CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41926 of 2017

(Arising out of Order-in-Appeal Nos. 263&264/2017(CXA-II) dated 22.05.2017 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Smith Enterprises **...Appellant**
A-3, 8th Cross, Pipdic Industrial Estate,
Mettupalayam, Thattanchavady,
Puducherry – 605 009.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Puducherry – 605 001.

And

Excise Appeal No. 41927 of 2017

(Arising out of Order-in-Appeal Nos. 263&264/2017(CXA-II) dated 22.05.2017 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. E-Mox Device Company **...Appellant**
R.S.No. 112/4&8,
Sedarapet Industrial Area,
Sedarapet,
Puducherry – 605 111.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Puducherry – 605 001.

APPEARANCE:

For the Appellants : Mr. G. Krishnamoorthy, Advocate
For the Respondent : Ms. G. Krupa, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41079-41080 / 2025

DATE OF HEARING : 07.08.2025
DATE OF DECISION : 30.09.2025

Per Mr. VASA SESHAGIRI RAO

Both the Appeals are combined together since common facts are involved and the common issue that arises for our consideration is, "whether the Revenue is justified in demanding duty on the goods manufactured by the appellants – job workers, in view of the amendment to Rule 10A of the Central Excise Valuation Rules, 2000"?

1.2 Excise Appeals Nos. E/41926 &41927/2017 have been filed by M/s. Smith Enterprises, Puducherry and M/s. E-Mox, Pondicherry Respectively (hereinafter referred to as the 'Appellants') directed against the impugned Orders-in-Appeal No. 263 & 264 /2017 dated 22.05.2017 passed by Commissioner of Central Excise (Appeals-II), Chennai who has upheld the demands confirmed while setting aside the penalties imposed in Orders-in-Original No. 04/2016 dated 29.07.2016 and No. 05/2016 dated 29.07.2016.

2. Brief facts of the Appeals are that, the Appellants, manufactured HDPE Plastic Caps on job work basis, out of the raw materials supplied by M/s. Marico Ltd. Upon verification by the department, it appeared that the value adopted by the Appellants by considering the cost of materials plus conversion cost, was not in accordance with

Rule 10A (iii) read with Rule 8 of Central Excise Valuation Rules, 2000 (CEVR) resulting in short payment of duty. Hence, Show Cause Notices No. 3/2016 dated 21.03.2016, SCN No 01/2016 dated 06.01.2016 and corrigendum dated 08.02.2016 were issued to the Appellants for the periods January 2015 to December 2015 and February 2015 to October 2015, proposing to re-determine the value and demand differential duties of Rs.3,89,177/- and Rs.3,67,939/- under Section 11A of the Central Excise Act, 1944 along with applicable interest under Section 11AA of the CE Act 1944 and to impose penalty under Rule 25 of the Central Excise Rules, 2002. The Adjudicating Authority *vide* Orders-in-Original No. 4/2016 dated 29.07.2016 and 05/2016 dated 29.07.2016, confirmed the demands and imposed penalties under Rule 25 of Central Excise Rules, 2002 respectively. Being aggrieved, the Appellant preferred appeals before the Commissioner (Appeals-II) who vide the impugned order upheld the Orders-in-Original in so far as demands were concerned but set aside the penalties imposed by the lower authority. The details are encapsulated as below:

Sl. No.	Order in Appeal No/date	Name of the Appellant	SCN No/date	OIO No	Amount demanded in impugned order (Rs.)	Period
1	263 &264	Smith Enterprise,	03/2016 dt.	04/2016 dt	3,89,177	Jan 2015

	/2017 dated 22.05.2017	Puducherry	21.03.16	29.07.2016		to Dec2015
2	263 &264 /2017 dated 22.05.2017	E-MOX, Puducherry	01/2016 dt. 06.01.16 and corrigendum dt. 08.02.2016	05/2016 dt 29.07.2016	3,67,939	Feb 2015 to Oct 2015

3. Aggrieved, the Appellants have come before this forum.

4. The Grounds of Appeal filed by the Appellant have been specified below: -

i. It was submitted that Rule 8 of CEVR could not be applied when the Appellant had not captively consumed the goods as it was the principal manufacturer who gets such goods manufactured on his behalf by the Appellant.

ii. It was averred that the assessable value in respect of job work was to be determined based on the cost of manufacture of the goods and job work charges in view of the decisions in the case of Ujagar Prints [1989 (39) ELT 493 (SC)] and M/s. Pawan Biscuits Ltd. [2000 (120) ELT 24 (SC)] which was also suitably clarified by CBEC in Circular No.619/10/2002-CX dated 19.02.2002.

iii. It was submitted that the impugned order had erred in relying on CBEC Circular F.No. 6/15/2009-CX dated 31.03.2010 wherein it was clarified that the assessable value would be determined in terms of sub-rule (iii) of Rule 10A read with Rule 8 of CEVR by adopting 110%

of Cost of production of the goods as assessable value, where the goods manufactured by a job worker was captively consumed by the principal manufacturer. It was pointed out that the said Circular was analysed and examined by the Tribunal in the case of *M/s. Advance Surfactants India Ltd. Vs. CCE, Mangalore [2011 (274) ELT 261 (Tri.-Bang.)]* and it was held that the said clarification was against the mandate of Rule 8 of CEVR and hence untenable. The above decision of the Tribunal was followed in *Rolastar Pvt. Ltd. Vs. CCE, Daman [2012 (276) ELT 87 (Tri.-Ahmd.)]* and *Indian Extrusion Vs. CCE, Mumbai [2012 (283) ELT 209 (Tr.i-Mum)].*

iv. The Appellant also pointed out the reliance placed in the impugned order on the decisions in the case of *M/s. Shivani Detergent Pvt. Ltd. Vs. CCE, Delhi [2013 (296) ELT 88 (Tri.-Del.)* and *Hyva (India) Pvt. Ltd. Vs. Union of India [2015 (327) ELT 41 (Bom.)]* was misplaced.

5. The Ld. Counsel Shri G. Krishna Moorthy representing both the Appellants reiterated the averments in the grounds of appeal and further submitted that in similar circumstances in thier own case for earlier period, the CESTAT Chennai has set aside the demand in Final Order Nos. 40047 - 40048 / 2025 in the case of *M/s.*

Smith Enterprises Versus Commissioner of GST and Central Excise, Puducherry Commissionerate 2025 (1) TMI 422 - CESTAT CHENNAI and prayed for setting aside the impugned order. Further reliance was also placed on the ratio of the Apex Court's decision in the case of *CCE Vs. Aqua Pet Industries [2013-TIOL-07-SC-CX].*

6. The Ld. Authorized Representative Ms. G. Krupa, representing the Department affirmed the findings of the Lower Appellate Authority and submitted that the Appellant had not adopted correct valuation in terms of Rule 10A (iii) read with Rule 8 of CEVR, 2000 and therefore Appellant was liable to pay differential duty. It was pointed out that the Appellant had contravened the provisions of CEVR with an intent to evade duty payment and hence the demands confirmed are sustainable. Hence it was prayed for dismissal of the appeals filed by the Appellant.

7. We have carefully considered the submissions made by both the sides and also evidences available on records.

8. The only issue which arises for decision in these appeals is whether the value to be adopted for job worked

goods was in terms of Rule 10A (iii) read with Rule 8 of CEVR, 2000?

9. We find that the Appellants have manufactured HDPE Plastic Caps on job work basis and have paid duty on the assessable value worked out by taking into account the cost of materials plus conversion cost. The principal manufacturer (M/s. Marico) used the caps for fitment onto bottles, in its factory, for filling coconut oil. The department therefore contends that after 01.04.2007 the valuation should be done applying Rule 10A(iii) r/w Rule 8 of Central Excise Valuation Rules which applies when goods are not sold. The appellant does not captively consume the goods nor does M/s. Marico consume it on behalf of appellant. The very same issue has been considered by this Tribunal in the case of M/s Smith Enterprises, one of the Appellants vide Final Order No. 40293-40297/2018 dated 02.02.2018 following the judgement in the case of *M/s. Advance Surfactants India Ltd. Vs CCE, Mangalore [2011 (274) ELT 261 (Tri.-Bang.)]*, the extracts of which has been reproduced below: -

> *"6. The undisputed fact in these cases is the appellant herein is a job worker manufacturing LABSA for M/s. HUL. It is also undisputed that HUL gives LAB and the appellant uses other consumables in the manufacture of LABSA. It is also undisputed that the appellant has been valuing the said*

LABSA cleared from factory premises, based upon the cost of material plus processing charges prior to 1-4-2007 when the provisions of Rule 10A were inserted into the Central Excise Valuation Rules, 2000. It is also undisputed that the said LABSA is returned back to M/s. HUL for further consumption in their factory premises for manufacturing of soaps and detergents. It is nobody's case that LABSA consumed by HUL is on behalf of the appellant herein.

7. On these factual matrix we need to appreciate the provisions under Rule 10A, which is reproduced herein under:-

> *"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, -*
> *(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;*
> *(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;*
> *(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.*
> *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."

7.1 It can be seen from the above reproduced provisions that provisions of Rule 10A can be brought into play only when there is a situation where excisable goods are produced or manufactured by a job worker on behalf of a person and cleared to the buyer of the principal and/or cleared to a depot or a consignment agent. The intention of the Legislature was to capture the tax on the goods, on the value of the said goods when cleared to the ultimate consumers. In the case in hand, we find that provisions of Rule 10A(i) and (ii) does not arise as has been recorded by us in the earlier paragraphs. Provisions of rule 10A(iii) gets attracted which talks about a situation where 10A(i) or (ii) does not apply. The said provision (iii) very clearly mandate that in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable shall mutatis and mutandis apply for determination of value of the excisable goods. This would indicate that the provisions of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 has to be gone through serially. It is not the Revenue's case that provisions of Rules 3, 4, 5, 6 and 7 would also apply in this case. Revenue is of the view that provisions of Rule 8 will apply. In order to understand the Revenue's case, we reproduce the provisions of Rule 8.

> *"RULE 8. Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be [one hundred and ten per cent] of the cost of production or manufacture of such goods."*

7.2 It can be seen from the above reproduced Rule that this will come into play only when the goods are used for consumption by the assessee or on his behalf, in the *production or manufacture of other articles, in such a case the value shall be 110% of the cost of production or manufacture of such goods. If this rule needs to be applied in the case, then it is to be on record that LABSA is a product of the appellant herein and is consumed by HUL on appellant's behalf or the said products are consumed by some other job worker of the appellant, in his factory for further manufacturing of goods. In the absence of any such situation, we are of the view that provisions of Rule 8 will not come into play. As already reproduced herein above, it is undisputed that LABSA is manufactured by job worker and cleared to HUL for further consumption and the said LABSA is the intermediate product required by HUL which is manufactured or produced by the appellant as a job worker. The key words in Rule 8 that needs to be interpreted are 'consumption by an assessee or on his behalf' for applying the said Rule for arriving at valuation or determination of goods. In the case in hand, it is very clear and not disputed that the appellant is not consuming the said LABSA nor is it consumed on his behalf by HUL. In our considered view, the provisions of Rule 8 will not get attracted in this case.*

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11. That still leaves us with a question of how the determination of value has to be done as provided under Rule 10A(iii). By elimination of Rule 2 to 10 as they may not apply in a situation like in this case provisions of Rule 11 will apply and Revenue has to take the recourse to provisions of Rule 11 which talks about using reasonable means consistent with the principles and general provisions of these rules read with sub-section (1) of Section 4 of Central Excise Act, 1944. Keeping this in mind, we find that the ratio laid down by the Hon'ble Supreme Court in the case of Ujagar Prints and followed by various other decisions of this Tribunal and accepted by Revenue in their various Circulars *will squarely apply i.e. to ascertain the assessable value on the cost of materials plus processing charges. In our view, the appellants have been correctly valuating their products by adopting this method.*

12. We find that the judgment relied upon by the learned SDR of this Bench in the case of Ultrapack is on a different set of facts i.e. in that case, the 'Ultramarine blue' was sent in bulk form by M/s. Reckitt Benckiser India Ltd. and the said product was repacked by the assessee, for Reckitt Benckiser India Ltd. and hence it was held that Rule 8 will be applicable. It can be seen that in that case, Rule 8 was invoked because it was undisputed that repacking was done on behalf of Reckitt Benckiser India Ltd. which would clearly attract the provisions of Rule 8. The situation in the current appeal before us is totally different which has been set out by us in the earlier paragraphs. In view of this, the decision of this bench in the case of Ultrapack will not be applicable.

13. In the facts and circumstances of the case, in view of the foregoing, we are of the considered view that the impugned orders are unsustainable and are liable to be set aside and we do so. Impugned orders set aside and Appeals allowed."

10. We find that the above decision of the Tribunal was followed in subsequent judgements delivered by the Tribunal in the case of *Rolastar Pvt. Ltd. Vs. CCE, Daman [2012 (276) ELT 87 (Tri.-Ahmd.)]* which was affirmed by the Hon'ble Supreme Court in [2013 (298) E.L.T. A186 (S.C.)] wherein it was held that: -

"In these appeals, no substantial question of law arises for our consideration. The same are dismissed accordingly."

The Appellate Tribunal in its impugned order had held that finished product (hollow profiles) manufactured on job work basis were sent back to principal-manufacturer providing raw material and consumed by the principal-manufacturer for further manufacture of final product. Rules 10 and 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 not applicable."

11. We are consciously refraining from burdening this order by reproducing from the wealth of jurisprudence available in this regard to avoid prolixity. It is suffice to note that similar view has been taken earlier by this Tribunal in more or less similar facts and circumstances, and the issue is no longer Res-Integra as can be seen from the above decisions, and also in the decisions in the 3 CASES of the One of the Appellant (Smith Enterprise) by this Tribunal. The Appellant also made additional submissions on 11/08/2025, placing reliance on the following cases: -

i. Bhavani Enterprises, Sree Mukambigai Polymers and Smith Enterprises Order Nos 40293-40297/2018 dated 2/2/2018
ii. Sree Mukambigai Polymers Final Order No 40502/2024 dated 30/4/2024
iii. Indian Extrusion Vs CCE Mumbai -2012 (283) ELT 209 (Tri-Mum)

In all the above decisions, it was held that where the finished products manufactured on job work basis ,were sent back to principal-manufacturer providing raw material and consumed by the principal-manufacturer for further manufacture of final product, Rules 10 and 8 of Central Excise Valuation

(Determination of Price of Excisable Goods) Rules 2000 are not applicable and the question framed by us is answered in favour of the Appellant.

12. In view of the clear ratio *decidendi*, we hold that the impugned orders in appeal cannot sustain insofar as the duty demand which is challenged in these appeals is concerned.

13. Resultantly, we set aside the impugned Orders-in-Appeal Nos. 263 & 264/2017 dated 22.05.2017 and allow the appeals with consequential benefits if any, as per law.

(Order pronounced in open court on 30.09.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK