & AAAC Conductor)

Financial accounts of all the units are maintained at their Head office at 145 G.T. Road, Sahibabad Ghaziabad. All the raw materials are purchased by Head office of all the units. They placed order for major materials on combined basis as per requirement of all the units. However, they maintain material receipt report (MRR) separately for all the units at Head Office. Their sale is generally through Government tenders. They submit tender for all their units from head office. However, orders are received on individual units for delivery. They manufacture complete transformer in their unit and they send only some maintenance items like motor, tools for job work to some outside venders. They have not undertaken any job work for any outside party at their premises. However, they had undertaken job work for their unit situated at Salempur Rajputan Industrial Area Roorkee during 2007-08 to 2008-09. During said period, the said unit was not technically competent as the training of worker and staff was lacking. They sent complete components/parts of transformers after manufacturing at their Ghaziabad unit on job work basis. The raw materials for manufacture of said components/parts for their Roorkee unit was purchased by their Head office at Ghaziabad and supplied to Ghaziabad unit directly. They have not received any documents/challan in respect of supply of said material from their Roorkee unit. After manufacturing the said components/parts of transformers on job work, they sent the same through challan issued by Ghaziabad unit. Their principal raw materials received on behalf of their Roorkee unit are Silicon Steel Sheet/Coil to make core assembly, Aluminum and Copper wire and insulation paper to make H.T and L.T Coils, M.S Steel and Section to make tanks, transformer oil used as coolant in the finished Transformers and H.T. bushing and fitting, as such supplied with the said goods. The above parts, except H.T. bushings and fittings are put/fitted in the tanks and filled with oil. With reference to the statement dated 20/08/2010 of Shri Surender Gupta, Marketing Head and statement dated 30/08/2010 of Shri V.S. Tomar in which both the persons stated that they manufactured complete Transformers for their Roorkee unit on job work during 2007-08 and 2008-09, he stated that he already replied in earlier question that they had manufactured components/parts on job work basis for the Roorkee unit and supplied the same. He does not know why they have made such statement. After perusal of the gate pass books, he stated that for every type of clearance, they are issuing proper invoice and Challan. Challans are invariably made by them for all kind of removal. As far as Gate Pass shown to him, it was stated that the same appears to be their internal documents, which is made along with other documents.

17. In compliance of summons statement of Shri Harsh Gupta, Director of M/s Jyoti Udyog Ltd., Ghaziabad was recorded on 18/11/2010, who interalia, stated that- M/s Jyoti Udyog Ltd., was doing manufacture, fixing of transformer on job work basis and have also manufactured their own Transformers for direct sales. They are doing job work only for M/s East India Udyog Ltd. Sahibabad, Ghaziabad. They are manufacturing complete transformer on job work for the said unit. They do not dispatch the goods directly to customers of M/s EIUL. However, in a few instances on verbal instructions of M/s EIUL, in case of emergency situation with customers of M/s EIUL, that is Electricity Boards, they have dispatched Transformers to customers from their premises. In such cases, the documents covering the consignment that is invoice, challan, GR, etc. were prepared by M/s EIUL and handed over to the transporter. Further, stated that they have not done any job work for M/s EIUL, Salempur Rajputana Industrial Area, Roorkee.

18. It appeared to revenue that during the period 2007-08 and 2008-09 M/s EIUL Sahibabad, Ghaziabad had

undertaken job for manufacturer of Transformers on behalf of their other unit situated at Salempur Rajputan Industrial Area, Roorkee. Head office purchased raw materials on behalf of the Roorkee unit and directly supplied to M/s EIUL, Sahibabad Ghaziabad unit and no documents that is challan/invoices/bill was issued/maintained by the head office or by Roorkee unit for sending the said raw materials. M/s EIUL had received Silicon sheet/coil, Aluminum and Copper wire, MS Steel and Section, transformer oils and H.T. bushing and fittings which were used in the manufacture of following items: -

(i) Silicon Steel Sheet/Coil used to make Core assembly.

(ii) Aluminum and Copper wire and insulation paper used to make H.T. and L.T. Coils.

(iii) MS Steel and Section used to make tanks.

(iv) Transformer oils used as coolant in the Transformers.

(v) H.T. bushing and fittings were put/fitted in the tanks and filled with oil.

and cleared the same after job work from Sahibabad, Ghaziabad unit to the Roorkee unit on challans. M/s EIUL have shown clearance of semi finished transformer/part of transformer on the said challans to the Roorkee unit on charging of job work charges for manufacturing of said semi finished parts of the transformer on job work basis. On careful examination of these challans, it appears that the numbers of semi finished parts of Transformers mentioned in the said challans are corresponding to complete transformer. For example, in Challan No.EIU/S-544/2007-2008 dated 22/12/2007 placed in file, containing bills/challans issued to M/s EIUL Salempur Rajputan, Roorkee for the year 2007-08, Sl. No.12 of annexure to the Panchnama (RUD-12), M/s EIUL had shown clearance of the semi finished parts of the transformer as under:-

Being the job work charges for manufacturing following semi finished parts: (for 25 KVA Transformer)	
Tank with Radiator & Fittings H.T. Coils (24 Tks x 12) L.T. Coils (24 Tks x 3) Core Assembly (24 Tks x 03) Transformer Oil Filtration Charge (14 Tks x 80Ltrs.) H.T. Fittings (24 Tks x 03) H.T. Bushings	24 Nos. 288 Nos. 72 Nos. 24 Nos. 1920 Ltrs. 72 Nos. 72 Nos.
	<u>Every Tank Sl. No. contains</u> 12 HT Coils + 3 LT Coils_1 Core Assembly + 3 Fittings & 80 Ltr Oil The items are fitted/immersed in oil

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It further appeared that –

(i) The aforesaid so-called semi-finished parts of the transformer as a whole represents complete Transformers and the numbers of complete Transformers are multiple of number of tanks. Further, it is apparent from the description given on the right corner of the challan that all the items mentioned in the challans are cleared from the factory duly fitted in the transformer tank and immersed in the transformer oil. In other words, it appears that M/s EIUL, Ghaziabad had not cleared the parts of the transformer but cleared only complete Transformers against the said challans. However, they have deliberately shown clearance of such Transformers in the guise of semi-finished parts of Transformers.

(ii) Shri Sushil Sharma, Marketing Head of M/s EIUL in his statement dated 20/08/2010, have stated that they had manufactured complete Transformers on job work for their Roorkee unit during 2007-08 and 2008-09, except L.T fittings/connection and testing. Mr. Sushil Sharma also stated that they manufactured and sent only such quantity of parts of transformer in proportionate to the complete Transformers.

(iii) Mr. V.S. Sharma sales Officer of M/s EIUL in his statement dated 30/08/2010 interalia, stated that they manufactured complete transformer, except punching serial number of transformer on behalf of the Roorkee unit during 2007–08 and 2008-09. They had not sent the semi-finished parts as shown on the said challans. But they sent the complete transformer to their Roorkee unit.

(iv) Shri N.K. Lohia in his statement stated that they had undertaken job work for the unit situated at Salempur Rajputan Industrial Area, Roorkee during 2007-08 and 2008-09. During, said period, the Roorkee unit was not technically competent as the training of worker and staff was lacking.

In view of the above premise, it appeared to revenue that raw material was purchased by Ghaziabad-Head Office on behalf of their Roorkee unit and supplied to M/s EIUL Sahibabad Ghaziabad, which manufactured Transformers on behalf of their unit Roorkee on job work basis, during the said period and removed from

Ghaziabad unit to Roorkee unit without payment of duty, claiming exemption under Notification No.214/86-CE. It further appeared that M/s EIUL Sahibabad Ghaziabad was not entitled for exemption on the said goods, since their Roorkee unit was availing Area-based exemption under Notification No.50/2003-CE. It further appeared to revenue that appellant unit at Sahibabad Ghaziabad is not entitled to benefit of Notification No.214/86-CE for want of satisfaction of the conditions. It is further observed that neither the goods manufactured by M/s EIUL Sahibabad Ghaziabad were on job work basis, were used in or in relation to the manufacture of final products nor the said goods have been cleared on payment of duty from their factory. Since, the complete manufacturing activities were undertaken by M/s EIUL Sahibabad, Ghaziabad unit and no further manufacturing activities were carried out at Roorkee unit for such goods and also the said goods were cleared to the customers either directly from Ghaziabad unit or from the Roorkee unit, as such, without payment of duty. The benefit of Notification No.214/86-CE does not appear to be admissible. Therefore, it appeared that M/s EIUL Sahibabad, Ghaziabad unit, which had manufactured the goods on behalf of the Roorkee unit was liable to pay Central excise duty on the said goods. Accordingly, the duty was proposed more fully detailed in Annexure-A to the SCN, for Transformers manufactured valued at Rs.14,37,39,040/- involving excise duty of Rs.2,17,77,102/- for the said period 2007-08 and 2008-09, holding the appellant unit (Sahibabad, Ghaziabad) was liable to pay duty which they have not paid under the facts and circumstances. It further appeared that M/s EIUL Sahibabad, Ghaziabad unit have violated the provisions of Rule 4, 5, 6, 8 and 11 of Central Excise Rules, 2002 and have suppressed the facts from the Department with intent to evade Central Excise duty and as such for recovery of the said amount extended period of limitation is invokable. Accordingly, show cause notice proposed demand of Rs.2,45,41,600/- including demand of Rs.27,64,498/- for the period 2009-10 and 2010-11 on the similar grounds with further proposal that the amount already deposited by GR-challans amounting to Rs.1,00,00,000/- should not be appropriated towards the proposed demand along with interest and further penalty was proposed under Rule 25 of CER, 2002.

19. The said SCN was confirmed on contest by the learned Commissioner confirming the proposed demand along with the appropriation of Rs.1,00,00,000/- with

interest and further penalty of equal amount was imposed on M/s EIUL Sahibabad, Ghaziabad under Rule 25 of CER, 2002. Further separate penalty of Rs.25 lakhs was imposed on Shri N.K. Lohia, Chairman of M/s EIUL under Rule 26 of CER, 2002 read with Section 11 AC of the Act.

20. Being aggrieved, the appellant company and its director are before this Tribunal. It is further informed by the learned Counsel, appearing for the appellants that the appellant, chairman of M/s EIUL Shri N.K. Lohia have died during November, 2016. The learned counsel urges that the impugned order is vitiated and against the facts on record. Further, the order is also bad as the same is in violation of the Section 9 (D) of the Act, as none of the persons, the statement of whom revenue have relied upon where examined and/or Cross Examination in the course of the proceedings. Further, appellant had made specific request in their interim reply, praying for cross-examination of about 14 persons who were named therein. The learned counsel also states that in view of the detailed examination of the records, nothing being found contrary, the learned Commissioner have erred in demanding the duty solely based on the statements. He further states that the show cause notice is vague, as it is

admitted case of the revenue that the appellant unit at Sahibabad, Ghaziabad manufactured and cleared various parts and components of the transformer to their Roorkee unit, but duty have been demanded wrongly on the value of complete Transformers. The learned counsel further urges that the learned Commissioner have misdirected himself by relying on the provisions of Notification No.214/86-CE. The learned Counsel urges that in the facts of the given case, as their Roorkee unit was availing benefit of exemption under Area-based Notification No.50/2003-CE, the procedure for job work under Notification No.214/86-CE is not applicable. He further states that there is no illegality in the modus-operendi adopted by the appellants, whereby the head office ordered raw material on behalf of the Roorkee unit, maintained separate accounts of such raw material, such raw material being received at the Sahibabad Ghaziabad unit, wherein it was processed and the components of the transformer manufactured and thereby transferred to the Roorkee unit, under proper invoices/challan raised. Not a single test report is brought on record by the revenue that what was removed from the Sahibabad, Ghaziabad unit were not the components and parts of the transformer, but was a complete Transformer. The whole case of revenue is based on presumptions and assumptions, ignoring the facts on record and simply relying on some vague statements of some employees, which have got no evidentiary value in the eyes of law. Moreover, the Chairman of the company Shri N.K. Lohia in his statement under Section 14 have categorically stated that they manufacture at the Sahibabad, Ghaziabad unit, components and parts of the of the transformer under job work for their Roorkee unit and accordingly, they clear the components and parts to the Roorkee unit. The said Roorkee unit after receiving the components and parts of the transformer conducts the finishing work of final assembly and testing, which is the most important activity for completion of manufacture. Thereafter, on completion of the manufacture, such transformer from Roorkee unit are sold under auction sales or sale by bidding, wherein the representatives of the buyers come to the factory for a pre-delivery testing and inspection, at the Roorkee unit. Only on being satisfied, and the transformer so certified, are supplied to particular buyers. There is no dispute by revenue that such transformer sold to various buyers were not manufactured at the Roorkee unit or were not inspected by the respective buyers at the Roorkee unit, before receiving delivery of the same. The learned counsel further, in the course of arguments have drawn our attention to the various documents, including Road Permits issued by the Sales Tax Department, which are mandatory documents for transportation of goods from one place to other within the state and also for interstate transfer. The Invoices/Bilites issued for transfer of transformer components or the parts, wherein the truck number and the road permit number (form Number-16 under UK VAT Rules). Further, we find that in the accompanying challan along with the road permit, there is endorsement by the Sales Tax check post, Roorkee unit. Learned counsel further explains that the appellant-assessee's Sahibabad, Ghaziabad unit and Roorkee unit have to maintain proper records of usage of such road permits and account for them before the concerned Sales Tax Department. The learned counsel further draws our attention to the facts that the Roorkee unit have filed proper returns of its turnover as required under Notification No.50/2003-CE with the Central excise Department. Nowhere, any of such returns have been found to be untrue or otherwise. The learned counsel further states that there has been failure on the part of learned Commissioner to exercise jurisdiction in examining the witnesses of the revenue. Inspite of all the powers of a Civil Court being vested, to ensure the attendance of witnesses, the learned Commissioner failed to exercise jurisdiction and have drawn erroneous conclusions to the prejudice of the appellants. The learned counsel also has drawn our attention to the financial records of the Roorkee unit by producing the audited balance sheets and financial statements of the Roorkee unit. From the balance-sheet, for the year 2007–08, it is evident that the Roorkee unit have got plant and machinery valued at Rs.63,24,105/-, which have been installed during the financial year 2007–08. Further, under the head operating, and other expenses–manufacturing and maintenance job and labour charges are shown at Rs.2,77,456/- and further the Roorkee unit has disbursed salaries and bonuses amounting to Rs.38,59,448/-. The Department found sufficient number of workers, as there is no case of the Department that their Roorkee unit was having insufficient number of workers to complete the manufacturing of Transformers. The learned Counsel have also drawn our attention to various 'Quality Testing Reports' issued by the buyers. From the sample of such reports, we find, in the report dated 13th of May 2010 issued by Paschimanchal Vidyut

Vitran Nigam Ltd., Meerut, regarding inspection and testing of 100 numbers 25 KVA 11/0.433 KVA, 3 Star rating distribution transformers against purchase order dated 22/06/2009, as amended by purchase order dated 21st December 2009, states that Assistant Engineer, Meerut, PVVNL, tested at your works at Roorkee Uttarakhand on 13th of May, 2010, wherein you offered the following material for inspection and testing vide your site offer letter dated 13th May, 2010. He further states that the 100 numbers of such Transformers were available and the testing was carried out, the copy of test results were enclosed. Further, authorizing the company, to dispatch 100 numbers of such Transformers along with accessories from their Roorkee unit. Several other such testing reports have also been produced before us which we do not mention for the sake of brevity. The learned counsel further relied on the ruling of this Tribunal in the case of CCE Vs FDO Coil Fabrication Sub Division PSEB reported at 1998 (182) ELT 29, wherein in the case of Aluminium and Copper coils for Transformers and wire, being not known, in the market as separate distinctly identifiable commodities, process undertaken by assessee, it was held, does not amount to manufacture. It was further held that such products in absence of marketability were not excisable and not dutiable under Section 2 (f) read with Section 3 of the Act. It was also held that coils fitted by the Board in Transformers, not sold by them, but used in all activities of transmission and distribution, and in absence of material to show presence of any notional margin of profit or amount of such profits, it was held that margin of profit was not includable in the assessable value. The learned Counsel also relies on the ruling of this Tribunal in the case of CCE Vs East India Udyog Ltd (appellant's own case) reported at 2001 (134) ELT 758, wherein the issue was conversion of duty paid paper coated copper wire into coils for use in repair of transformer, whether amounts to manufacture. It was held that the same does not amount to manufacture within the meaning of Section 2 (f) of the Act. Relying on these rulings, the learned counsel states that the parts of Transformers are not separately marketable and as such no excise duty is leviable. Even in absence of the procedure of job work under Notification No.214/86-CE, transformer parts were removed from the Sahibabad Ghaziabad unit of the company. Accordingly, the learned counsel prays for allowing the appeal with consequential benefits and setting aside of the impugned order.

21. The learned A.R. for revenue have relied on the findings of the impugned order.

22. Having considered the rival contentions, we are satisfied that the learned Commissioner have erred in confirming the demand, ignoring the documentary evidence on record and relying on the various statements which have got no evidentiary value. Further, such statements recorded during investigation cannot be relied upon without the witnesses being examined in the course of proceedings, as provided by Section 9 D of the Central excise Act. We further find that all the transactions are properly recorded in the books of accounts maintained in the ordinary course of business and the returns filed with the Department. We further find that the documentary evidence speaks for itself that the Sahibabad Gaziabad unit received raw material on behalf of the Roorkee unit and thereafter, manufactured components and parts of Transformers and removed the same on proper challans to the Roorkee unit and there is available on record, proper evidence of transportation of such goods to the Roorkee unit. Further, we find that there is evidence on record of the manufacturing process being completed at Roorkee unit, expenses being debited in the books of accounts, availability of required personnel little unit and

thereafter inspection and sale of the Transformers, including delivery from the Roorkee unit. The evidences on record, particularly the inspection report and delivery order issued by the respective buyer (Electricity distributing Companies) corroborates the stand of the appellants, as to manufacture, inspection and sale at the Roorkee unit. We further, find that there is no test report brought on record by revenue in support of their contention that the appellant have not removed the Transformer- spares parts, but have removed complete transformer. Thus, the whole case of the revenue is based on presumption and assumptions, which falls flat, in view of the overwhelming documentary evidence. We further find that the learned Commissioner have selectively relied upon the evidence on record. The learned Commissioner conveniently ignored the statement of the chairman of the company, Shri N.K. Lohia, wherein he stated that they have manufactured components and parts for the Roorkee unit and the final manufacture process have taken at Roorkee unit, from where such goods were finally inspected and sold/removed. Further, we find from the punchnama that revenue had examined various statutory records like daily stock account register, challan, transfer invoices, form-16 (road permits), file containing inspection related correspondence (for sale of Transformers), stock and production file, form 31 register (road permit under UP Sales Tax Provisions), daily goods register, sales tax file, register of HB/LB coil, attendance register, production register, power ratio register, nameplate dispatch register, record of failure register, 57–F 49 challan file. More particularly, at the Roorkee unit as per Punchnama dated 16/09/2010, the documents found and recovered were challan/transfer invoices, incoming goods register, outgoing goods register, copy of statutory gate pass, material receipt register, dispatch file, challan file, Ghaziabad challan file, etc. We also find that none of the persons whose statement was recorded have made an averment that the Transformer components have not moved from Sahibabad Ghaziabad unit to their Roorkee unit. In view of all these overwhelming evidences, which are discussed above, we find that the whole case of the revenue is based on presumption, which has not been corroborated, in view of overwhelming documentary evidences, on record.

23. In this view of the matter, we allow both the appeals and set aside the impugned order. The appellants shall

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be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

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