CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 737 of 2012

(Arising out of Order-in-Appeal No. P-II/RKS/53/2012 dated 09.02.2012passed by Commissioner (Appeals), Central Excise, Pune-II)

Pressmatic Electro Stampings (P) Ltd. .....**Appellant**
Unit-II, D-2 MIDC Tal – Karad,
Satara – 515 109.

VERSUS

Commissioner of Central Excise, Kolhapur .....**Respondent**
Vasant Plaza Rajaram Road,
Kolhapur – 416 003.

Appearance:

Shri V.B. Gaikwad, Advocate for the Appellant
Shri N.N.Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85177/2022

Date of Hearing: 06.09.2021
Date of Decision:03.03.2022

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are engaged in manufacture of excisable goods namely, "Stator Laminations" and "Rotars Laminations", falling under Chapters 83 & 85 respectively of the First Schedule to the Central Excise Tariff Act,

1985. The said products are mostly manufactured by the appellants on job work basis, out of the raw material supplied by the principal manufacturer M/s. Emersion Climate Technologies India Ltd. (ECTIL) and cleared the same on payment of duty to another job worker M/s. Hematic Motors Pvt. Ltd. (HMPL), who after further processing, cleared the goods i.e. Stators and Rotors on payment of duty back to the principal manufacturer M/s ECTILfor further manufacture of the resultant final product namely, compressors. Initially, the appellants were paying Central Excise duty on the laminations by considering the aggregate value of the cost of raw material, adding there with the job-work charges and the job-work profit. Adoption of valuation of goods by the appellants was based on the formula laid down by the Hon'ble Supreme Court in the case of Ujagar Prints Ltd. Vs. Union of India – 1989 (39) ELT 493 (SC). Such *modus operandi* of valuation adopted by the appellants as the job worker was accepted by the department till the period March,2007. However, consequent upon insertion of Rule 10A in the Central Excise Valuation Rules,2000 (w.e.f. 01.04.2007), the department had entertained the view that the valuation provisions contained in the newly inserted sub-clause (iii) of Rule 10A read with Rule 8 *ibid* should be applicable in the case of the appellant and they were liable to pay Central Excise Duty on 110% of the cost of production of the Laminations. Since, appropriate duty liability was not discharged by the appellant during the period April 2007 to November 2007, the department initiated show cause proceedings, proposing for recovery of the differential Central Excise duty liability along with interest and for imposition of penalty. The proceedings were initiated by the department under the proviso to Section 11A of the Central Excise Act, 1944 on the alleged ground of suppression of facts etc. The matter arising out of the show cause notice dated 01.10.2010 was adjudicated vide order dated 21.06.2011, wherein the learned adjudicating authority had confirmed the proposals made in the show cause notice. On appeal against the adjudication order, learned Commissioner (Appeals-II), Pune vide the impugned order dated 09.02.2012 has upheld the adjudged demands confirmed on the appellants and rejected the appeal filed by them. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that since the job-worked goods manufactured by the appellants were consumed in the manufacture of final products of the principal manufacturer M/s. ECTIL and were not sold on as it is basis by them, the valuation provisions contained in Rule 10A (iii) read with Rule 8 *ibid* should not be applicable for determination of duty liability. He further submitted that the method of valuation adopted by the appellants as per the formula laid down in the case of Ujagar Prints Ltd. (Supra) should be applicable for the purpose of determination of the assessable value. To substantiate such stand, the learned Advocate has relied upon the following judgments:

(a) Advance Surfactants India Ltd. Vs. CCE,
2011 (274) ELT – 261;

(b) CCE Vs. Melters and Blenders India Pvt. Ltd.
2017 (11) TMI-1465 (affirmed by Hon'ble Supreme Court as reported in 2018 (12) TMI-1689);

(c) RolastarPvt. Ltd. Vs. CCE,
2012 (276) ELT -87 (affirmed by Hon'ble Supreme Court as reported in 2013 (298) ELT –A186).

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that the valuation provisions adopted by the department are inconformity with the newly inserted Rule 10A *ibid* and the appellants are liable to pay the differential amount of short-paid duty along with interest and penalty confirmed on them. He has relied upon the larger Bench decision of this Tribunal in the case of Eicher Motors Ltd. Vs. Commissioner of Central Excise – 2008 (228) ELT 43 (Tri.-LB) to support the stand of Revenue that the appellants should

be liable to pay Central Excise duty on 110% of the cost of production of Laminations.

4. Heard both sides and perused the records.

5. We find that for the prior period (up to March 2007), the department did not dispute the valuation provisions adopted by the appellants, in considering the aggregate cost of raw material (+) job charges, inclusive of job-work profit for the purpose of determination of the assessable value. However, upon inclusion of Rule 10A by Notification No. 9/2007-C.E. (N.T.), dated 01.03.2007in the Valuation Rules, 2000, the department had changed the stand to conclude that the valuation provisions contained in Rule 10A *ibid*read with Rule 8 *ibid* should be applicable for determination of the assessable value and computation of the appropriate duty liability thereon.

6. Different situations are envisaged in Rule 10A *ibid*, for determination of the value, where the excisable goods are manufactured by a job-worker on behalf of the principal manufacturer. On a conjoint reading of different clauses contained in Rule 10A *ibid*, it transpires that the said statute provide variouscircumstances for sell of the job-worked goods by the principal manufacturer. In the present case, it is an undisputed fact that 'Laminations' manufactured by the appellants on job-work basis were used by another manufacturer M/s. HMPL for converting into stator/roters on job-work basis and thereafter, the same were used by the principal manufacturer for ultimate manufactureof the final product i.e. 'Compressors'. It is not the case of Revenue that the Laminations manufactured by the appellants were sold by the principal manufacturer in as it is condition to the buyers. Since the said goods were used by another job worker and such job-worked goods were further used by the principal manufacturer for ultimate manufacture of the final product by themselves, which were subsequently sold in the open market, the valuation of the goods manufactured by the appellants cannot be done as per the provisions of Rule 10A(iii) *ibid* read with Rule 8 *ibid*. Rather, in our considered

opinion, the valuation in the circumstances of the present case should appropriately be done as per the formula laid down by the Hon'ble Supreme Court in the case of Ujagar Prints (supra). This view of the Bench is in consonance with the co-ordinate Bench decision in the case of Advance Surfactants India Ltd. (supra), relied upon by the learned Advocate for the appellants. The relevant paragraph in the said decided case is extracted herein below:-

> ***"11.*** *That still leaves us with a question of how the determination of value has to be done as provided under Rule 10A(iii). By elimination of Rule 2 to 10 as they may not apply in a situation like in this case provisions of Rule 11 will apply and Revenue has to take the recourse to provisions of Rule 11 which talks about using reasonable means consistent with the principles and general provisions of these rules read with sub-section (1) of Section 4 of Central Excise Act, 1944. Keeping this in mind, we find that the ratio laid down by the Hon'ble Supreme Court in the case of Ujagar Prints and followed by various other decisions of this Tribunal and accepted by Revenue in their various Circulars will squarely apply i.e. to ascertain the assessable value on the cost of materials plus processing charges. In our view, the appellants have been correctly valuating their products by adopting this method."*

7. We find that the learned Commissioner (Appeals) has not considered the Tribunal order passed in the case of Advance Surfactants India Ltd. (supra), holding that the said order has not been accepted by the department and is the subject matter of dispute pending before the Hon'ble Supreme Court and as such, the same has not attained finality. It is an admitted fact on record that the operation of the above order of the Tribunal has not been stayed or overruled by the Hon'ble Supreme Court. In this context, the law is well settled that the lower authorities, sub-ordinate to the Tribunal are duty bound to follow the orders passed by such higher judicial forum.

8. Insofar as the provisions regarding filing and hearing of appeal before the Hon'ble Supreme Court is concerned, Sub-section (1) of Section 35M of the Central Excise Act, 1944 mandates that the provisions of the Code of Civil Procedure, 1908 (5 of 1908) (for short, referred to as "CPC") relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under Section 35L *ibid*

as they apply in the case of appeals from the decrees of a High Court. Order 41 – Rule 5(1) of the CPC deals with the effect of the order of lower authority, when the said order is assailed before the Appellate Court. It has been mandated that an appeal shall not operate as a stay of proceedings under a decree or order appealed from, except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause, order for stay of execution of such decree.

9. In this case, considering the version of learned lower appellate authority that Revenue has preferred appeals before the Hon'ble Apex Court against the earlier order (supra) passed by the Tribunal on identical/similar set of facts, but admittedly so far the said order has neither been stayed nor set aside by the Appellate Court. On plain reading of the above statutory provisions, it reveals that mere filing of an appeal before the Hon'ble Supreme Court will not automatically take away the effectiveness of the order appealed against and for such purpose; a reasoned order in granting stay of operation of the impugned order is a condition precedent. In this context, the Hon'ble High Court of Judicature at Bombay in the case of VidarbhaVineer Industries Vs. Assistant Collector of C.Ex. [1991 (55) ELT 167 (Bom.)] has held that mere filing of an appeal even if it be in exercise of a statutory right does not operate as a fetter on the effectiveness of the order appealed against and that until varied, modified or stayed, the order is effective and the party against whom it is passed is under an obligation to give effect thereto. Further, in the case of Century Rayon Vs. Union of India, reported in [2002 (142) ELT 319 (Bom.)], the Hon'ble Bombay High Court in an identical situation have held as under:-

> ***19.*** *At the outset, we wish to emphasise that no positive statement has been made or material is produced before us to show that S.L.P. has been admitted and pending in the Supreme Court from the judgment of the Gujarat High Court in the case of Ahmedabad Electricity Co. Ltd. (cited supra). In our opinion mere filing of S.L.P. may not detain us from considering the question on merits. The Supreme Court in this behalf in the case Kunhayammed v. State of Kerala [2001 (129) E.L.T. 11 (S.C.) = 2000 6 SCC 359] had occasion to observe as under :*

> *"Mere pendency of an application seeking leave to appeal does not put in jeopardy the finality of the decree or order sought to be subjected to exercise of appellate jurisdiction by the Supreme Court. It is only if the application is allowed and leave to appeal granted then the finality of the decree or order under challenge is jeopardised as the pendency of appeal reopens the issue decided and the Supreme Court is then scrutinising the correctness of the decision in exercise of its appellate jurisdiction."*

10. In view of the above settled position of law, we do not find any justification in the impugned order insofar as it has held that the ratio of the order passed by the Tribunal in the case of *Advance Surfactants India Ltd. (supra)* cannot be followed for deciding the present appeal. We also find that in the case of *Rolastar Pvt. Ltd. (supra),* the Tribunal by placing reliance in the case of *Advance Surfactants India Ltd. (supra)* has held that the provisions of 10A *ibid* would be applicableonly to the job-worker, who completes the job work and puts the finished goods into the market as directed by principal-manufacturer or sends the same to the depot of the principal-manufacturer for further sales. It has further been held that the provisions of Rule 8 *ibid*also not applicable inasmuch as the statute only discuss about captive consumption of goods by manufacturer himself or on his behalf. Though, the said order of Tribunal was appealed against by the department, but the Civil Appeal was dismissed by the Hon'ble Supreme Court, reported in *2013 (298) ELT – A186 (S.C.).*

11. The ratio of the order of Larger Bench in the case of *Eicher Motors Ltd. (supra),* relied upon by the learned AR for Revenue cannot be applied to the facts of the present case inasmuch as in the said decided case, the issue was entirely different, concerning the fact of determination of value under Rule 8 *ibid*, when the job-worked Chassis was fitted into the motor vehicle by the principal-manufacturer. Contrary is the situation in the case in hand, inasmuch as the job-worked goods were sent by the appellants to another job-worker for further manufacture and such manufactured goods thereafter were used by the principal-manufacturer for manufacture of a entirely different excisable product. In other words, the

'Lamination' manufactured by the appellants were not used by the principal-manufacturer for manufacture of 'Compressors'. Further, the issue arising out of the present dispute has been adequately dealt with by the Tribunal (supra), relied upon by the appellants. The said decisions have not been referred to or distinguished by the Larger Bench in the case of *Eicher Motors Ltd. (supra).*

12. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals) in upholding confirmation of the adjudged demands on the appellant. Therefore, by setting aside the same, the appeal is allowed in favour of the appellant.

(Order pronounced in the open court on 03.03.2022)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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