**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**
**EASTERN ZONAL BENCH: KOLKATA**

**Appeal No. E/152/2008**

(Arising out of Order-in-Original No.35-37/Commissioner/CE/KOL-III/2007-08 dated 28.12.2007 passed by the Commissioner of Central Excise, Kolkata-III)

M/s. Exide Industries Ltd.

Applicant (s)/Appellant (s)

**Vs.**

Commissioner of Central Excise, Kolkata-III

Respondent (s)

<u>Appearance:</u>

Shri Ravi Raghavan, Advocate and Ms. S.Mundra, CA for the Appellant (s)
Shri D.Haldar, AC(AR) for the Respondent (s)

**CORAM:**
**Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
**Hon'ble SHRI V.Padmanabhan, Member (Technical)**

Date of Hearing/Decision:- 01.05.2018

ORDER NO.FO/76020/2018

**Per Shri V.Padmanabhan**

1. The present appeal has been filed against the Order-in-Original No.35-37/Commissioner/CE/KOL-III/2007-08 dated 28.12.2007.

2. The brief facts of the case are that the appellant is engaged in manufacture of electric storage batteries which are normally sold to independent buyers. However, a small portion of the goods manufactured are also sold by the appellant to M/s. Caldyne Automatics Ltd. which is a subsidiary unit of the appellant. The dispute during the period April, 2001 to December, 2006 relates to the valuation of goods cleared by the appellant

to its subsidiary. The duty on such clearances was paid on the basis of mutually agreed price. The department was of the view that since the subsidiary has further sold the batteries at higher price, excise duty was required to be paid at the price at which said subsidiary is selling the goods to independent buyers. Accordingly, show cause notice was issued. The demand of central excise duty has been confirmed along with interest and penalty. Aggrieved by the said order, the present appeal has been filed.

3. With this background we heard both sides and perused the appeal record.

4. It is the submission of the ld. Advocate for the appellant that the goods sold through the subsidiary comprise only on very small percentage of the total goods sold by the appellant. Since bulk of the goods are sold to independent buyers, such price is available and the mutually agreed price at which duty was paid at the time of clearance to the subsidiary has also been arrived at on the basis of such independent price. He submitted that the provisions of Rule 10 of the Central Excise Valuation Rules, 2000 will not be applicable to the present case, since 100% of the goods manufactured are not being cleared to and through the subsidiary. He also relied on various case laws in which it is categorically held that differential duty demand is not payable under the circumstances of the present case. In this regard he relied on the relevant judgments which are as follows:

1. South Asia Tyres Pvt. Ltd. vs. CCE [2003(152) ELT 434]
2. JMP Castings Ltd. vs. CCE [2017 (349) ELT 648 (Tri.)]
3. Exide Industries Ltd. vs. CCE [2003(161) ELT 770 (Tri.)]

5. Ld. DR justified the impugned order. He submitted that the Adjudicating Authority has held that Rule 10 will be applicable since the goods have been sold through related persons.

6. After hearing both sides and perusal of record we find that the goods stand sold through the subsidiary which in turn has sold the goods at higher price, but duty has been paid at the time of clearance at mutually agreed price which is claimed to be the price at which goods are sold to independent persons. The view of the department is that central excise duty is required to be paid, in terms of Rule 10 of the Valuation Rules, 2000 at the price at which the subsidiary sells the goods to independent buyers. In this connection we note that the applicability of Rule 10 of the Central Excise Valuation Rules, 2000 and the circumstances in which it can be applied have been clarified by the CBEC vide their Circular dated 01.07.2012, in question No.12 which is reproduced here for ready reference.

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| *12. How will valuation be done when godos are sold parly to related persons and partly to independent buyers?* | *There is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per Section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers valuation will be done as per Section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the residuary Rule 11 read with Rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are to related buyers only.* |

7. From the above clarification it is evident that when goods are partly sold to related persons and partly to independent buyers, there will be no applicability of Rule 10. The Rule 10 will be applicable only in those cases where 100% of the goods are sold through related persons. We also note that under similar circumstances the Tribunal has held that duty is payable

only at the rate of which goods are sold to independent buyers as long as 100% of the production is not sold through related persons. In the JMP Castings Ltd. case the Tribunal has held as under:

> *"8. On going through the said rules, the said rules are applicable only in a situation where the appellant is clearing 100% of production through the person who is related. Admittedly, the appellant is not clearing 100% of production through related person. In that circumstances, we hold that the provisions of Rule 9 read with Rule 8 of Valuation Rules, 2000, are not applicable to the facts of this case. Therefore, the charge of undervaluation is not sustainable against the appellant."*

8. As discussed above in principle we find there is no justification for insistance on payment of duty at the price at which the goods are sold by the related persons. It is the submission of the appellant that the mutually agreed price at which goods are sold to the related persons is at par with the price of such goods sold to independent buyers. We also note that related details also have been submitted before the Adjudicating Authority. But we find from the impugned order that this aspect has not been discussed by him. Hence, we direct the Adjudicating Authority to consider this submission made by the appellant and accept the mutually agreed price if it is on par with the selling price to independent buyers.

9. In the result, impugned order is set aside and appeal disposed of with above directions.

(Dictated and pronounced in the Open Court )

**S/d.**
**(Justice Dr. Satish Chandra)**
**President**

**S/d.**
**(V.Padmanabhan)**
**MEMBER (Technical)**

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