CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/904/2008-DB & E/26/2009-DB

[Arising out of Order-in-Original No. 12 & 13/2008 dated 30/09/2008 passed by Commissioner of Central Excise, Bangalore-I]

1. **HYVA INDIA LTD**
   SY NO.8 BALAGARANAHALLY,
   ATTIBELE INDUSTRIAL AREA, HOSUR
   MAIN ROAD, BANGALOR-562107

Appellant(s)

2. **M/s. TATA MOTORS LTD**
   JAMSHEDPUR- 831010

Versus

Commissioner of Central Excise,
Customs and Service Tax-
Bangalore-I
Post Box No. 5400… CR Buildings,
Bangalore-560001

Respondent(s)

Appearance:

Mr. G. Shridharan, Advocate,
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH
FLOOR, SOUTH WING BRIGADE GATEWAY
CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
MALLESWARAM
BANGALORE
KARNATAKA
560009

For the Appellant

Mr. Pakshirajan, AR

For the Respondent

Date of Hearing: 16/11/2018

Date of Decision: 07/03/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order No.20240-20241/2018

Per : C.J. MATHEW

M/s Hyva (India) Ltd, a manufacturer of 'bus bodies' on behalf of owners of 'chassis', including M/s Tata Motors Ltd, was proceeded against by the jurisdictional central excise authorities for recovery of duties alleged to have been short-paid by concealing the correct assessable value on transfer of the 'chassis' from M/s Tata Motors Ltd. In the impugned order-in-original no. 12 & 13/2008 dated 30 September 2008, Commissioner of Central Excise, Bangalore-I confirmed demand of Rs.92,83,656 for the period between October 2003 and October 2006 and Rs.35,51,452 for the period between November 2006 and March 2007 under section 11 A of Central Excise Act, 1944, along with applicable interest under section 11 AB of Central Excise Act, 1944, besides imposing penalty of like amount as the former under section 11 AC of Central Excise Act, 1944 in addition to imposing penalty of Rs.20,00,000 under rule 25 of Central Excise Rules, 2002 in relation to the second demand while imposing penalty of Rs.5000 on M/s Tata Motors Ltd under rule 27 of Central Excise Rules, 2002. Both are in appeal against the detriments and we dispose of the disputes by a common order.

2. The value alleged to have been excluded for computation of duty liability by the adoption of price at the same level as that at which' chassis' were cleared by M/s Tata Motors Ltd to the appellant included a discount, the cess discharged under Automobile Cess Act, 1984 and the freight incurred in transporting the 'chassis' to the premises of the appellant. According to central excise authorities, the relationship between the appellant and M/s Tata Motors Ltd was that of principal and job-worker, apparent from the clearance on 'no sale' basis, the restriction on the utilization of CENVAT credit of duty paid by M/s Tata Motors Ltd which was to be availed by the appellant only for the clearance of fully built vehicles by the latter and the delivery of furnished after executing the work, back to the regional sales offices of M/s Tata Motors Ltd. In the notice issued to the two appellants, it is contended that the application of rule 6 of Central Excise Valuation (Determination of

Price of Excisable Goods) Rules, 2000 mandates the additional consideration flowing directly or indirectly from the buyer to the assessee to be added back for computation of the assessable value.

3. According to Learned Counsel for the appellants, they were required, on clearance of the finished product back to M/s Tata Motors Ltd, to compute the duty liability on the cost of manufacture of the goods produced by them and that they, for the valuation of inputs, *viz*., 'chassis', had no option but to adopt the invoice price at which these were delivered to them. He contends that the adoption of any other value by the jurisdictional central excise authorities was tantamount to revision of the assessable value in their hands and, therefore, contrary to settled law. Pointing out that statutory levies incorporated in the price at which goods are sold are to be excluded, under section 4(3)(d) of Central Excise Act, 1944, it is his claim that this exclusion cannot be legally added back. He also contends that it is not the case of Revenue that the freight element has not been included in the price at which 'chassis' are cleared to their dealers; the adding

back of such amount that was never deducted in the first place from the assessable value did not have the authority of law. On these two latter aspects of the dispute, we find that Revenue is in error in their insistence upon inclusion for the purposes of computation of duty liability. Being contrary to the legal provisions, we find ourselves unable to sustain the order of the original authority on these two additions.

4. Learned Counsel contends that various decisions of the Tribunal have held that the cost of manufacture be the base for computation of duty liability when goods are transferred, other than in the course of sale, to entities for further processing as has occurred with the appellant-assessee. This, according to him, the Tribunal, in ***Ispat Industries Ltd v. Commissioner of Central Excise, Raigad [2007 (209) ELT 185 (Tri-LB)],*** has held Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as applicable when the entire clearance is captively consumed and that-

> ***"7.*** *We also agree with the submission of the assessee that even if both the rules, i.e. Rule 4 and Rule 8, were applicable, it would only be logical to read and apply the various rules in*

the Central Excise Valuation Rules in a sequential manner. Though the Central Excise Valuation Rules, 2000 do not specifically prescribe such sequential application of various rules, the same, in our view, is the only reasonable way to read these rules. Any other interpretation would only lead to confusion and chaos. Since the applicability of Rule 4 is not really in dispute, there was no need to look further and regardless of the applicability or otherwise of Rule 8, the assessable value should have been determined in terms of Rule 4 of the Valuation Rules.

8. *The conclusion that we are drawing in the present case would lead to determination of a value which, in our view, will not only be reasonable but also consistent with the provisions of Section 4 of the Central Excise Act. We would, at this stage, draw support from the judgment of the Supreme Court in the assessee's own case, as reported in 2006 (202) E.L.T. 561, wherein the Court applied "The Gunapradhan Principle" in interpreting the Customs Valuation Rules. We have kept in mind the following observations of the Court in coming to our above conclusion:"*

would preclude the adoption of any value other than that at which clearances were effected to their dealers in the course of ordinary sale. Furthermore, relying upon the decision of the Hon'ble Supreme Court in ***Commissioner of Central Excise & Customs v. MDS Switchgear Ltd [2008 (229) ELT 485 (SC)]***, he contends that the duty liability determined at the end of the supplier cannot be reopened for the purposes of ascertaining the duty liability at the end of the recipient. According to him, the issue of valuation, in situations such as theirs, has been resolved by the Tribunal in ***Eicher Motors Ltd v. Commissioner of Central Excise, Indore [2008 (228) ELT 43 (Tri-LB)].***

5. Learned Authorized Representative urges us to reject the various submissions made on behalf of the appellant. According to him, the passing on of discount in the impugned transaction is incorrect as the appellant-assessee is clearly a job worker and, the goods being captively consumed, there is no sale and there can be no providing of discount to oneself. According to him, M/s Tata Motors Ltd did not have to follow this elaborate process of having the credit of duty availed by the job worker and that this complication was implemented with ulterior motive.

6. According to us, the resolution of the dispute lies within the narrow compass of identification of the particular rule to be adopted for determination of the assessable value on clearance of the fully built vehicle by the appellant-assessee to M/s Tata Motors Ltd, the supplier of the inputs to appellant-assessee. It is not in dispute by either side that appellant-assessee is a job

worker and the clearances are not at 'arm's length' in the manner that clearances effected to their authorized dealers are. According to appellant-assessee, the adoption of the price at which goods are sold to authorized dealers is the most apt in terms of section 4 of Central Excise Act, 1944. The appellant-assessee, being a job worker, is liable to duty on the value of the goods transferred for the purposes of undertaking job-work and the job-work charges recovered from the principal. On the job-work charges, there is no dispute.

7. The decision of the Hon'ble Supreme Court in ***re MDS Switchgear Ltd***, affirming the finding of the Tribunal in disposing of the appeal before it, articulating that

> ***7.*** *The Tribunal has come to the conclusion that in fact there was no loss of revenue. It accepted the appeal by recording the following reasons :*
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> *"Reasons given by the appellants for the alleged inflation of the value of the intermediate goods are logical. What was required of the Commissioner was to examine the quantum of the loading of the assessable value by the Modvat credit on the earlier inputs. That exercise has nowhere been done. If the department was of the opinion that the value of the final product was depressed, then they could have charged the Jalgaon unit with under-invoicing of their product. That has also not been done. The valuation as given by the Sinnar unit was duly approved by*

> *the department and the payment of duty was also duly accepted. We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into 'deposit of duty'. There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit [2000 (38) RLT 179]."*

would preclude any re-determination of the value at which goods were cleared by the principal to the job-worker. In the hands of the appellant assessee, the value cannot be anything other than a computation under rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 apparent from

> ***20.*** *The submissions do not cut any ice. What has to be seen is whether Bhilwara Processors was decided in accordance with the ratio of Ujagar Prints-III. After noticing the decisions in Ujagar Prints-III and Pawan Biscuits Co. (P) Ltd., in a rather brief order, the Tribunal held that it found merit in the submission that assessable value for processed fabric is to be arrived at by adding the processing charges and the processing profit to the cost of grey fabric supplied. Reliance was particularly placed on the observation in Pawan Biscuits Co. (P) Ltd., quoted hereinabove, that "the cost of raw material supplied by Britannia will have to be included in addition to the appellant's manufacturing cost and profit of raw material". We have already dealt with the decision in Pawan Biscuits Co. (P) Ltd. and held that that there was no departure from the legal position settled in Ujagar Prints-III. We have also explained the relevance of the word 'cost' observing that value of an intermediate product when*

> *used as raw material, is cost of the raw material but for the purpose of determining its assessable value at the hands of job worker, what is relevant is the 'value' and not 'cost' in the sense of cost of manufacture of that product or raw material. The decision in Bhilwara Processors, if we may say so with respect, was rendered on a mis-reading of the decision in Pawan Biscuits Co. (P) Ltd. which had simply followed Ujagar Prints-III.*

26. *As a matter of fact, the Valuation Rules did not contain any specific provision to deal with the valuation of goods returned by job worker to the principal until March, 2007 when Rule 10A was inserted. It was for this reason, absence of any specific provision regarding valuation of goods cleared by job worker to the principal, that the question as to valuation remained in contention until the law finally came to be settled in Ujagar Prints-III. However, in fairness to the appellant, we do not wish to forclose the issue giving reference to Ujagar Print-III alone. We may make brief comments on the interpretation of Rule 11 which was subject of lengthy discussion at the time of hearing of these appeals. But before we do that, we may again clarify that while Rule 8 is generally applicable to non-sale transactions, it cannot be applied at the stage of clearance of the goods by the job workers to the principal for the reason that at that stage there is no further consumption of the goods as a raw material either by himself or on his behalf for production of some other goods. But it does not mean that the basic principle governing the* *determination of value under Rule 8 is to be given a go-bye. The words "using reasonable means consistent with the principles and general provisions of these rules" occurring in Rule 11 clearly indicate the relevance of the provisions of Rule 8. Indeed, the provisions and the principle involved are the guiding factors for determining the assessable value of the goods under Rule 11.*

as held by the Larger Bench of the Tribunal in re ***Eicher Motors Ltd***. The principal manufacturer, besides utilizing the job-worker for a limited range of activities, primarily clears 'chassis' to their authorised dealers and at an assessable value that is not in dispute. The decision of the Larger Bench of the Tribunal in ***re Ispat Industries Ltd*** requires the principal manufacturer to discharge duty liability on the value determined in accordance with rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. We have already held that the adjudicating authority had erred in adding back the freight and cess. The cycle of commercial activity in the impugned transaction involves transfer of the 'chassis' to the appellant-assessee, discharge of duty liability by the principal manufacturer, transfer of the finished goods to the depots of the principal manufacturer after discharge of duty liability by the job-worker and final clearance thereafter. Till the delivery of the goods to the ultimate buyer of 'built-up vehicles', the valuation for the purpose of determination of duties of central excise is the cost of manufacture. The price at which goods are cleared by M/s Tata Motors Ltd to their authorized dealers includes, other than the cost of manufacture, the cost of transportation and the profit component. The adoption of this price for determining the duty liability in the hands of the principal manufacturer is not in any way prejudicial to Revenue and, therefore, cannot be a cause of grievance to the tax authorities.

8. In the light of our findings *supra*, we cannot but differ with the impugned order in its entirety. Accordingly, we set aside the demand of duties of central excise, along with interest thereon, and the various penalties imposed in the impugned order. Appeals are allowed.

(Order was pronounced in Open Court on **07/03/2019**)

S.S GARG
JUDICIAL MEMBER

C.J MATHEW
TECHNICAL MEMBER

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