IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40879 & 40880 of 2017

(Arising out of Order-in-Appeal No.15/2017 (CXA – I) and Order in Appeal No. 18/2017 (CXA – I) dated 19.1.2017 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

M/s. Deccan Alloys Pvt. Ltd. **Appellant**
No. 62, SIPCOT Industrial Estate
Thally Road, Hosur – 635 126.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulkes Compound
Anaimedu, Salem – 636 001.

AND

Excise Appeal No.40940 & 40941 of 2017

(Arising out of Order-in-Appeal No.17/2017 (CXA – I) and Order in Appeal No. 19/2017 (CXA – I) dated 19.1.2017 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

M/s. Thirumala Alloy Castings Pvt. Ltd. **Appellant**
No. 3, Richmond Plaza
Richmond Road, Bangalore – 560 025.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulkes Compound
Anaimedu, Salem – 636 001.

APPEARANCE:

Shri A.S. Monappa, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40308 to 40311/2025

Date of Hearing : 07.03.2025
Date of Decision: 10.03.2025

Per M. Ajit Kumar,

These appeals arise out of a common Order in Appeal No. 15 to 19/2017 (CXA – I) dated 19.1.2017 passed by the Commissioner of Central Excise (Appeals – I), Chennai.

2. Brief facts of the case are that M/s. Deccan Alloys P. Ltd. (job worker) are manufacturers of TOR Steel, MS Angles, MS Rounds, MS Channels etc. falling under Chapter 72 of the CETA, 1985. They receive duty paid ingots from their principals M/s. A.R. Mettallurgicals P. Ltd., M/s. Thirumala Alloy Castings Pvt. Ltd. for conversion into re-rolled products. As per conversion contract agreement, the job worker after conversion of the goods are obliged to return the goods to their principals after discharging duty on the goods. Duty so discharged was based on cost arrived at landed cost of raw materials plus burning loss plus conversion charges. It appeared to the department that the principals subsequently prepare delivery challan with necessary sales tax documents for delivery of the goods to job worker who is situated at Bangalore showing transactions as 'consignment sale account' treating the job worker as consignment sales agent. The principals do not pay central excise duty on the goods but show the value in delivery challans as the gross value. The job-worker also does not discharge central excise duty further on the goods but sell the finished goods from their depot at Bangalore in the capacity of consignment sales agents to the principals. The job worker and the depot at Bangalore were not two different entities and the transactions were one and the same as far as manufacturer and central excise assessment were concerned. The job-worker did not adopt normal transaction value in terms of Rule 7 of Central Excise Valuation Rules, 2000 for the clearances made and they thus appeared to contravene the provisions of sec. 4 of the Central Excise Act, 1944. Hence Show Cause Notices were issued for the periods September 2005 to October 2006 to the appellants proposing to demand differential duty along with interest

and for imposing penalties. After due process of law, the Ld. Adjudicating Authority confirmed the differential duty demands along with interest and imposed penalty. The appeals preferred by the appellants were rejected by the Ld. Commissioner (Appeals). Hence this appeal.

3. Shri A.S. Monappa, Ld. Counsel appeared for the appellant and Shri N. Satyanarayanan, Ld. Authorized Representative appeared for the Respondent.

4. The Ld. Advocate submitted on behalf of the appellant, that this Tribunal in the appellant’s own case in an identical issue for the earlier period, following the judgment of the Hon'ble Supreme Court in the case of **Ujagar Prints Vs. UOI** reported in 2000 (120) ELT 24 (SC) allowed their appeals vide Final Order No. 40342 to 40344/2017 dated 16.2.2017. He hence prayed that the appeals may be allowed.

4.1 The Ld. Authorized Representative reiterated the findings in the impugned order.

5. Heard both sides. We find that a similar matter was examined by a Coordinate Bench of this Tribunal in **FMC India Ltd Vs Commissioner of Central Excise, Nagpur** [2006 (193) E.L.T. 57 (Tri-Mumbai)]. The judgment discussed the legal issue involved at Para 2.1(e) and is reproduced below:-

> (e) CCE's finding no. 3 since goods were sold through the depot of Rallis, the valuation should have to be done as per Rule 7 of the Valuation Rules, 2000 is at & based on the fact that the goods have been ultimately sold from the depot/C&F agent of Rallis, the CCE has held that the value of the goods should be done in terms of Rule 7 of the Valuation Rules, 2000 (in short 'Valuation Rules') thereafter it has been held that appropriate duty has not been discharged by Rallis. Thus, according to the CCE, simply be-cause the goods have been sold through the depot of Rallis, the value should be the price at which the goods are sold therefrom proceeded on the premises that since Rallis was receiving commission for the activities undertaken in terms of the CAA, their responsibility did not cease after the goods left the factory of Rallis. Based on the aforesaid, he has again held

that the valuations would have to be done in terms of Rule 7 of the Valuation Rules. These findings cannot be upheld as-

(i) Rule 7 has no application in cases where the assessee is not the owner of the goods, hence CCE's findings that valuation of the product in the instant case should be done in terms of Rule 7. of Valuation Rules not tenable. Valuation under Rule 7 can be taken recourse to only when an assessee who is the owner of the goods manufactured by him on his own account instead of selling the goods from his factory gate, sells the goods from his depots or premises of a consignment agent. The said principle has been held by the Larger Bench in the case of Prafful Indus-tries Ltd. v. Commissioner of Central Excise, Mumbai reported in 2000 (118) E.L.T. 97 (T-LB). Though Rallis manufactured the goods as a job worker, it does not own the goods and hence Rule 7 cannot be made applicable to Rallis. The title & property in the goods always vests with FMC. Application of Rule 7 in the said cases of job work would tantamount to taxing trader's (FMC) profit and trader's (FMC's) expenses towards publicity, advertisement, freight expenses etc., which cannot be done in terms of settled legal principles. Hence the valuation under Rule 7 of the Valuation Rules is not warranted in case of job work."

(emphasis added)

6. We also find that for the earlier period i.e. from 01/09/2004 to 30/06/2005, a Coordinate Bench of this Tribunal has vide Final Order No. 40342-40344/2017 dated: 16.02.2017, decided the appeal in favour of the appellant M/s. Deccan Alloys Pvt. Ltd. The order is reproduced below:-

"Appellant-Job worker was consignment agent of its principal. It submitted that value of the goods cleared from its job working factory to the place of consignment agency which was belonged to the appellant was valued following the ratio of Apex Court judgement in Ujagar Prints etc. Vs UOI and other [2000 (120) ELT 24 (SC)]. Normal rule of valuation was followed in respect of the goods despatched by the appellant to principal manufacturer who ultimately dispatched the same to the consignment agent's place belonged to appellant.

2. Revenue's allegation is that value of job worked goods was lower than the assessable value of the goods cleared by the Job worker-appellant to the principal manufacturer who ultimately despatched the same to consignment agent's place belonged to appellant. Revenue also contends that when the same person acted as job worker and also a consignment agent with the same principal, there was depression to the assessable value at the job working stage. Therefore, differential duty is demandabie.

3. To resolve the controversy aforesaid, we made extensive survey to the basis of SCN. SCN does not bring out any element of mens rea or premeditated design of the appellant to depress the assessable value of job-worked goods. No material or modality was brought to record by Revenue to demonstrate that the goods

> despatched to consignment agent's place were undervalued by appellant. Suspicion, however grave may be, shall not be a substitute of proof. Allegation should be based on cogent and credible evidence. That not being not done, adjudication fails to stand for which appeal is allowed.
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> In view of principal appeal E/177/2008 allowed as above, the other two appeals [E/178 & 179/2008] are also allowed."

7. Judicial discipline requires that we follow the judgment of the Coordinate Bench for an earlier period, especially when the issues therein has not been distinguished on facts by Revenue. We accordingly set aside the impugned Orders. The appellant is eligible for consequential relief, if any, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 10.03.2025)

(**AJAYAN T.V.**) Member (Judicial)	(**M. AJIT KUMAR**) Member (Technical)

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