CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Principal Bench-Court No.-2

Excise Appeal No. 55699 of 2013 [DB]

[Arising out of Order-in-Appeal No. 61-62/CE/DLH/2012 dated 26/10/2012 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Secure Mobile India **Appellant**
A-17, Harphool Vihar,
Najafagarh Road,
New Delhi

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance
Shri Naveen Mullik and Shri Parth, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DRs – For the respondent

With

Excise Appeal No. 55700 of 2013[DB]

[Arising out of Order-in-Appeal No. 61-62/CE/DLH/2012 dated 26/10/2012 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Sanjay Jain **Appellant**
A-17, Harphool Vihar,
Najafagarh Road,
New Delhi

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance
Shri Naveen Mullik and Shri Parth, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - For the respondent

With

Excise Appeal No. 60542 of 2013[DB]
[Arising out of Order-in-Original No. 05-2013-14 dated 30/08/2013 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Laycok Engineers Pvt. Ltd. **Appellant**
409,ansals Majestic Tower,
G-17, Community Centre,
Vikash Puri New Delhi
110018

Versus

Commissioner Central Excise
Delhi-I **Respondent**
CR Building,
IP ESTATE, Delhi-110109

Appearance
Shri B. Garg and Ms. Rinki Arora Advocates - For the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent

with

Excise Appeal No. 60613 of 2013[DB]
[Arising out of Order-in-Original No. 05-2013-14 dated 30/08/2013 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Sanjay Sathi, Director **Appellant**
M/s Laycock Engineers Pvt. Ltd.
409, Ansals Majestic Tower,
G-17, Community Centre,
Vikas Puri, New Delhi-110018

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building, IP Estate,
New Delhi-110002

Appearance
Shri B Garg and Ms. Rinki Arora Advocates - For the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent with

Excise Appeal No. 51487 of 2014[DB]

[Arising out of Order-in-Original No. 17-2013-2014 dated 02/12/2013 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Laycock Engineering Pvt Ltd. **Appellant**
409, Ansals Majestic Tower,
G-17, Community Centre,
Vikas Puri, New Delhi-110018

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building
I P Estate, Delhi-110109

Appearance

Shri B Garg and Ms. Rinki Arora, Advocates - For the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent

with

Excise Appeal No. 51488 of 2014[DB]

[Arising out of Order-in-Original No. 17-2013-14 dated 02/12/2013 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Varun Sethi, Director **Appellant**
M/s Laycock Engineers Pvt. Ltd.
409, Anasals Majestic Tower, G-17,
Community Centre
Vikas Puri

Versus

Commissioner Central Excise
Delhi-II **Respondent**
CR Building, I P Estate,
New Delhi-110002

Appearance

Shri B Garg and Ms. Rinki Arora Advocates - For the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent

with

Excise Appeal No. 51489 of 2014[DB]

[Arising out of Order-in-Original No. 17-2013-14 dated 02-12-2013 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Sanjay Sethi, Director **Appellant**
M/s Laycock Engineers Pvt. Ltd.
409, Ansals Majestic Tower,
G-17, Community Centre,
Vikash Puri,
New Delhi-110018

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building, I P Estate,
New Delhi-110002

Appearance
Shri B Garg and Ms. Rinki Arora Advocates - For the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent

with

Excise Appeal No. 51791 of 2014[DB]
[Arising out of Order-in-Appeal No. 01-02/CE/D-II/13 dated 04/01/2013 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Rajesh Kapoor **Appellant**
M/s Kapoor Welding &
Engineering Works,
(Now M/s KW Engineering & Signs Pvt. Ltd.)
Farm No. 2, Club Drive Road,
Ghitorni, New Delhi-110030

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building, I P Estate,
New Delhi-110002

Appearance
Shri Naveen Mullik and Shri Parth, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DRs - For the respondent

with

Excise Appeal No. 51817 of 2014[DB]
[Arising out of Order-in-Appeal No. 01-02-CE-D-II-13 dated 04/01/2013 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

K W Engineering & Sign
Pvt. Ltd. **Appellant**

Farm No. 2, Club Drive Road,
Ghitorni, New Delhi-110030

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building, I P Estate,
New Delhi-110002

<u>Appearance</u>
Shri Naveen Mullik and Shri Parth, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DRs - For the respondent

with

Excise Appeal No. 51103 of 2015[DB]
[Arising out of Order-in-Original No. 36-D-I-2014 dated 30/12/2014 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Dasmesh Art Ltd. **Appellant**
26, Ram Nagar Market,
Qutub Road, Pahar Ganj,
New Delhi

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

<u>Appearance</u>
Shri Naveen Mullik and Shri Parth, Advocate - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DRs - For the respondent

with

Excise Appeal No. 51104 of 2015[DB]
[Arising out of Order-in-Original No. 36-D-I-2014 dated 30/12/2014 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Kultar Singh **Appellant**
26, Ram Nagar Market,
Qutub Road, Pahar Ganj,
New Delhi-110055

Versus

Commissioner Central Excise **Respondent**

Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance

Shri Naveen Mullik and Shri Parth, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DRs - For the respondent

with

Excise Appeal No. 51710 of 2015[DB]

[Arising out of Order-in-Original No. V-94-15-CE-ADJ-D-I-27-2012-120 dated 30/01/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Sign At Sote **Appellant**
3705/8, 1st Floor, Narang Colony,
Tri Nagar, Delhi

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance

None for the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent

with

Excise Appeal No. 51711 of 2015[DB]

[Arising out of Order-in-Original No. V-94-15-CE-ADJ-D-I-27-2012-120 dated 30/01/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Vikas Garg **Appellant**
M/s Sign at Site
3705/8, 1st Floor, Narang Colony
Tri Nagar, Delhi

Versus

Commissioner Central Excise
Delhi-II **Respondent**
Gate No.2,
CR Building, IP Estate,
Delhi-110109

<u>Appearance</u>

None for the appellant

Shri H C Saini, S K Bansal, V B Jain, DRs - For the respondent

with

Excise Appeal No. 54416 of 2015[DB]

[Arising out of Order-in-Original No. 30-D-I-2015 dated 31/08/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Design Dialogues India Pvt. Ltd. **Appellant**
AK-11, Arakansha Road, Paharganj,
New Delhi-110055

Versus

Commissioner Central Excise
Delhi-II **Respondent**

<u>Appearance</u>

Shri Naveen Mullik and Shri Parth, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DRs - For the respondent

with

Excise Appeal No. 50370 of 2016[DB]

[Arising out of Order-in-Original No. 16-2015-16 dated 17/12/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

M/s Saksham Signs Pvt. Ltd. **Appellant**
101, Manak Vihar, Delhi-110092

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building, IP Estate,
New Delhi

<u>Appearance</u>

Shri G K Sarkar, Prasand Srivastava, Advocates For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - For the respondent

With

Excise Appeal No. 50371 of 2016[DB]

[Arising out of Order-in-Original No. 16-2015-16 dated 17/12/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Vikas Manchand Director **Appellant**
M/s Saksham Signs Pvt. Ltd.
101, Manak Vihar,
Delhi-110092

Versus

Commissioner Central Excise
Delhi-II **Respondent**
C R Building, I P Estate,
New Delhi-11109

Appearance
Shri G K Sarkar, Prasand Srivastava, Advocates - for the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - for the respondent

with

Excise Appeal No. 51990 of 2016[DB]
[Arising out of Order-in-Original No. 30-D-I-2015 dated 31/08/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Deepak Trehan, Director **Appellant**
M/s Design Dialogues India Pvt. Ltd.
AK-11, Arakansha Road, Paharganj,
New Delhi-110055

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance
Shri Naveen Mullik and Shri Parth, Advocate - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - For the resp.

with

Excise Appeal No. 52592 of 2016[DB]
[Arising out of Order-in-Original No. 3-2016-17 dated 31/05/2016 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Fiberfill Engg. **Appellant**
C-9/9574, Vasant Kunj,
New Delhi-10070

Versus

Commissioner Central Excise **Respondent**

Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance
Shri A K Prasad, Ms. Surbhi Sinha, Advocates - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - For the Respondent

with

Excise Appeal No. 50430 of 2017[DB]
[Arising out of Order-in-Original No. 28-D-I-2015 dated 31/07/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

AVI Plast **Appellant**
102,Ground Floor,
State Bank Nagar,
New Delhi

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi-110109

Appearance
Shri Naveen Mullik and Shri Parth, Advocate - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - For the Respondent

With

Excise Appeal No. 50560 of 2017[DB]
[Arising out of Order-in-Original No. 28-D-I-2015 dated 31/07/2015 passed by the Commissioner of Central Excise-DELHI - I(Appeal)]

Vikas Sabharwal **Appellant**
102, Ground Floor, State Bank Nagar,
New Delhi-110063

Versus

Commissioner Central Excise **Respondent**
Delhi-I
Gate No.2,
CR Building, IP Estate,
Delhi

Appearance

Shri Naveen Mullik and Shri Parth, Advocate - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR - For the respondent

And with

Excise Appeal No. 52590 of 2016[DB]

[Arising out of Order-in-Original No. 3/2016-17 dated 31/05/2016 passed by the Commissioner of Central Excise-DELHI - II(Appeal)]

Shri Rishab Kishore **Appellant**

C-9/9574,
Vasant Kunj, New Delhi-110070

Versus

Commissioner Central Excise **Respondent**
Delhi-I

CR Building, IP Estate,
Delhi-110002

Appearance

Shri Naveen Mullik and Shri Parth, Advocate - For the appellant

Shri H C Saini, Shri S K Bansal, Shri V B Jain, DR -For the respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing: 20.11.2018

Date of Decision: 20.05.2019

FINAL ORDER NO. 50711-50731/2019

Per Bijay Kumar:

1. All these appeals which have been adjudicated by the different Adjudicating Authority are on the identical issue and hence being disposed of by this common order. The details of these appeals are tabulated herein and for sake of appreciation;

S No.	Appeal Number/ Appellant name	Order-in-Original & Order-in-Appeal	Duty imposed	Penalty imposed
1.	E/54416/2015 Design Dialogues India Pvt. Ltd	OIO-30-D-I-2015 dated 31/08/2015	Rs.5,31,48,777/-	Rs.5,31,48,777/-
2.	E/51990/2016 Deepak Trehan Director	OIO-30-D-I-2015 dated 31/08/2015	NIL	Rs. 50,00,000/-
3.	E/51791/2014 Rajesh Kapoor	OIA-01-02/CE/D-II/13 Dated 04/01/2013	NIL	Rs. 5,00,000
4.	E/52592/2016 Fiberfill Engg. & ANR	OIO-03-2016-17 dated 31/05/2016	NIL	12,74,48,040/-
5.	E/50430/2017 AVI Plast	OIO-28-D-I-2015 dated 31/07/2015	Rs. 2,13,37,367/-	Rs. 2,13,37,367/-
6.	E/51489/2014 Sanjay Sethi	OIO-17-2013-2014 dated 02/12/2013	NIL	Rs. 20,00,000/-
7.	E/52590/2016 Rishab Kishor	OIO-03/2016-17	NIL	Rs. 50,00,000/-
8.	E/50560/2017 Vikas Sabharwal	OIO-28-D-I-2015 dated 31/07/2015	NIL	Rs. 25,00,000/-
9.	E/51103/2015 Dasmesh Art Ltd	OIO-36-D-I-2014 dated 30/12/2014	Rs.1,08,76,009/-	Rs. 1,08,76,099/-
10.	E/51104/2015 Kultar Singh	OIO-36-D-I-2014 dated 30/12/2014	NIL	Rs. 10,00,000/-
11.	E/60542/2013 Laycock Engineers Pvt Ltd.	OIO-05-2013-14 dated 30/08/2013	Rs.1,10,70,038/- & Rs.18,54,000/-	Rs.1,10,70,038/- & Rs.18,54,000/-
12.	E/60613/2013 Sanjay Sathi	OIO-05-2013-14 dated 30/08/2013	NIL	20,00,000/-

13.	E/51817/2014 K W Engineering	OIA-01-02-CE-D-II-13 dated 04/01/2013	Rs.49,83,450/-	Rs.49,83,450/-
14.	E/50370/2016 Saksham Signs Pvt Ltd.	OIO-16-2015-16 dated 17/12/2015	Rs.1,23,37,039/-	NIL
15.	E/50371/2016 Vikas Manchanda Director	OIO-16-2015-16 dated 17/12/2015	NIL	Rs. 20,00,000/-
16.	E/55699/2013 Secure Mobile India	OIA-61-62/CE/DLH/2012 dated 26/10/2012	Rs. 12,57,658/-	Rs. 12,57,658/-
17.	E/55700/2013 Sanjay Jain	OIA-61-62/CE/DLH/2012 dated 26/10/2012	NIL	Rs. 4,00,000/-
18.	E/51710/2015 Sigm At Sote	OIO-V-94-15-CE-ADJ-D-I-27-2012-120 dated 30/01/2015	Rs. 101,54,972/-	Rs. 101,54,972/-
19.	E/51711/2015 Vikas Garg	OIO-V-94-15-CE-ADJ-D-I-27-2012-120 dated 30/01/2015	NIL	Rs. 7,50,000/-
20.	E/51488/2014 Varun Sethi	OIO-17-2013-2014 dated 02/12/2013	NIL	Rs. 20,00,000/-
21.	E/51487/2014 Laycock Engg. Pvt. Ltd.	OIO-17-2013-2014 Dated 02/12/2013	Rs. 12,633,263/-	Rs. 12,633,263/-

The appellants were awarded contracts by Petroleum companies such as M/s Indian Oil Corporation, M/s Bharat Petroleum

Corporation, M/s IBP Co. Ltd for manufacture and installation of Retail Visual Identity Elements (RVI for short) at the petrol pumps different companies. Broadly, RVI are those signs which display the name of different petroleum companies the unique look, common to all pumps dispensing products of these companies, by which a person going to the pump clearly identifies the pump that dispenses the products of that particular company. There were other elements also indicating the facilities at the pump and directions signs to help the vehicles using these pumps. The specifically RVIs consist of Spreaders, Facility Signs, Direction Signs, Monoliths, Wall cladding etc. The process of making of these units are as under;

(a) The various components were dispatched on the site as per requirements of that particular site/petrol pumps. Thereafter, these were installed on the existing sites building on the top of the petrol pumps. It was not possible/feasible to assemble building fascia at factory or even at ground level on the site. The material was always sent in loose condition. The Cladding: (i.e., covering of any surfaces such as walls, floors, building, column etc. by any foreign material on the pre-existing structure), was carried out mainly with aluminum composite sheets on the pre-existing surfaces of walls, columns, canopies and buildings. In the process, exact sizes were measured, the sheets were cut as per the site specifications, surfaces was leveled with M.S pipes which were welded to the existing surface to even out different levels of variations (i.e., to cover the defects in civil construction), aluminum extrusion was fixed piece by piece of required lengths cutting out the various opening like doors, windows, ventilators, ACs, coolers, water dispensers, power points and lighting fixtures etc., ACM sheet was cut as per the Aluminum extrusion that was secured to the MS or building through bolts. The ACM was installed in equal lengths/panels and depended upon the individual site plans.

(b) **Monoliths:** Monolith is a complete sign which was manufactured at the site of oil company (i.e., petrol pump) using steel, ACM, Ploy carbonate sheets & aluminum tubes, exact cut to size pipes were received/ procured and given to a job worker to fabricate the components of monolith as per design of the oil company. The steel was then directly dispatched from the job worker to site of the Oil company. Other items like ACM and polycarbonate were purchased as per the design of the Oil company. These panel were then cladded on the cut to size as per format, POC Foam boards were packed and dispatched to site, where they are all assembled and installed on the specifically constructed foundation built by Oil company for the same. At the site the components of monoliths were assembled piece by piece and the structure was erected and panels were cladded.

(c) **Building Fascia**: Building Fascia is the ACM cladding done on top of sales building of a Petrol Pump. Aluminum Composite Panels (ACM) sheets and Aluminum Angle/Extrusion length were dispatched on site. Then they were cut to size and the facie was fabricated at site thereafter.

(d) **Canopy Fascia:** This cladding is a work on existing canopies of the Oil Companies as per their colour scheme and design provided by the oil companies for aesthetic looks. For installation of canopy fascia MS Pipe (Coated) Aluminum extension, ACM sheets, GI sheets were supplied directly at the site, where measurement of canopy with regards to size, string level/straightness, water level was taken and a mean level was worked out so that water does not stop on the canopy. Subsequently, MS Pipes of 900 mm were installed on the canopy piece by piece, on the desired line levels, as worked out earlier (vertically) Aluminum Extrusion was then put/installed on the MS Pipes horizontally again piece by piece i.e., as per the standard lengths available then the ACM sheet of required colours was cladded on the

MS/Aluminum with the help of screw/rivets. GI sheet was fixed on the top of ACM sheet to avoid water seepage.

(e) **Direction Sign:** The Direction Sign is entry/exit sign displaying road directions. The aluminum frame was made by the job worker and ACM was slided into it after punching & routing, poly carbonate sheet was fixed in the routing and punching area, CFL Lamps was used for illumination. At site, excavation was done and RCC foundation was made. The direction sign was then fixed on RCC foundation, which was then cladded with black granite tiles.

(f) **Facility Sign:** Aluminum, Poly Carbonate and ACM Aluminum Frames were fabricated by job workers, ACM polycarbonate was cut, punched to size assembled and then dispatched to the site by the job worker.

(g) **Spreaders:** They were fixed on canopy column and facilities on the compound walls, Aluminum, Poly Carbonate and ACM Aluminum frames were fabricated through a job worker and ACM and ACM polycarbonate are cut, punched to size as per oil company’s designs, assembled and then dispatched to the site by the job worker.

2. Revenue entertained of the view that fabrication and installation of the RVI amounts to manufacture as defined in Section 2(f) of Central Excise Act, 1944 and the Appellants should have paid excise duty on goods so manufactured. Since the appellants were not registered with the excise authorities and did not pay excise duty the Revenue took the amounts realized from the oil companies as reflected in the balance sheets of the appellants and demanded excise duties by the various Show Cause Notice notices for realization of demanding Central Excise duty and also invoking penal action for period mentioned therein.

3. The Commissioner of Central Excise Delhi vide order-in-originals confirmed the entire duty amount and imposed penalties on the other appellants. The Appellants instead of challenging the said order before the Tribunal approached the Hon'ble Delhi High Court. The Hon'ble Delhi set aside the said Order-in-Originals and remanded the matter to the Commissioner with some directions. The Commissioner of Central Excise Delhi re-adjudicated the matter vide order-in-Original No. 3/2011 dated 6.5.2011 whereby he again confirmed the entire duty demand and imposed penalties. The Appellants challenged the said Order-in-Original before this Tribunal and this Tribunal at the stay stage itself set aside the said Order-in-Original and remanded the matter again to the Commissioner/adjudicating authority with certain directions. The Commissioner was directed to allow cross-examination of four

persons/witnesses on whose statements reliance was placed in the show cause notices.

3.1 That during the course of remand proceedings cross-examination of Sh. Sanjay Kumar Jain of IOC, Sh Ajay Thakur of SGS, Shri Ashit Gupta of Bureau of Veritas and Sh. S.S. Pandita of IOC was fixed for 14.3.2016 and 4.4.2016. However, none of above witnesses appeared on the said dates. However, the Department offered one Sh. SK Upadhyay for cross-examination on behalf of SGS instead of Sh. Ajay Thakur. Hence the cross examination of Sh. SK Upadhyay was conducted on 14.3.2016

3.2 The Commissioner of Central Excise Delhi-I vide the impugned orders again confirmed the duty demands after giving cum duty benefit raised vide two show cause notices and imposed equal amount of penalty. Separate penalties as indicated above have also been imposed on other appellant.

4. That the Ld. Counsels have appeared on behalf of the Appellants. Their submissions can be summarized hereunder:

4.1 None of the disputed items were manufactured by the Appellants. They were manufactured by the independent job workers to whom the work was sub-contracted. This was intimated to the department during the investigation stage itself but no investigation/verification was done at the supplier end. There is proof that the elements of the

RVI were not inspected at the Appellants premises but at the premises of job-workers. This was confirmed during the cross-examination of one of officers of the Inspecting Agency. The Appellants were issuing TDS Certificates to all the job workers. Some of the job workers were even registered with the service tax department, others were registered with the Central Excise Department as well.

In support of the submission that when the goods are manufactured by the job workers duty cannot be demanded from the suppliers of the raw material, as in such events job workers are to be treated as actual manufacturers and reliance has been placed on the following judgements:

(i.) **Ujagar Prints etc v/s Union of India & Others - 1988(38) ELT 535(SC)**

(ii.) **Union of India& Others v/s Cibatul Ltd 1985 (22) ELT 302(SC)**

(iii.) **CCE Baroda v/s MM Khambhatwala- 1996(84) ELT 161(SC)**

(iv.) **Jay Engineering Works Ltd v CCE Calcutta-1985(21) ELT 299(T) which has been upheld by the Supreme Court as reported in 1995(80) ELT A279(SC)**

(v.) **AFL(P) Ltd V CCE Mumbai II- 2013 (285) ELT 211(T)**

(vi.) **Raymond Ltd V CCE Bhopal- 2014(308) ELT 151(T)**

(vii.) **CBEC circular No 56/56/94-CX dated 14.9.1994**

4.2 Since the manufacturers were the individual job workers, the officers to investigate and adjudicate the case would be jurisdictional officer of the concerned Commissionerate only. Without first determining the jurisdiction, neither the show cause notice could have been issued nor the case would have been adjudicated.

4.3 The case of the department, is that the Appellants were the manufacturers of the various elements of the RVI which have been manufactured at the Appellants premises. Once it is established that the Appellants did not have any manufacturing premises and that the goods have been manufactured at the premises of different job workers, the adjudicating authority could not have gone beyond the SCN to hold that, notwithstanding the facts that the goods were not manufactured at the Appellants premises, they would still be considered as manufacturers.

In support of his submission that adjudicating authority can’t travel beyond the scope of the show cause notice. Reliance has been placed on the following judgments:-

(i.) **CC Mumbai v/s Toyo Engineering India Ltd-(2006) 7 SCC 592**

(ii.) **CCE Cochin v/s Kerala State Bamboo Corpn Ltd-(2005) 13 SCC 396**

(iii.) **CCE Bhubaneshwar-1 v/s Champdany Industries Ltd-(2009) 9SCC 466**

4.4 The photographs of various elements of the RVI would reveal that all of them were assembled at the site and come into existence as parts of permanent structures of the petrol pump (Retail Outlet). The canopy of the petrol pump was never fabricated/erected by the Appellants. These were already available at the site. The Appellants merely had to do the cladding with the cut-to-size imported Aluminum Composite Material (ACM) sheets(by cutting, grooving and bending), fixing the Spreads and erecting the Monoliths and the Signage. These were therefore, not goods as per CBEC 37B order No 58/1/2002-CX dated 15.01.2002.

4.5 The transactions between the Appellants and various job workers were on principal to principal basis. There is no evidence on record that the job workers were under the control of the appellant. The onus of proof in this regard was on the Department. Reliance was placed on the judgment of the Hon'ble Apex in the case of Uniworth Textiles Ltd v CCE reported in 2013 (288) ELT 161(SC) for their submission.

4.6 That the Appellants were paying service tax under the works contract service @ 2% on the gross value of the contracts. Therefore, the Central Excise Department could not demand Central Excise Duty on the same value and on the same activity.

4.7 That in any event the process undertaken by the job workers did not amount to manufacture as the Service Tax is payable only on the activites which did not amount to manufacture. According to him same activity can't be considered as a manufacturing activity subjected to excise duty and as also considered as service subjected to service tax. In support of this submission reliance has been placed on the judgment of this Tribunal in the case of M/s Jubilant Industries Ltd V CCE Ghaziabad-2013(31) STR 181 (T) wherein the above principle of law has been laid down.

4.8 The service tax was demanded for the same period on the ground that activities of the Appellants were appropriately covered under the taxable service Erection, Commissioning and Installation Service and Industrial Construction Service. These Show Cause Notices have since been adjudicated by the Commissioner of Service Tax Delhi-III Commissionarate vide order-in-originals dated 11.11.2016 wherein the Commissioner has relied upon the law laid down by the Hon'ble Apex Court in the case of M/s Larsen Toubro reported in 2015 (039) STR 913(SC) and accepted that the Appellants had correctly discharged the Service tax under Work Contract Service. The proceedings were consequently dropped.

4.9 Further, no reliance can be placed upon the statements of Shri SK Jain Chief Engineer Manager, IOCL dated 18.9.2018, Shri Ashish Gupta Field Inspector, Bureau Veritas India Ltd dated 7.10.2008, Shri

S.S PanditaSr Manager (Engg), IOCL dated 18.9.2009 and Shri Ajay Thakur Field Inspector SGS India Ltd dated 26.10.2009 as these witnesses did not appear for cross examination and their statements have not been examined under section 9D of the Central Excise Act 1944. In support of this submission reliance was placed on the following judgments:-

(i.) **Arubica International V/S UOI & Others_- 2016 TOIL 1238 (P&H)**

(ii.) **Karan Traders v/s Joint Commissioner of CE-2016 (339) ELT 249()**

(iii.) **Kusum Ingots & Alloys Ltd V CCE Indore-2015 (317) ELT 721(T)**

4.10 The Ld Counsel has placed reliance on RTI reply dated 8.3.2011 received from CPIO, IOCL which clarified that all the elements of the RVI were received in component form and fixed at the site and that the canopy fascia, building fascia, column and building cladding were not illuminated signs.

4.11 The demands are time-barred as there is no evidence of the Appellants deliberately mis-declaring or concealing any information from the department. Since the matter related to dutiability of items which are erected at site and get assimilated into permanent structures, has been a subject matter of dispute for quite some time, the present issue can, at best, be considered as matter relating to interpretation of law and no *mala fides* can be attributed to the

Appellants. Even before the detection of the case, the Appellants had themselves registered with the department for providing Works Contract Service and had been regularly paying Service Tax on the gross value of the contracts and had also been filling regular ST-3 returns. In other words, the activities of the Appellants were all along within the knowledge of the department. In support of his submission that demand is barred by the time he relied upon the following judgments: -

(i.) **TTG Industries Ltd V CCE Raipur- 2004 4 SCC751**

(ii.) **Pushpam Pharmaceuticals Co V/S CCE Bombay- 1995(78) ELT 401(SC)**

(iii.) **CCE V/Chemphar Drugs &Liniments - 1989 (40) ELT 276(SC)**

(iv.) **Padmini Products V CCE- 1989 (43) ELT 195(SC)**

4.12 Extended period had been invoked in subsequent Show Cause Notices in case of some of the appellants, though everything was in the knowledge of the department and the show cause notices were based entirely on the investigations conducted in respect of earlier Show Cause Notice. Further, there is no discussion in the show cause notices as to how the department has arrived the value or rate of duty for computing the demand.

4.13 That no penalty is imposable either on the main Appellants or their partner. Learned Advocate, therefore, pleaded for allowing both these appeals.

5. The Ld. Authorized Representative has supported the impugned order and made the following submissions:

(i.) That no evidence has been provided by the Appellants that their relationship with the job workers was on principal to principal basis.

(ii.) That the Appellants had direct supervisory control over the manufacturing of RVI element and hence they have to be treated as manufacturers of the goods. Hence the Central Excise Duty has been rightly demanded from them.

(iii.) There was no requirement that to become a manufacturer the party should have a manufacturing unit.

(iv.) He relied upon the statements of officials of IOCL & others to bring home the point that RVI elements were fully manufactured in the factory of the manufacturer and transported at the Retail outlets for installation.

(v.) He relied upon the judgment of this Tribunal in the case of **Virgo Industries (Engineers) (P) Ltd V/S CCE reported in 2009(243) ELT 132(T)** which has been upheld by the **Madras High Court as reported in 2015(320) ELT 695(Mad)** which dealt with the identical issue.

(vi.) That the duty demands are not barred by limitation on the ground that the appellants suppressed the various facts from the Revenue.

6. A few of the appellants are registered with the Central Excise Department. He, therefore, upholding of the impugned order-in – original.
7. We have heard submissions of both the sides and carefully perused the records.

8. We also find the Appellants were issued two show cause notices in which Central Excise duty in which the Appellants were considered as manufacturers of branded goods (RVIs) for M/S IOCL. The first show cause notice was issued under extended period of limitation. Though in various show cause notices the Appellants were considered manufacturers of the RVIs but no evidence were bought on record as to in which manufacturing premises of the Appellants the said RVIs were manufactured. We also find that in reply to the show cause notice the Appellants furnished documents in their support establishing that the entire work of fabrication of RVI elements were got done from the various job workers. The Commissioner in his order has though conceded that the Appellants are liable to pay Central Excise duty even though they did not have any manufacturing premises, as the onus to prove the principal to principal relationship between

them and the jobs worker were upon them which have not been fulfilled by them. We do not find the findings of Commissioner to be legal, as the Commissioner was legally bound to confine his findings with respect to charges levelled in the show cause notices. As we have already noted that in the show cause notices proceeded on the allegations that it is the Appellants who had manufactured the RVI elements. Hence the Commissioner could not travel beyond the scope of the allegations levelled in the show cause notices. In this regard law is well laid down by the Hon'ble Apex Court in various judgments noted in para 4.3 hereinabove wherein it has been held that if the findings are beyond the scope of the allegations set out in the show cause notice the same can't be sustained.

8.1 We find that the Commissioner has tried to justify his finding by going beyond the scope of the allegations levelled in the show cause notices on the ground that it was for the Appellants to prove that their relationship with the job workers was on principal to principal basis. It is well settled law that the burden of proof is on the person who alleges it as held by the Hon'ble Apex Court in the case of **Uniworth Textiles Ltd V CCE Raipur reported in 2013(288) ELT 161(SC).**

9. Next issue to be decided is as to whether whether the Appellants could be considered as a manufacturer of the goods in terms of

Section 2(f) of the Central Excise Act 1944. The Commissioner has treated the Appellants as the manufacturer merely on the ground that the contract of the IOCL for supply of RVIs was with them and not with the job workers. It has been held in the order that Appellants have failed to produce any document from the oil companies to the effect that the manufacturer of RVI's by their job workers was either permitted by the oil companies or was in their knowledge. According to him in terms of the contracts the different elements of RVIs were to be fabricated at the vendors premises. He has also not accepted submission of the details of job charges paid by the appellants with TDS deduction.

9.1 We do not agree with the above findings of the Commissioner. The Appellants have brought sufficient evidence on record that the job workers were independently fabricating the various components on RVI elements. The Appellants were issuing TDS certificates to all the job workers. Some of the job workers were even registered with the service tax department. Further, it has also been accepted by the Commissioner that the Appellant were not having manufacturing premises. We also take note of the proceedings of cross examination of Shri S.K Upadhyay of M/S SGS INDIA (P) LTD, who was cross examined by the Appellants. Though the department has relied upon the statement of Shri Ajay Thakur but since Shri Ajay Thakur was not available the Appellants agreed to cross examine Sh. S.K Upadhyay. Sh. S.K Upadhyay stated that they were engaged for third party inspections of the various components of RVI. They had inspected the components of RVI supplied by apellants. All these facts would therefore clearly establish that the job workers were fabricating the components of RVI independently and hence they are to be considered the actual manufacturers in terms of Section 2(f) of the Central Excise Act. We agree with the submissions of the Ld. Counsels that the status of the Appellant is that of supplier of raw material to various job workers who had actually manufactured the goods. In support of this finding we place reliance on the law laid down by the Hon'ble Apex Court discussed in para 4.1 hereinabove.

10. We agree with the submission of the Ld Counsel that on the same activity department can't demand tax twice. We take note of the fact that the some of the Appellants were registered with service tax department under the category of work contract service. They were also issued a show cause notice dated 21.4.2011 demanding the service tax for the same period noted in para 4.8 above in case of M/s Fiberfill. These proceedings already stand dropped by the Commissioner vide order dated 11.11.2016 as noted in para 4.8 above. The Commissioner, vide above order, has accepted that the Appellants were providing work contract service to their clients. We hold that once the activities of the Appellants have been held to be falling under the works contract service under the Finance Act, 1994 and hence central excise duty

cannot be demanded or confirmed treating the same activity to be a manufacturing activity, that too for the same period.

11. The next issue which is to be decided is as to whether the Commissioner could rely upon the statements of four witnesses the details of which have been given in para 3.1 above. This Tribunal in remand order dated 11.1.2012 had interalia directed the Commissioner to allow cross examination of the four persons/witnesses. The Commissioner called these four persons for cross examination on 14.3.2016 & 4.4.2016 but none of the witnesses presented themselves for examination/cross examination. The Commissioner has relied upon their statements to come to the conclusions that the RVI items were in fully manufactured condition in the factory of the vendor itself. According to these statements completed RVI elements were transported to the sites and erected/installed with the help of nuts, bolts and screws. Fabrication work involving welding was not permitted at site.

11.1 We hold that in terms of Section 9(D) of the Central Excise Act no reliance can be placed on any statement recorded under section 14 of the Central Excise Act unless the witness is examined by the adjudicating authority. It has been laid down in the case of Ambica International v/s Union of India another reported in 2016-T01L-1238(P&H) that no reliance can be placed on any statement unless the procedure laid down in section 9D is followed which is of a statutory in nature.

11.2 It is also a well settled law that no reliance can be placed on a statement of a witness when the department was unable to produce them for cross examination as held by M/S Karan Traders V Joint Commissioner of C.E reported in 2016 (339) ELT 249 (Mad). It is also a well settled law that no reliance can be placed on statements of witnesses who when summoned for their cross examinations refuse to turn up as held by Kusum Ingots Alloys Ltd v/s CCE Indore reported in 2015(317) ELT 721(T) & various other judgments.

In view of the above we are of the view that the Commissioner has erred in relying upon the statements of four witnesses which were not tested on cross examination.

12. The next issue for determination is whether the RVI elements which were cleared from the units of the job workers in fully manufactured conditions and became subject to payment of excise duty or whether the various components became integral part of the building/fascia or in other words the final RVI elements came in to existence at site only. The Commissioner has held that the Appellants had manufactured RVI elements for petrol pumps, consisting of Canopy Fascia, Building Fascia, Column Cladding, Building Cladding, Spreaders Facility signs, Direction signs,

Monoliths etc. in their premises and thereafter transporting the same and installing the same at various petrol pumps with the help of nuts and bolts. In support of this findings he has relied upon the letter dated 9.9.2008 of Sh SK Jain Chief Engineering Manager, IOCL, statement dated 7.10.2008 of Shri Ashit Gupta, Field Inspector, M/S Bureau Veritas India Ltd and statement dated 26.10.2009 of Sh. Ajay Thakur, Field Inspector M/S SGS India. We have already held that the Commissioner could not have relied upon their statements without producing them for cross examination. In support of their submissions that the RVI elements were cleared from the workshop in component form and fixed at site the Appellant have relied upon RTI reply dated 8.3.2011 received from CPIO, IOCL wherein it which clarified that.

a) RVI elements are fabricated at site as specific requirement. After installing the RVI elements they are not dismantled as they become an integral part of the building/fascia.
b) RVI elements are dispatched as components from the workshop and these loose components are leveled, spaced, fabricated and installed to construct/ give shapes to the final product at site.
c) The final RVI element come into existence at site only.
d) RVI elements once installed at the site of petrol pumps are neither dismantled nor re-installed at alternate locations/petrol pumps. These RVI elements are not resold/marketed by IOCL.

e) For RVI works, Indian Oil is claiming depreciation as per prevailing income Tax rules. RVI acquires the character of basic assets on which it is installed.

In view of the above reply from IOCL, we have no doubt in holding that the RVI elements were dispatched as components from the workshops of thejob workers and not in fully manufactured condition, and RVI elements came into existence only as a part of permanent structure at site only. In any event we have already held that the Appellants can't be treated as a manufacturer of RVI elements in terms of section 2(f) of the Act.

12.1 We further hold that the ratio laid down in Virgo Industries(Engineers) (P) Ltd (supra) has no applicability to the facts of the present case in as much as in this case the complete signages were assembled at Virgo premises. The same were dismantled and packed for convenience of transportation to various petrol pumps of IOCL where they were erected. In the present there is no dispute that the Appellants did not have any manufacturing unit. Further the IOCL in their reply dated 8.3.2011 supra categorically accepted that the RVI elements were dispatched as components from the workshop and final RVI elements came into existence at site only, which were fixed to the earth.

13. The Ld. Counsels have been contended that the extended period of limitation is not applicable to the facts of the present case and has relied upon number of judgments in his support. We agree with his submissions that it is not a case where the department could invoke extended period of limitation due to various reasons. Firstly the Appellants were registered with the service tax department in respect of works contract service w.e.f 6.10.2007. Secondly, the Appellants were not having any manufacturing unit but for a few and were getting the components of RVI fabricated on job works basis. Thirdly, we have already held that fully manufactured RVI elements came into existence at site only. All these facts are sufficient to come to a definite conclusion that there is no willful suppression or misstatement of facts by the Appellants. Hence extended period of limitation is not available to the department and we hold so. In view of above findings, and the reasons given by the Commissioner for upholding the extended period of limitation cannot be sustained.

14. In view of above the impugned orders are not sustainable and so is the case for imposition of penalties on the appellants. The orders are, accordingly, set aside by allowing the appeals.

(Pronounced in open court on 20.05.2019)

(Bijay Kumar)	**(Anil Choudhary)**
Member(Technical)	**Member(Judicial)**

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