IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST ZONAL BENCH AT KOLKATA

APPEAL NOS: E/56 - 57/2007 & E/244 - 245/2008

[Arising out of Order-in-Original Nos: 11-12/COMMR/2006 dated 18th October 2006 and 3/COMMR/2008 dated 7th February 2008 passed by the Commissioner of Central Excise, Jamshedpur.]

Tata Steel Limited
Neepaz Tubes (P) Ltd é ***Appellants***

versus

Commissioner of Central Excise & Service Tax
Jamshedpur ***…Respondent***

Appearance:

Dr Samir Chakraborty, Senior Advocate with Shri Abhijit Biswas, Advocate for appellants

Shri S Guhar, Deputy Commissioner (AR) for respondent

CORAM:

Hon'ble Shri P K Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 16/03/2018
Date of decision: 16/03/2018

ORDER NO: FO/A/76769-76771/2018

Per: C J Mathew

These appeals have been filed by M/s Neepaz Tubes (P) Ltd and M/s Tata Steel Limited against two orders-in-original no. 11-

12/COMMR/2006 dated 18th October 2006 and no. 3/COMMR/2008 dated 7th February 2008 of Commissioner of Central Excise, Jamshedpur demanding duty of `2,30,49,813.70 for the period from December 2000 to July 2005 and `51,89,271.51 for the period from April 2006 to December 2006 from the former besides imposing penalties on the former and the latter.

2. The issue in dispute is the valuation to be adopted for the computation of duties of central excise on clearances effected by M/s Neepaz Tubes (P) Ltd who, according to central excise authorities, are a job worker of M/s Tata Steel Limited and would have to comply with the provisions of section 4 of Central Excise Act, 1944 as held by the Hon©ble Supreme Court in *Ujagar Prints vs. Union of India [1989 (39) ELT 493 (SC)]* and in *Pawan Biscuits Co. (Pvt.) Ltd. vs. Collector of Central Excise, Patna [2000 (120) ELT 24 (SC)]* but had not done so. Despite the protestations of the appellants that the value should have been determined in accordance with rule 11 of Central Excise (Determination of Price of Excisable Goods) Rules, 2000, the impugned orders held otherwise leading to this appeal.

3. It was contended on behalf of the appellants that the facts of the case is squarely covered by the decision of the Hon©ble Supreme Court *in Commissioner of Central Excise v. S Kumars Ltd [2005 (190) ELT 145 (SC)]* and reliance was placed upon various decisions to

demonstrate the differing viewpoints that existed on this particular aspect of tax determination. The scope of applicability of the decision of the Hon'ble Supreme Court in *re Ujagar Prints Ltd* and *re Pawan Biscuit Co Ltd* and the limitations in each were sought to be highlighted by reference to the decision of the Tribunal in *Ultra Lubricants (India) (P) Ltd v. Commissioner of Central Excise, Mumbai [2002 (150) ELT 580 (Tri-Mumbai)]*. It is the claim of the appellant that the peculiar circumstances of the clearances effected from the factory have not been taken into account by the adjudicating authority.

4. We have heard Learned Authorised Representative who submits that the adjudicating authority has, in a reasoned order, spelt out the tactics adopted by the appellants to evade duties of central excise. He urged this to dismiss the appeals.

5. On perusal of the impugned orders, we find a lack of clarity in the findings of the adjudicating authority in arriving at the conclusion that a particular combination of costs and other factors should be adopted for computing the assessable value. The leap from the applicability of section 4 of Central Excise Act, 1944 to the disinclination in accepting the contention of the appellants for invoking of rule 11 of Central Excise (Determination of Price of Excisable Goods) Rules, 2000 lacks justification to accord validity to

the conclusion that the incorrect provisions for valuation has been resorted to. The specific business model of the appellants does not appear to have weighed with the adjudicating authority. It was also necessary on the part of the adjudicating authority to ascertain the scope of ójob workô in the context of the duty liability devolving, and envisaged in Central Excise Act, 1944, on the manufacturer.

6. In view of the numerous *lacunae* noted *supra* requiring the attention of the adjudicating authority, and in the light of the various decisions cited by Learned Senior Counsel, it would be appropriate to set aside the impugned orders and remand the matter back to the adjudicating authority to determine all the aspects noted by us and, after affording a reasonable opportunity for hearing their submission, to pass fresh orders on the charges alleged in the show because notices.

7. Appeals are allowed by way of remand.

(Pronounced in Court)

(P K Choudhary)
Member (Judicial)

(C J Mathew)
Member (Technical)

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