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

S.No.	Appeal No.	Appellant	Respondent
1.	E/810/2010	Sujhan Instruments	Commissioner of Central Excise, Chennai-II
2.	E/1/2011	Honeywell Electrical Devices and Systems India Ltd.	Principal Commissioner of Central Excise, Chennai-I
Arising out of Order-in-Original No.20/2010 dt. 3.9.2010 passed by the Commissioner of Central Excise, Chennai – II			
3.	E/40261/2014	Sujhan Instruments	Commissioner of Central Excise, Chennai-II
Arising out of Order-in-Appeal No.222/2013dt. 22.11.2013 passed by the Commissioner of Central Excise (Appeals), Chennai			
4.	E/40964/2013	Commissioner of GST &Central Excise, Chennai South Comissionerate	Sujhan Instruments
5.	E/40965/2013	Commissioner of GST &Central Excise, Chennai South Comissionerate	Sujhan Instruments
Arising out of Order-in-Appeal No.12 & 13/2013(M-II) dt. 30.01.2013 passed by the Commissioner of Customs, Central Excise& Service Tax (Appeals), Chennai			

Appearance :

Shri Joseph Prabhakar, Advocate
For the Appellant

Shri K.P. Muralidharan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision :21.06.2018

FINAL ORDER No. 41924-41928 / 2018

Per Bench

All these appeals since relating to the same issue, they are taken up together for disposal.

2. The facts of the case are that Sujhan Instruments (hereinafter referred to as Sujhan) are engaged in the manufacture of electronic devices such Fan Speed Controller / Dimmers / TVCo-oxial Socket outlet, Computer jack etc. Pursuant to an audit of the records, it emerged that theyhad enteredinto an agreement with M/s.Honeywell Electrical Devices and Systems India Ltd. (hereinafter referred to as Honeywell). It appeared to the department that —

(a) The assessee is manufacturing for M/s.Honeywell on contract basis

b) The price adopted by the assessee is only the cost of production at their hand as evidenced from the cost sheet prepared.

c) The goods enter into the market from the hands of M/s.Honeywell.

d) There is a difference of 200 to 400% in the sale price of the goods from M/s.Honeywell when compared to the sale price ofthe assessee to M/s.Honeywell.

e) Thebrand name is owned by M/s.Honeywell and the intellectual property rights of the products manufactured by the assessee rest with M/s.Honeywell.

f) With the affixing of the brand name, as the ownership of the products rests with M/s.Honeywell, the assessee has no right to sell the goods.

g) When there is no right to sell the goods, the amount received by the asessee is only compensation of the expenditure incurred by the assessee and received by him through sale invoices raised.

h) the declaration made in the MRP stickers as “Specially manufactured for Honeywell Electrical Devices and Systems India Ltd. by M/s.Sujhan Instruments, 54, 4th Street, Kasi Estate, Jafferkhanpet, Chennai 600 083” also confirm that the goods are manufactured for M/s.Honeywell. Department took the view that Sujhan had simply been acting as job worker for Honeywell; that the entire manufacturing activities were controller by Honeywell as principal manufacturer; that Honeywell fixed ordinary sale price of the impugned goods; Hence value adopted for payment of duty by Sujhan is not the sole consideration for sale as per Section 4 (1) (a) of the Central Excise Act, 1944 Hence the goods required valuation as per Valuation (Determination of price of Excisable goods) Rules, 2000 under Section 4 (1) (b) of the Act. Various show cause notices were issued to the assessee for various periods inter alia demanding differential duty liability with interest thereon and also proposing imposition of penalties under various provisions of law on Sujhan and Honeywell. The details of SCN, periods involved, impugned orders etc., are as follows :

Appeal No.	Period	SCN No. & Date	Order in Original No.	Order in Appeal No.	Amount of Excise Duty INR	Amount of Penalty INR
E/00810/2010 **(Appeal by Sujhan)**	April 2007- July 2009	104/ 2009 dated 23.10.09	20/2010 dated 03.09.10	-	1,77,73,275/ -	1,77,73,275/-
E/00001/2011 **(Appeal by Honeywell for Penalty)**	April 2007 – July 2009	-	20/2010 dated 03.09.10	-	-	2,00,000/-
E/40964/2013 **(Appeal by Department)**	April 2010 – March 2011	12/2011 dated 25.04.11	12/2012 dated 29.02.12	12& 13/2013 dated 30.01.13	13,49,816/-	20,000/-
E/40965/2013 **(Appeal by Department)**	April 2011 – January 2012	8/2012 dated 20.04.12	12/2012 dated 08.08.12	12& 13/2013 dated 30.01.13	3,58,663/-	2,000/-
E/40261/2014 **(Appeal by Sujhan)**	August 2009 – March 2010	61/2010 dated 12.08.10	58/2011 dated 22.06.11	222/2013 dated 22.11.13	31,17,332/-	25,000/-

In adjudication, in respect of appeal E/810/2010 & E/00001/2011, the notices were adjudicated by the Commissioner vide OIO No.20/2010dated 03.09.2010 who confirmed the proposals,hence these appeals by Sujhan and Honeywell.

3. In appeals E/40964 & 40965/2013, the adjudicating authorities were of the level of Additional Commissioner, who confirmed the proposals in the respective SCNs; on appeal, the Commissioner (Appeals) concerned, set aside the orders of the adjudicating authority and allowed the appeals of the assessee. Hence department have filed these appeals.

4. In appeal E/40261/2014, the proposals in the related SCN were confirmed by the adjudicating authority which on appeal was upheld by the Commissioner (Appeals), hence the appeal by Sujhan.

5. Today when the matter came up for hearing, on behalf of assessee, Ld. Advocate Joseph Prabhakar made various submissions which can be broadly summarized as under :

i) In the first place, Ld. Advocate has sought to convey an objection in respect of the issues framed by the adjudicating authority. Towards this end, he takes us to para 11.1 of the order dt.3.9.2010 (Impugned order for Appeal E/810/2010 to point out that where the adjudicating authority had framed the issues as under :

> a) whether the activities of M/s.Sujhan Instruments are to be treated as those of a “job worker” on behalf of M/s.Honeywell i.e. “job worker to principal” or
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> b) whether activities of M/s.Sujhan Instruments are to be treated as “manufacture” and relationship between M/s.Sujhan and M/s.Honeywell is on a “principal to principal basis”.

ii) Ld. Advocate submits that the issue should have been framed in the other way round and that only after eliminating the applicability of Section 4 (1) (a) of the Act in respect of transactions between Sujhan and Honeywell, should the adjudicating authority have gone further ahead to agitate the applicability of Rule 10 (a) of the Valuation Rules.

iii) As per Section 4 (1) (a) of the Act, the transaction is generally required to be adopted as the value of goods for the purpose of charging duty of excise in the cases. Department has not adduced any evidence to prove that the sale of goods between Sujhan and Honeywell have not satisfied any of the ingredients of Section 4 (1) (a) or have not satisfied the definition of transaction value in that section.

iv) Rule 10 (a) was introduced in Central Excise Valuation Rules, 2000 w.e.f. 1.3.2007 in respect of goods manufactured by job worker. However, Sujhan was never a job worker of Honeywell. The transaction between the two appellants were always on principal to principal basis.

v) As per Board's circular No.902/22/2009 dt. 20.10.2009 on the subject of scope of Rule 10 (a) of the Rules the Board had issued circulars on this score. The import of the said circular is that for the activities to come under the scope of Rule 10 (a) as a job worker, the goods / materials should have been supplied on stock transfer basis or without cost by the principal manufacturer to the job worker and not sold to the latter. However, there the material for the goods manufactured by Sujhan was never supplied free cost by Honeywell.

vi) Even though raw material was sourced only from vendors designated by Honeywell they were not obtained free from the latter.

vii) For specifying the vendors for raw material by Honeywell provisions of Section 10 (a) cannot be invoked. Ld. Advocate relies upon the Tribunal decision in *Coromandel Paints Ltd*. *Vs Commissioner of C. Ex., Visakhapatnam* - 2010 (260) ELT 440 (Tri.) where it was clearly held that no duty demand on this ground can be raised against the assessee.

viii) In respect of Appeals E/40964/2013 & E/40965/2013 filed by the department, Ld. Advocate submits that common impugned order No.12 & 13/2012 dt. 30.1.2013 of commissioner (Appeals) has gone into all aspects of matter and arrived at the reasoned finding that the relationship between Sujhan and Honeywell is only on principal to principal and that there is no complete control of the manufacturing process of the former by the latter. Ld. Advocate therefore submits that there is no merit in the departmental appeals and they may therefore be rejected.

6. On the other hand, Ld.A.R Shri K.P.Muralidharan supports the impugned orders.

7. Heard both sides and have gone through the facts of these cases.

8.1 Ld. Advocate has found fault with the framing of issues by the Commissioner in the impugned order dt.3.9.2010 (impugned order for Appeal No.E/810/2010 & E/1/2011) that the adjudicating authority should have examined the issue first under section 4 (1) (a) of the Act and not under Rule 10 (a) of the Valuation Rules. We are not able to appreciate this contention. For one thing, the related SCNs have alleged that the assessees having fallen out of the scope of Section 4 (1) (a) and hence would fall in Rule 10 (a) of the Valuation Rules. In fact, the major thrust of these notices is that Sujhan is nothing but a job worker for Honeywell and hence provisions of Rule 10 (a) are attracted.

8.2. Viewed in this light, the adjudicating authority has surely not committed sacrilege by seeking to examine the issue first through the scope of Rule 10 (a) ibid. It is alsonot as if the authority has refused or refrained from examining whether the relationship between Sujhan & Honeywell is on principal to principal basis,since the second alternative issue framed in para 11.1 of that impugned order is just very that.

8.3 A perusal of the SCN No.104/2009 dt. 23.10.2009 reveals that department is inclined to treat Sujhan as a job worker of Honeywell primarily on the grounds that supplies of raw materials that required to be approved by the latter, quality control exercised by Honeywell, 99%of the finished goods are sold to the latter and that Honeywell's brand name and MRP stickers are used on the packing. The Rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, w.e.f. 1.4.2007. As per this rule, the value at which principal manufacturer sells his goods will be the basis for determining the transaction value for payment of Central Excise duty by the job worker. For the purpose of this rule, the job worker is defined as "…. a person engaged in the manufacturer or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or any other person authorized by him". Thus to qualify as job worker, in our view, the following hard sticks require to be satisfied :

(i) Job worker should be engaged in manufacture or production of goods on behalf of another manufacturer

(ii) Inputs or goods should be supplied by the said principal manufacturer or by any other person authorized by him.

(iii) By implication, the inputs or goods so supplied will not be required to be paid for by the job worker.

When we apply these tests to the facts of the appeal at hand, we find that Sujhan does not appear to qualify to be a "job worker" for the purpose of

Rule 10A ibid. The inputs or goods are not supplied free by Honeywell, or other persons authorized by Honeywell.

8.4 On the other hand, Sujhan have to buy these inputs and goods etc. at a price. The goods are not cleared by Sujhan without payment of Central Excise duty. The goods are cleared by Sujhan to Honeywell only after discharge of Central Excise duty on the assessable value and the value indicated in the invoices from Sujhan to Honeywell.

8.5 Thus just because the goods manufactured or produced by Sujhan are purchased by Honeywell on contract that should detract from acceptance of the transaction between Sujhan and Honeywell to be one of principal to principal basis. The arrangement between Sujhan and Honeywell, in our view, is on the lines of "contract manufacturing" as distinguished from "job worker". The contract manufacturers are not supplied with the raw material from principal manufacturers, like "job workers", butthey are required to purchase them from the market, very often from vendors who are approved by the principal manufacturer for quality point of view. The principal then buys finished products from the contract margin and very often sales them to his core customer, sometimes with enhanced margin. Department has also not unearthed or brought out anything on record to suspect that the contract between Sujhan and Honeywell is only a camouflage for job working. There is also no evidence put forth to indicate that apart from the alue invoices by Sujhan to Honeywell there is an additional value component which is separately paid by the latter to the former or that there is any additional flow back of funds. This being the case, there is no reason on account of invoice value between Sujhan and Honeywell should not be treated as the "transaction value" under Section 4 (1) (a) of the Central Excise Act, 1944.

8.6 While arriving at this conclusion, we draw sustenance from the ratio of the Tribunal's decision in *Coromandal Paints*- 2010 (260) ELT 440 (Tri.-Bang.). In that case, the Coromanal Paints and SIPL had entered into agreement for manufacture and supply of paints, with all taxes to be paid on sale price by the latter. The agreement indicated that prices charged by the former are treated as sale to SIPL on which value Central Excise duty and sales tax was being discharged. The Tribunal following the ratio already laid down in *Gillette Diversified Operations Ltd*. *Vs Commissioner* – 2007 (217) ELT 51 (Tribunal) held that by merely indicating vendors of raw materials or by giving advance for procuring raw material or even installing equipment given by SIPL would not render Coromandal as a job worker.

9. In view of the findings and conclusions herein above and following the ratio already laid down by Tribunal in *Coromandal Paints Ltd*. (supra), impugned order No.20/2010 dt. 03.09.2010 (relating to Appeals E/810/2010 and E/1/2011) are set aside and the said appeals are allowed in toto with consequential benefits, if any, as per law.

10. So also, the order of Commissioner (Appeals) No.222/2013 dt. 22.11.2013 (impugned order for Appeal E/40261/2014) is also set aside and the said appeal is also allowed with consequential benefits, if any, as per law.

11. For the same reasons, we do not find any infirmity in the orders No.12 & 13/2013 dt. 30.01.2013 (impugned orders for Department Appeal E/40964/2013 & E/40965/2013) and they are upheld. In consequence, no merit is found in the said departments which are dismissed.

Appeals disposed of on above terms.

(operative part of the orderpronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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