CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.

Excise Appeal No. 672/2010

(Arising out of Order-in-Appeal No. SB/29 & 30/Th-I/2010 dated 26.02.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Wellman Hindustan Ltd. **Appellant**
Kolshet Road,
Thane – 400 607

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

AND

Appeal No. E/673/2010

(Arising out of Order-in-Appeal No. SB/29 & 30/Th-I/2010 dated 26.02.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Wellman Hindustan Ltd. **Appellant**
Kolshet Road,
Thane – 400 607

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

WITH

Appeal No. E/1748/2010

(Arising out of Order-in-Appeal No. SB/188/Th-I/2010 dated 13.07.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Wellman Hindustan Ltd. **Appellant**
Kolshet Road,
Thane – 400 607

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai-28

Appearance:

None for the Appellant
Shri N.N. Prabhudesai, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

FINAL ORDER NO. A/**85950-85952/2019**

Date of Hearing: 18.01.2019
Date of Decision: 18.01.2019

PER: S.K. MOHANTY

These appeals are directed against the impugned orders dated 26.02.2010 and 13.07.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai.

2. Brief facts of the case are that the appellant was engaged in manufacture of excisable goods, falling under Chapter 51, 55, 62 and 63 of the Schedule to the Central Excise Tariff Act, 1985. During the disputed period, the appellant had filed price declarations in the proper format in respect of the goods, i.e., wool tops and polywool yarn manufactured on job work basis for M/s. Raymond Woollen Mills Ltd. While scrutinizing the records of the appellant, the department contended that M/s. Raymond Woollen Mills Ltd., while arriving at the assessable value of yarn/wool produced by them, had not taken into account the indirect cost incurred by them such as cost of finance, depreciation, wear and tear of machinery, administrative expenses and the profit margin earned in the previous year, which was

12.85%. Since M/s. Raymond Woollen Mills Ltd. had undervalued the cost of input, the department contended that the final product manufactured by the appellant was also undervalued. Therefore, the department initiated show cause proceedings against the appellant. The show cause notices issued were adjudicated by the department in confirming the duty demand on the appellant. Appeals filed against the adjudication orders were also upheld by the learned Commissioner (Appeals) in the impugned orders passed by him.

3. None appeared for the appellant despite notice. Heard the learned AR for Revenue.

4. The appellant in the appeal memorandum has submitted that M/s. Raymond Woollen Mills Ltd. is a distinct manufacturer of excisable goods and is also registered with the Central Excise Department; that the price of goods declared by the said supplier was not objected to by the jurisdictional central Excise authorities and the assessments were also final. Thus, the appellant submitted that since the assessment in the case of the supplier is final, demanding differential duty from the appellant would amount to review of assessment of the said supplier. The appellant further submitted that it being an independent manufacturer of excisable goods, had no control over the prices declared by the supplier of goods and the duty liability was discharged on the appropriate assessable value as per the judgment delivered by Hon'ble Supreme Court in the case of *Ujagar Prints vs. UOI,* reported in *1989 (39) ELT 493 (SC)*. The appellant also submitted that Rule 6 of the

Central Excise Valuation Rules, 1975 is applicable only to captive consumption and not to the job worker. In this context, the appellant has relied upon the decision of this Tribunal in the case of *J. Ice Cream (P) Ltd. vs. CCE, Chandigarh – 2000 (121) ELT 89 (Tribunal)*.

5. On the other hand, learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

6. The adjudged demands were confirmed on the appellant on the ground that it had not followed the proper procedure in construing the sale value inasmuch as the raw material received from the supplier M/s. Raymond Woollen Mills Ltd. has itself undervalued, by not loading the indirect cost in their price declaration. Thus, the department has held that the appellant has undervalued the goods manufactured by it on job work basis and accordingly, short paid the central excise duty. We find that the learned Commissioner (Appeals) has recorded the submissions of the appellant made before him in the appeal memorandum, contending *inter alia*, that the supplier M/s. Raymond Woollen Mills Ltd. was a Central Excise registered assessee and the valuation declared by them was duly accepted by the jurisdictional Central Excise authorities and the assessment was also final. However, the impugned order has not recorded any findings with regard to such submission of the appellant. With regard to consideration of assessable value for payment of central excise duty, the independent job worker is required to include the price at which the job worked goods would leave its premises along with the profit

margin. Post manufacturing profit in the hands of main manufacturer should not be considered as the element of assessable value for determination of the duty liability. The Hon'ble Supreme Court in the case of *Ujagar Prints* (supra) has recognized the factory of the job worker as the deemed factory for the purpose of Section 4 of the Central Excise Act, 1944. Thus, as an independent manufacturer, the assessable value is determinable under Section 4(i)(a) of the Act and there was no necessity of going into the Valuation Rules for such determination. Further, Rule 6 of the Valuation Rules is only applicable to the case of captive consumption and not to the goods manufactured on job work basis. Hence, such rule cannot be applicable in the present case, as held by the Tribunal in the case of *J. Ice Cream Pvt. Ltd.* (supra). It is also not the case of Revenue that the appellant is related to the supplier of goods M/s. Raymond Woollen Mills Ltd. In our considered view, the appellant had appropriately discharged the central excise duty liability on the goods manufactured on job work basis and supplied to the supplier M/s. Raymond Woollen Mills Ltd. as the goods had been subject to valuation as required in Section 4 of Central Excise Act, 1944 before arriving at the factory of the appellant. Whenever a value is to be utilized for the purposes of implementing the Central Excise Act, 1944, only such value as ascertainable under Section 4 can be adopted. When that value is challenged in the hands of the principal manufacturer, a different value cannot be utilized at the appellant's end.

7. Therefore, we do not find any merits in the impugned orders in confirming the adjudged demands on the appellant. Accordingly, the same are set aside and the appeals are allowed in favour of the appellant.

(Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

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