CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO. II

Excise Appeals Nos.50829 & 50832 of 2019 (DB)

[Arising out of Order-in-Original No.ALW-EXCUS-000-COM-032-033-18-19 dated 08/10.01.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Alwar (Rajasthan)].

M/s. Classic Signages Private Limited, **Appellant**
A-6, 2nd Floor, Shastri Nagar,
Jaipur (Rajasthan).

Versus

Commissioner of Central Goods & **Respondent**
Service Tax Commissionerate
Alwar (Rajasthan).

AND

Excise Appeal Nos.50830 & 50831 of 2019 (DB)

[Arising out of Order-in-Original No.ALW-EXCUS-000-COM-032-033-18-19 dated 08/10.01.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Alwar (Rajasthan)].

Shri Deepak Maheshwari, Director of **Appellant**
M/s. Classic Signages Private Limited,
A-6, 2nd Floor, Shastri Nagar,
Jaipur (Rajasthan).

Versus

Commissioner of Central Goods & **Respondent**
Service Tax,
Alwar (Rajasthan).

APPEARANCE:
Dr. G.K. Sarkar, Shri Rajeev Tuli & Shri P. Srivastava, Advocates for the appellant.
Shri Rakesh Agarwal, Authorised Representative for the respondent.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs.50251-50254/2023

DATE OF HEARING:02.09.2022
DATE OF DECISION:01.03.2023

Anil Choudhary:

The issue in these appeals is – on the activities of the fabrication/manufacture including installation (at premises of customer) of Retail Visual Identity (RVI) under contract by the appellant, is liable to central excise duty or taxable under the provisions of the service tax for providing works contract service.

2. The brief facts are that the appellant, M/s. Classic Signage Pvt. Ltd. having their factory located at RIICO Industrial Area, Jetpura, Chomu, Jaipur are engaged in the work of fabrication and installation of Retail Visual Identity ("RVI" in short). These RVIs are usually manufactured for petrol pumps (retail outlets) of various petroleum companies like IOCL, HPCL, BPCL, etc. consisting of Spreaders, Facility Signs, Direction Signs, Wall Cladding, Column Cladding, Canopy Facia, etc. These signage or sign board or RVI are classifiable under Chapter Heading 9405, in case of where these signs and are not illuminated, fall under 8310 of the CETA. The entire activity of the RVI is broken down into four parts as follows:-

(a) Canopy Facia

(b) Sales Building Facia

(c) Building /Column Cladding

(d) Spreader, Arches, Direction & Facility Signs, Air Sign, etc.

3. The work of canopy and sales building facia etc. is carried out partly at workshop and partly at site. Once the work order is accepted by the appellant, site visit is done for the purpose of measurement of canopy, building and columns. After the site measurement, following materials are purchased on payment of central excise duty, as applicable:-

. Aluminium Composite Material –ACM sheet

. Aluminium Angle,

. M.S. Pipe

. G.I. Sheet's,

. Iron Sheet –CR, HR Sheet's,

. Electrical – Tube, Chowk, Wires

. PVC Flex & Vinyl,

. Plastic Material – Pet G, Acrylic Polycarbonate, etc.

4. Once the measurement is done then frames of M.S. Pipe, Aluminium Angle are made and the ACM sheets of the required size are cut. The fabricated frames (partially finished) and ACM sheets are taken to site. At site, firstly it is ensured that the frames are of the size of the canopy, sales building and/or columns. If there is difference in size then they are further cut/reworked so that they can be fixed on the canopy, sales building and columns. Once the frames are fixed then the ACM sheet is fixed on the frames. The Arches and Spreaders are made in the factory and are taken to site, where they are fixed onto the columns/canopy, etc.

5. That on the basis of intelligence gathered by Revenue, that manufacturers of RVIs in Rajasthan are involved in large scale evasion of Central Excise duties, the officers of the Central Excise (Anti-Evasion) of the office of Central Excise Commissionerate – I,Jaipur visited the then office premises of appellant - M/s. Classic Signages Private Limited, A-6, 2nd Floor, Shastri Nagar, Jaipur and resumed certain records like balance sheets, sales accounts and sales and purchase orders, etc. for the years 2003-04 to 2007-08.

6. That the Central Excise Commissionerate, Delhi had also detected similar activity in their Commissionerate and they had sought certain information/clarifications from Shri S.K. Jain, Chief Engineering Manager, IOCL and recorded his statement under Section 14 of the Central Excise Act, 1944 on 18.09.2008 and Shri

S.S. Pandita, Senior Manager (Engineering), IOCL. The officers of the Delhi Excise Department also recorded the statement of Shri Ajay Thakar, Field Inspector, M/s. SGS India Pvt. Ltd., 250, Udyog Vihar, Phase-IV, Gurgaon on 10.10.2008. The said firm viz. M/s.SGS India Pvt. Ltd. was carrying out third party inspections on behalf of various companies like IOCL,HPCL, EIL and L&T etc. in order to check the quality of raw materials used in work of RVI.

7. That from the information/clarifications obtained by the Delhi Excise Officers from the offices of IOCL and third party inspectors of Delhi/Gurgaon, the officers of the Jaipur Commissionerate-I reached the conclusion that the work of RVI is a manufacturing activity and that the appellants did not disclose the fact that they are carrying manufacturing activity and had knowingly and willfully suppressed the actual manufacturing and clearance of the excisable goods without payment of duty and, therefore, the extended period of limitation as provided in proviso to sub-section (1) of Section 11 A of Central Excise Act, 1944 was invokable. The Commissioner, Central Excise Commissionerate-I, Jaipur issued show cause notice C.No.V(H)Adj.I/CE-94/245/2009/2004 dated 23.09.2009 for the period 2004-2005 upto 2009-2010 (till June, 2009) calling upon the appellants to explain as to why:-

(i) Central Excise duty amounting to Rs.2,07,67,730 plus Higher Education Cess @ 1% coming to Rs.1,34,701/- should not be recovered under Section 11 A of the Central Excise Act, 1944;

(ii) Penalty under Section 11 AC of the Act, read with Rule 25 of the Central Excise Rules, 2002 should not be imposed for contravention of the various provisions; and

(iii) Interest under Section 11 AB of Central Excise Act, 1944 should not be demanded and recovered at the prescribed rates.

8. Further, it appeared to Revenue that RVI is not a single good (s) but combination of many Signage /goods, which are put up at different places of the retail outlets like canopy facia, building facia, column cladding, building cladding, spreaders, facility signs, directions signs, monoliths, etc. RVI is a mere nomenclature by the Oil Companies for the project. Essentially, all these are signage. As per the 'Work Order' issued by the Oil Companies, the appellant/assessee were on Turnkey basis required to procure the various materials, as mentioned hereinabove. Thereafter, offer the same for inspection. It further appeared that each goods (signage) has been priced separately in the works contract, which cumulatively became work contract price for RVI. No fabrication /welding was allowed at the site or retail outlet as per statement of I.O.C. officers. The assessee have declared the description of the goods as signage and the sales turnover in their VAT/CST Returns. It further appeared to Revenue that the activity of the appellant with respect to RVI does not fall under the definition of "Works Contract Service" as defined under Section 65 105(zzzza) of the Finance Act, as manufacture/fabrication of goods is not includible in works contract. It is alleged that the appellant manufactured the signage in their premises/factory and thereafter transported these in CKD/SKD condition to the site or the retail outlets for installation. It will not be appropriate to hold that whenever element of work with materials is involved, irrespective of its magnitude, all such work should be held to be works contract. Revenue relied on the ruling of the Division Bench of this Tribunal

in **Virgo Industries (Engineers) Pvt. Ltd. Vs. CCE reported at 2019 (243) ELT 132.**

9. This is the second round of litigation. In the earlier round, this matter had come-up before the Tribunal in Excise Appeal No.1497 of 2011. Vide Final Order No.27/2012-EX dated 05.12.2011, this Tribunal was pleased to allow the appeal of the assessee by way of remand for de novo adjudication, keeping all the issues open. The Tribunal also gave specific guidelines for a) allowing cross examination of the persons, whose statements have been relied upon viz. (i) Shri S.K. Jain, Chief Engineering Manager, IOCL,(ii) Shri S.S. Pandita, Senior Manager (Engineering), IOCL, (iii) Shri Ashit Gupta, Field Inspector, M/s. Bureau Verietas India Ltd. (iv) Shri Ajay Thakur of M/s. SGS India (P) Ltd, b)As regards excisability, it was directed to refer to guidelines issued by CBEC from time to time particularly Circular No.58/1/2002-CX dated 15.1.2002 and Circular No.643/34/2002-CX dated 1.7.2002. Further, directed that the goods have to be classified in the form, in which they are removed from the place of manufacture, c) Further, directed to examine whether items like Building Facia, Canopy Facia, Column Cladding, Building Cladding, etc. will fall under Heading 9405 and /or 8310 of CETA, d) It was also made clear that Interpretative Rule 2 (a) of General Rules of Interpretation of the First Schedule to CETA cannot be of any help for levy of excise duty on anything, which comes into existence, only as an immovable property or in concluding that the value of the excisable goods removed will be the contract value inclusive of the activities of installing and erecting of the goods, making it an immovable property, e) As regards valuation, the Tribunal observed

that the Adjudicating Authority have taken sales figures from the Annual Financial Statement of the appellant and treated as the assessable value of the excisable goods, when part of the money realized was in relation to the transport and installation of the fabricated items. The Adjudicating Authority has not allowed any deduction for the value of service /installation for the reason that, no such break-up has been provided by the appellant. Further, it is not clear on which value, the Department initially collected service tax and how it was arrived at.

10. Pursuant to remand, the appellant/assessee filed their supplementary reply dated 16.07.2013 and also filed further additional submissions dated 25.11.2017 reiterating their request for cross-examination of the persons, whose statements have been relied upon in the show cause notice. Out of the four persons named above, only two persons (Shri S.S. Pandit and Shri S.K. Jain) appeared for cross-examination, which was done on 08.02.2018 and 05.04.2018. Thereafter, hearing was again conducted on 12.12.2018 and the common impugned order-in-original was passed dated 10.01.2019 confirming truncated amount of central excise duty at Rs.1,24,57,934 including cess, along with equal amount of penalty under Section 11 AC of the Act read with Rule 25. Further, penalty was imposed of Rs.35 lakhs on Shri Deepak Maheshwari, Director of the appellant company under Rule 26 of Central Excise Rules, 2002.

11. As regards the other (subsequent) show cause notice dated 07.07.2011, central excise duty was confirmed of Rs.29,63,248/- including cess for the period 2010-11. Further, penalty of Rs.2,96,324/- was imposed under Rule 25 of CER, 2002. Penalty of

Rs.5 lakhs was imposed on Shri Deepak Maheshwari, Director of the appellant company.

12. Being aggrieved, the appellant company and the Director are in appeal before this Tribunal.

13. Assailing the impugned order, the ld. Counsel, Dr. G.K. Sarkar for the appellant, *inter alia,* urges that after procurement of the various items like Aluminium Composite Material-ACM Sheet, Aluminium Angle, M.S. Pipes, G.I. Sheets, Iron Sheets-CR/HR Sheets, Electrical-Tube, Chowk, Wires, PVC Flex & Vinyl, Plastic Material-Pet G, Acrylic, Polycarbonate, etc., some of the activities (partial fabrication) are undertaken at the premises of the appellant and some are done on the site (including job work by others). Thereafter, the parties remove the goods, which are not in a marketable state and sent to the site or retail outlets of the Oil Companies for further fabrication and installation, e.g. with regard to Canopy Facia –M.S. Clamps are purchased and thereafter, the same are sent on job work for powder coating, as the appellant do not have such facility of powder coating. It is submitted that none of the ingredients viz. ACM sheet, M.S. pipes, M.S. Clamps, Aluminium Angles, Nut Bolts or other hardware items are manufactured by the appellant. The appellant mainly does the activity of cutting and welding of sheets and fabrication of frames made out of sheet and metal angles, to make it suitable for further fabrication and installation at site. The activity undertaken by the appellant can at best be said to be the 'Works Contract Service'. Referring from the copy of the work order No.**UPSO/ENG/AS/ERO 10/CX 10 dated 21.09.2006** issued by IOCL, wherein subject is mentioned - supplying, fabrication and

installation of Retail Visual Identity (RVI) elements for retail outlets (about 45 nos.) at a total value of Rs.55,29,987/- for 5 nos. of retail outlets. Further, Clause 7 of Special Instructions forming part of the Work Order mentions terms of payments as follows:-

(i) 70% of payment shall be released when the material is received at site after dispatch clearance certificate is approved by the third party inspection agency;

(ii) 20% of payment shall be released after installation of the items as per specifications and drawings;

(iii) Balance 10% payment will be released after the final inspection by TPI or site engineer.

14. Further, the schedule of rates annexed to the Work Order provides –

(i) Canopy facia – structural frame to be welded tightly to the structural frame members of the existing canopy structure. Rate to include supply and installation of all materials – installation at site, powder coated M.S. frame work. ACM cladding as per drawings including thermo formed Pet G, Vinyl, adhesive, rivets, nuts, tube lights, chowk, conductors, connectors, flashing, etc. all inclusive as per drawing. Rate includes cost of labour, transportation, erection, tools and tackles, scaffolding, frame work, moulds, cutters, etc. which might be required to complete the job. Rate to include dismantling of the existing building/canopy facia. As regards canopy column cladding, it is to be done as per drawing and specification, fixed securely to existing canopy column by <u>welding at site,</u> ACM panel fixing to

> ensure constant joint gaps and panel size. Further, some of the goods or items of RVI are non-lit.
>
> (emphasis supplied)

15. Ld. Counsel further urges that the appellant was registered with the Service Tax Department and have paid the service tax under the head "Works Contract Service" w.e.f. 1.6.2007 and have been filing the periodical returns. They were also registered with the VAT/Sales Tax Department since 2003 as works contractor and have been paying VAT as applicable on the material component. Further, from the Work Order, it is evident that the activity of the appellant are indivisible work contract. Work contract service was made taxable w.e.f. 1.6.2007. Under the facts and circumstances, the appellant does not fabricate or manufacture any goods, which are classifiable under the CETA, nor such goods are in marketable state. Further, it is settled law that service tax and Central Excise Act are mutually exclusive. On the same activity, both central excise duty and service tax cannot be levied. It has been so held by this Tribunal in **Excel Engineering Vs. CCE – 2017 (15) STR 295,** which have been upheld by the Apex court reported at **2018 12 GSTL J 89 (SC).** Further, prior to 1.6.2007, service tax for works contract service cannot be demanded as held by the Hon'ble Supreme Court in the case of **CCE & Customs - Larsen & Toubro – 2015 (39) STR 913 (SC).**

16. Ld. Counsel further urges that the whole demand is bad for invocation of extended period of limitation. Revenue have wrongly alleged that the activities of the appellant 'of RVI' came to their knowledge in the course of investigation. Whereas the admitted facts are that the appellant had taken *suo moto* registration under the provisions of Service Tax and have been making compliance by paying service tax and filing returns. The appellant have been maintaining proper books of accounts in the ordinary course of business. The appellant were also registered with the Sales Tax/VAT Department as works contractor and were discharging the liability under the sales tax. Admittedly, the Service Tax & Central Excise Act are administered by the same Department, hence, Central Excise Department was having full knowledge of the activities of the appellant and also the fact that the appellant were discharging service tax liabilities as a work contractor. Reliance is placed on the ruling of the Apex Court in the case of **Uniworth Textile Vs. CCE – 2013 (288) ELT 161 (SC)** and also in the case of **Sarabhai M. Chemicals Vs. CCE- 2005 (179) ELT 0003 (SC).**

17. It is further urged that as the final fabrication and installation is done at the site, RVI is attached permanently to the immovable structure and the same cannot be removed or dismantled without cannibalizing or substantial damage to its components. Thus, the same cannot be removed and reassembled at some other retail outlets. Thus, the RVI on completion takes the character of immovable property and thus, is not excisable goods. Ld. Counsel refers to photographs of the finished works annexed to the appeal paper book. It is further urged that RVI are basically routed to the existing structures for beautification of the petrol pumps. They are fastened (including welding) on the structure made of M.S. Pipes, which is attached and /or fixed to the existing building. The ACM sheets alone are not RVI. RVI like monolith, building facia, canopy facia etc. are attached and formed part of the immovable structure at the retail outlets. Ld. Counsel further urges that the ruling in the case of **Virgo Industries (supra)** is not applicable to the facts of the instant case. In the said case, the issue was related to the excisability of only signage, which means illuminated signage having independent frames fixed to light source, which is not the case here. Further, it was proposed in the show cause notice that the subject items/RVI are classifiable under CTH9405. Whereas in the impugned order, the Adjudicating Authority have classified the items/ RVI under CTH 8310 and thus travelled beyond the show cause notice, which is not permissible. Further, CTH 9405 6090 is also not applicable, which describes goods as --- illuminated signage, illuminated name plates having permanently fixed light source. Thus, the essential element is having permanently fixed light source. Explanatory Notes to heading 9405 makes it clear that this heading excludes signage, name plates and the like not illuminated or illuminated by light source not permanently fixed. In the present case, it is not in dispute that the items made by the appellant do not contain permanently fixed light source. RVI have only provisions for fixing electric bulbs and the power source is the power supply at the place, where the RVI is installed. Heading 9405 excludes such a product.

18. It is further urged that the Adjudicating Authority have erred in vivisecting the activities of the appellant in two components one – manufacture and the other – service. It is not possible to bifurcate the activities of the RVI, as it is a composite work on Turnkey basis, which includes sourcing of materials, part fabrication in the premises of the appellant or their job worker and thereafter, the finishing and installation is done at the site of the service receiver. No bifurcation can be done of the composite price,

which is evident from the impugned order, as the Adjudicating Authority have also failed to bifurcate the composite price as to the cost of the goods and cost of the service. Thus, *ipso facto,* the demand of excise duty is bad. Ld. Counsel further relies on the ruling of the Coordinate Bench of this Tribunal in the case of **Secure Mobile India Vs. CCE – Final Order No.50711-50733 of 2019 dated 20.05.2019,** wherein for similar work of RVI done for the Oil Companies, it was held that excise duty is not attracted, observing that RVI elements come into existence at the site of the buyer only and once installed at the site cannot be dismantled and re-installed at alternate location. It is also urged that the activity does not amount to manufacture in terms of Section 2(f) of the Central Excise Act. Accordingly, prays for allowing their appeals.

19. Opposing the appeal, ld. Authorised Representative for the Revenue relies on the impugned order. He further urges that RVI is combination of many signages/goods, which are put at different places of the retail outlets of the Oil Companies. For distinct visibility like Canopy facia, Building facia, Column Cladding, facility signs, direction signs, wall cladding , monolith, etc. RVI is a mere nomenclature given by the Oil Companies for project. Further, from the facts on record, it appears that after issue of the work order, the appellant has to procure the required materials and offer the same for inspection. After approval of the materials, they fabricate the signage in parts. Further, each good/signage has been priced separately in the work contract, which cumulatively forms price of the project known as RVI. From the statement of the officers of the Oil Companies, it is evident that no fabrication/welding is allowed at site. The appellant have declared the description of the goods as

signage in their invoice as well as in their sales tax returns. It appears only erection and installation is done at site after fabrication of the signage at factory or works of the appellant, these were carried to the site of the buyer in dismantled or completely in knock-down position. Thereafter re-installed at the site. Modular and fabricated RVI elements were transported from the works of the appellant and thereafter, installed/erected at site. Modular pieces of RVI elements can be dismantled and re-installed at another site.

20. Ld. Authorised Representative places reliance on the ruling of the Madras High Court in the case of **Virgo Industries (Engineers) Vs. CCE – 2013 (230) ELT 695(Madras).** The appeal against this order of the High Court has been admitted by the Hon'ble Supreme Court. As regards the ruling of the Coordinate Bench of this Tribunal in the case of **Secure Mobile India (Supra),** ld. Authorised Representative states that in the said judgement, the Tribunal primarily relied on the assessment made to service tax on the same activity by the Department under the head "Works Contract Service". In the said case, the activity of manufacture /fabrication at the premises of the assessee was not involved. Referring to the definition of "Works Contract Service" under Section 65(105)(zzzza) of the Finance Act, he urges that in case of works contract an immovable asset or property comes into existence, whereas in the present case, the appellant have manufactured or fabricated the goods to clear the same from the their factory for installation at retail outlet of the Oil Companies. He further urges that benefit of SSI exemption and calculation of duty

on cum-duty basis has already been extended in the impugned order.

21. Having considered the rival contentions and on perusal of the records, it is evident from the pleadings including copy of the work order issued by the Oil Companies, the appellant have acquired various inputs manufactured by other manufacturers like Aluminium Composite Material-ACM Sheets, Aluminium Angles, M.S. Pipes/Angles/clamps, G.I. Sheets, Iron Sheets, CR/HR sheets, Electrical fittings like tube lights, Chowk, Wires, PVC Flex & Vinyl, Plastic material – Pet G, Arcylic Polycarbonate, etc. After the goods are inspected by the Oil Companies or its nominated agencies, the appellant undertakes fabrication, wherein they do cutting, sizing, etc., as per measurements taken at the retail outlets. Partially fabricated frames in un-finished condition and other cut materials etc. are then transported to the site, where final adjustments are made at site by cutting, re-working, etc. Frames are finally fabricated and fixed (piece by piece) with the help of the angles and brackets fixed to the building facia, column, etc. Barring a few small signages, various elements of RVI upon final fabrication/erection at site like Canopy facia, building facia, monolith, etc are practically immovable. These cannot be removed without cannibalizing, only few smaller signages including Arches and spreaders (direction signs) are made in the factory. These are also removed in semi-finished conditions and are not in a marketable state, and finally finishing and installation is done at the site only. The various elements of RVI, which come into existence at the site of the buyers as an immovable, are no longer goods and hence, not exigible to central excise duty. Revenue have failed to

identify the state or form in which the goods are removed from the factory and whether these are in marketable stage. We further find that the statement of the officers of the Oil Companies is not reliable, as the same is contrary to the documentary evidence being work order, inspection reports, etc. on record, forming part of the relied upon documents. The schedule of rates forming part of the work order mentions fabrication with prescribed materials as per drawings and specifications, fixed securely to existing canopy-columns by welding, etc. at site. ACM panel fixing - to ensure the joint gaps are uniform. Thus, from the work order, partial fabrication at site including welding etc. is evident. We find that the Court Below have ignored these material facts and have mis-directed itself by relying on the oral evidence. Further, Revenue failed to establish that the partially fabricated goods removed from the factory were in marketable state. The whole case is made out on the basis of assumptions and presumptions. No inspection has been made by the Revenue at the factory premises of the appellant/assessee.

22. We further find that admittedly the appellant have maintained proper books of accounts and had taken registration under the Service Tax Provisions for discharge of their tax liability and have accordingly discharged the service tax payable under the head "Works Contract Service" on the gross value under Compounding Scheme. Thus, Revenue had full knowledge of the activities of the appellant.

23. Thus, we hold that extended period of limitation is not invokable. We further find that on final fabrication and installation, the RVI forms part of the immovable property at the retail outlet

and does not result in manufacture of goods. Further, various elements of RVI are neither movable nor marketable. It has been clarified by the Board in Circular No.58/1/2002-EX, if the goods are incapable of being sold, shifted and marketed without first being dismantled into component parts, the goods would be considered as immovable and, therefore, not excisable to duty. When the final product is considered as immovable, the same product in CKD or in unassembled form will also not be dutiable. We find from the impugned order that the work of RVI involves a large number of components, fabrication and installation. To make foundation/civil structure at site, cannot be considered as excisable goods for imposition of central excise duty. It has been so held in similar facts and circumstances in **CCE Vs. Bhagwanpura Sugar Mills – 2001 (134) ELT 673,** wherein storage tank is erected and installed (though not embedded to the earth) at site stage by stage and after completion cannot be physically removed. For sale or removal, it has to be necessarily dismantled and sold as scrap. Under similar circumstances, the Apex Court in **Craft Interiors (P) Ltd. Vs. CCE – 2006 (203) ELT 529 (SC)** have held fixed fittings of wood, etc. like storage cabinet, running counters, conference tables are practically immovable and not classifiable as furniture, as these can be removed only in bits and pieces (scrap), and hence not excisable. Accordingly, we hold that in the facts and circumstances on the activity of the appellant, central excise duty is not attracted, as the partially fabricated frames etc. removed from the works of the appellant are not in a marketable stage. We also find that Revenue have failed to value the various elements of RVI or goods in the state, they are cleared from the factory and have grossly erred in charging the duty on the gross value of the work contract. We also find that it has been clarified by the Oil Companies subsequently (after remand) that RVI elements are fabricated at site as per specific measurements and requirements. After installation, the RVI elements cannot be dismantled without cannibalizing and they become as integral part of the building facia, etc.

24. In view of our aforementioned observations and findings, I hold that the impugned order is also bad as it was not proposed in the show cause notice to classify under CTH 8310 of CETA. Under the facts and circumstances, we also hold that the extended period of limitation is also not applicable.

25. In view of our observation and findings, we allow the appeals and set aside the impugned order. The appellants shall be entitled to consequential benefits in accordance with law. We allow appeals both of the Company as well as the Director.

[Order pronounced on 01.03.2023]

(Anil Choudhary)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Ckp.