CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 971 of 2009

(Arising out of Order-in-Original No. 07/2009/C dated 01.06.2009 passed by the Commissioner of Central Excise, Nagpur)

Vishnu Kumar Ratanlalji Oza **Appellant**
Managing Director,
M/s. Vinar Ispat Ltd.,
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur 442 402 (MS).

Vs.

Commissioner of Central Excise, Nagpur **Respondent**
GST Bhavan,
Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

AND

Excise Appeal No. 972 of 2009

(Arising out of Order-in-Original No. 07/2009/C dated 01.06.2009 passed by the Commissioner of Central Excise, Nagpur)

M/s. Vinar Ispat Ltd. **Appellant**
B-31, MIDC Industrial Area,
Ghugus Road, Chandrapur 442 402 (MS).

Vs.

Commissioner of Central Excise, Nagpur **Respondent**
GST Bhavan,
Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

Appearance:

Shri Rajesh Ostwal with Shri Saurabh Bhise, Advocates, for the Appellant
Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 15.02.2023
Date of Decision: 15.02.2023

FINAL ORDER NO. 85749-85750/2023

PER: SANJIV SRIVASTAVA

These appeals are directed against impugned order in original No 07/2009/C dated 01.06.2009 of the Commissioner

Central Excise Nagpur. By the impugned order following has been held:

3.3.1 I confirm the demand and recovery of Central Excise Duty of Rs 1,15,44,696/- (Rupees One Crore Fifteen Lakhs Forty Four Thousand Six Hundred and Ninety Six only) (BED Rs 1,12,82,522/- + Ed Cess Rs 2,20,463/- + HS Cess Rs 41,711/_) as detailed in Annexure A & B from them by invoking proviso to section 11A (1) of Central Excise Act, 1944.

3.3.2 I order recovery of the aforesaid amount of duty confirmed from the noticee alongwith interest under section 11 AB of Central Excise Act, 1944.

3.3.3 I impose a penalty of Rs 1,15,44,696/- (Rupees One crore Fifteen Lakhs Forty Four Thousand Six Hundred and Ninety Six only) under the provisions of Section 11AC of Central Excise Act, 1944 which shall stand reduced to 25%, if the entire amount of demand is paid along with interest and penalty within 30 days of the receipt of this order in original.

3.3.4 I impose a penalty of Rs 12,00,000/- (rupees twelve Lakhs only) on Noticee No 1 under rule 25 of the Central Excise Rules, 2002.

3.3.5 I order confiscation of impugned goods under rule 25 of the Central Excise Rules, 2002. However, redemption fine in lieu of the same is levied at Rs 30,00,000/- only (Rupees Thirty Lakhs only)

3.3.6 I impose a penalty of Rs 12,00,000/- (rupees twelve Lakhs only) on Noticee No 2 under rule 26 of the Central Excise Rules, 2002.

2.1 Appellant is engaged in manufacture of the goods falling under Chapter 72 of the Central Excise Tariff. Apart from manufacturing and clearing the goods on own behalf, they also manufacture and clear the goods on job work basis.

2.2 A show cause notice alleging contravention of Rule 4, 6 & 8 of Central excise Rules, 2002 was issued to the Appellants as they were retaining the scrap generated from the raw material received by them from the principal manufacturer namely KEC International, Larsen and Tubro Ltd. etc., and there after selling the same against a consideration. They were also availing the

CENVAT credit of the raw materials received from the principal manufacturers. They were asked to show cause as to why:

a. CENVAT Duty of I *of Rs 1,15,44,696/- (Rupees One crore Fifteen Lakhs Forty Four Thousand Six Hundred and Ninety Six only) (BED Rs 1,12,82,522/- + Ed Cess Rs 2,20,463/- + HS Cess Rs 41,711/-) as detailed in Annexure A & B should not be recovered from them under the proviso to section 11A (1) of Central Excise Act, 1944.*

b. Penalty should not be imposed on them under provisions of Section 11AC of the Central Excise Act,1944 and Rule 25 of the Central Excise Rules, 2002.

c. Interest should not be demanded recovered under Section 11AB of the central Excise Act, 1944.

d. Impugned goods should not be confiscated under Rule 25 of central Excise Rules, 2002.

2.3 Show cause notice also called on Appellant 2 who is Managing director of Appellant 1, to show cause as to why penalty under Rule 26 of the Central excise Rules, 2002 should not be imposed on him.

2.4 Show cause notice has been adjudicated as per the impugned order referred in para 1 above. Aggrieved appellants have preferred these appeals.

3.1 We have herd Shri Rajesh Ostwal and Shri Saurabh Bhise, Advocates for the appellant and Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the revenue.

3.2 Arguing for the appellants learned counsel submits that the issue involved in the matter is no longer res-integra and has been decided in their favour in their own case vide Order in appeal no NGP/EXCUS/000/APPL/257-260/16-17 dated 22.09.2016. Similar view has been taken by the tribunal in cases of

a. Raaja Magnetics Ltd [2017-TIOL-1420-CESTAT-Bang]
b. Reclamation Welding Ltd. [0214 (308) ELT 542 9T-Ahmd)]
c. Osho Forge Ltd [2017 (3) TMI 1442 -CESTAT Chandigarh]
d. P R Rolling Mills [2010 (249) ELT 232 (T-Bang)] affirmed

at [2010 (260) ELT A84 (SC)]

3.3 Learned authorized representative re-iterates the findings recorded in the impugned order and would rely on the decisions in case of

a. Jay Engineering Works [1997 (93) ELT 492 (T)]

b. Thermax Babcock Wilcox Ltd. [2018 (364) ELT 945 (T-LB)]

c. International Auto Ltd [1999 (35) RLT 58 CEGAT]

d. Jay Yushin [2000 (119) ELT 718 (T-LB)]

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 The issue involved in the present case is identical to the issue involved in the cases referred to by the counsel for appellants. In case of Raaja Magnetics Ltd. , supra following has been observed:

"2. The brief facts of the present case are that the respondent is a manufacturer of electrical stampings falling under Chapter 83 & 85 of the First Schedule of the Central Excise Tariff Act, 1985. In addition to the manufacturing and clearance of their products, the respondent/assessee also engaged in the manufacture of excisable goods on job work basis. The said job worked excisable goods are cleared on payment of duty by taking into consideration the landed cost of the raw material and the conversion cost. However the waste and scrap generated during the course of such job work were retained by the job worker and the same was sold on payment of duty and the sale proceeds were also retained by the respondent. The respondent were issued a show-cause notice for having contravened the provisions of Rules 4, 6 and 8 of Central Excise Rules 2001 and Central Excise Rules 2002 on the ground that assessee had not included the value of unreturned scrap generated on account of the job work in the assessable value, worked out on cost construction method. It was also alleged in the show-cause notice that the sale proceeds of the scrap should be considered as additional charge includable in the assessable value. Accordingly a duty amount of Rs.44,79,557/- was demanded and penalty was also proposed. After the due process of law, the Additional Commissioner of Central Excise, Bangalore vide

Order-in-Original dt. 24/11/2005 confirmed the demand and also imposed equal amount of penalty. Aggrieved by the said order, the assessee filed appeal before the Commissioner (Appeals) on the ground that sale proceeds of the waste and scrap generated during the course of job work has to be reduced from the raw material in accordance with the Standard Principles of Costing and the assessee also relied upon the two decisions of the Tribunal in support of their submissions. The Commissioner (Appeals) vide the impugned order allowed the appeal of the assessee and set aside the Order-in-Original. Aggrieved by the said order, the Revenue has filed the present appeal.

3. Heard both the parties and perused the records.

4. The learned AR for the Department submitted that the impugned order passed by the Commissioner (Appeals) is contrary to the law and is not sustainable and is liable to be set aside on the ground that the learned Commissioner (Appeals) has not appreciated that the value of the scrap arisen during the manufacture of finished goods retained and sold by the job worker on payment of appropriate duty is includable in the assessable value of the finished goods. He further submitted that the Commissioner (Appeals) has wrongly relied upon the case laws viz. Lloyds Steels Inds. Ltd. Vs. CCE, Nagpur [2003 (163) ELT 128 (Tri. Mumbai)] and Mahindra Ugine Steel Co. Ltd. Vs. CCE, Pune [2003(157) ELT 435 (Tri. Mumbai)] = 2003-TIOL-88-CESTAT-MUM. He further submitted that the full conversion charges are required to be loaded on the costing of raw material at job worker's end to arrive at the correct assessable value and deducting the portion of scrap credit from the assessable value will amount to non-inclusion of total conversion charges into the assessable value.

5. On the other hand, the learned counsel for the assessee defended the impugned order and submitted that the issue involved in the present case is no more res integra and he relied on the decision in the case of PR Rolling Mills Pvt. Ltd. Vs. CCE, Tirupathi [2010(249) ELT 232 (Tri. Bang.)] = 2009-TIOL-2575-CESTAT-BANG wherein the Division Bench of this Tribunal in similar facts has held that the value of scrap not includable in assessable value. In this regard, paras 6.3 and 6.4 of the *decision of the Tribunal are relevant and are reproduced below:-*

"6.3 We find that the General Engineering case was decided on 10-3-2005 but the International Auto case was decided later on 17-3-2005. This case has been applied to the M/s. Lawkim Ltd. case, whose facts are identical to the present case. If the intermediary products are not liable to duty at the hands of the job worker, then the question of adding the value of scrap does not arise at all.

6.4 The Kolkata Bench in the case of Orissa Industries Ltd. v. CCE, Bhuvaneswar (supra) have also relied on the International Auto case and held that the job worker (intermediate manufacturer) need not pay differential duty by taking value inclusive of cost of raw materials, as raw materials supplier would be entitled to credit or Intermediate goods could be returned without payment of duty under Rule 57F procedure. If the intermediary product is not liable of duty, the question of adding the value of scrap does not arise at all. In these circumstances, in our view, the value of scrap need not be included in the assessable value of the products manufactured by the appellant.

6. He further submitted that against the decision of this Tribunal in PR Rolling Mills Pvt. Ltd. (supra), the Revenue filed an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the appeal of the Revenue on merit. The decision of the Supreme Court is reported in Commissioner Vs. P.R. Rolling Mills Pvt. Ltd. [2010 (260) ELT A84 (SC)].

7. Respectfully following the decision of the Tribunal which was upheld by the Apex Court, we find no infirmity in the impugned order passed by the Commissioner (Appeals) and therefore, we uphold the impugned order and dismiss the appeal of the Revenue."

4.3 Commissioner (Appeals) has in the appellant own case following the decision of P R Rolling Mills has allowed the appeals observing as follows:

"19. The appellant further contended that the issue has been resolved beyond any doubt by the decision in the case of P R Rolling Mills Pvt. Ltd. Vs. CCE 2010 (249) ELT 232 where in the Hon'ble CESTAT after considering the concept of valuation as per

Standard Accounting Practice based on the costing principles, held that the value of the waste and scrap is not liable to be included in the assessable value of the final products manufactured on job work basis. The department had challenged the above decision of the CESTAT before the Supreme Court of India. The Apex Court dismissed the civil appeal of the department as per the order reported at 2010(260) ELT A-84.

20. I observed that the Department alleged that the valuation of the goods cleared by Appellant under job work are as per the cost arrived at as per CAS -4 plus 10% i.e. as per Rule 8 of the Central Excise Valuation Rules, 2000. Department wants to add the value of scrap arisen during the conversion of goods and retained by the appellant applying to Rule 6 read with Rule 10A(iii) of the Central Excise Valuation Rules, 2000. The appellant submitted that during costing of the goods manufactures on jobwork basis, they have taken the landed cost of the goods considering cost of the raw material, transportation charges, burning loss which includes scrap arisen and conversion charges as per agreement. In this regard they submitted some sample purchase invoices and corresponding sale invoices and pleaded that for valuation of goods under job work, Rule 11 of the Central Excise Valuation Rules, 2000 are to be resorted to under which the Ujagar prints formula is to be applied. The show case notices issued in the case to the appellants and the impugned orders are also seeking to value the goods of the appellant cleared under job work as per the Ujagar Prints formula with the difference that Rule 11 read with Rule 6 of the Central Excise Valuation Rules, 2000 is sought to be applied i.e, department wants to add value of scrap arised during jobwork and retained by the appellant as additional consideration.

21. Thus the important question which is to be answered, is whether the value of the sale proceeds of scrap which is being retained by the jobworker, is liable to be included in the assessable value of the job worked goods as an additional consideration and whether retention of scrap and its sale proceeds by the job worker is depressing the conversion charges agreed upon under contract.

22. The Ujagar prints formula adapted in such cases prescribes *that the value of job work goods should be - cost of raw material (including cost of free material received) plus job/conversion charges (including profit of the job worker).*

23. The Departments allegation is that while deciding the conversion charges, when the question of retention of scrap by the job worker comes up, the principal manufacturer will have to inevitably depress the conversion charges, to make up for such retention of scrap by the job worker. So, sale of scrap and retention of such value by the job worker, being additional consideration to the job worker has to be considered by the principal manufacturer at the time of fixing the conversion charges to be given to the job worker.

24. Departments allegation further states that, as per Boards' circular No. 519/10/2002-CX dated 19th February 2002 the provisions of Rule 6 read with Rule 11 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 are to be applied for the valuation of job worked goods. After insertion of Rule 10A(iii) w.e.f. 01/04/2007 in the Central Excise Valuation Rules, as a natural corollary, Rule 10(A)(ii) will, as per the guidelines contained in the above Boards' circular, be again read with Rule 6 of the Valuation Rules for the valuation of job worked. goods. The said Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 provides that the money value of any additional consideration flowing directly or indirectly has to be included in the assessable value. So, in the instant case, the money value of the scrap retained represents additional consideration for the job worker. which has to be included in the assessable value of job worked goods as per the above provisions of law.

25. In case of Commissioner of C. Ex. Nagpur Vs. Llyods Steel Industries Ltd. 2007(213)E.L.T. 339(SC), which is relied by the Lower Authority, the Hon'ble Supreme court held that "if by retaining scrap/..waste the conversion charges get reduced, then the value of scrap / waste will have to be added to the conversion charges.

26. However I observed that in the present case, the lower authority has not shown any evidence / logic that how they decide that the retention of scrap has depressed the conversion *charges. The lower authority simply add sale proceeds of scrap retained by the appellant in assessable value for demanding differential duty holding that it is an additional consideration. On the contrary the appellant has submitted some of the sale invoices of scrap to my perusal which shows that the rate of scrap was always fluctuating, thus sale proceeds from scrap was variable whereas the conversion cost during the period was fixed as determined by the job work agreement with the principle manufacturer. If we assume that the conversion charges have been determined taking into consideration of value of scrap retained, then it will always be a loss to either job worker or principle manufacturer with a change in market price of the scrap as the market forces decide the value of scrap. Thus I held that sale proceeds from scrap arisen and retained was having no effect on the conversion charges.*

27. I find that the present case is identical to the case of P R Rolling Mills Pvt. Ltd. Vs. CCE 2010 (249) ELT 232. Both are manufacturing intermediate goods on job work basis which are further utilized for the manufacture of excisable goods by the principle manufacturer and cleared on payment of duty. The point involved in case of P R Rolling Mills Pvt. Ltd was whether the value of scrap obtained by the appellant while doing the job work is to be included in the assessable value. The issue is discussed in depth by the Hon'ble CESTAT analyzing judgments of Hon'ble Supreme Court which includes Commissioner Vs. Lloyds Steel industries 2007(213) ELT 339(SC), General Engineering Works Vs. Commissioner 2007(212)ELT 295(SC) and International Auto Ltd. Vs. Commissioner 2005(183)ELT 239(SC) followed by CCE Vs. Motherson Sumi systems Ltd 2008(228)E.LT. A65(SC).

28. The operative part of the said decision is reproduced below:

6. We have considered carefully the records of the case. The issue is whether the value of the scrap has to be included in the value of the goods cleared by the appellants to M/s. WIL. The appellant strongly pleaded that the value of scrap cannot be included twice. The main argument was that while estimating the value of the products manufactured by the appellant on jab work basis, the value of the entire raw material received has been *taken into account. It was also pleaded that the scrap separately has been cleared on payment of duty, hence, there was no need for including the value of the scrap in the assessable value again. It was stated that this would amount to addition of the value of the scrap twice. A decision of this Bench in the case of Consolidated Engg. (supra) has also been relied on.*

6.1 In the present case, the raw material is received from M/s. WIL which is obtained from Visakhapatnam Steel Plant. These raw materials are given to the appellant for conversion. A similar issue was dealt by the Supreme Court in the case of General Engineering Works (supra) and it was held that in such circumstances the value of the scrap should be included to the value of the goods produced by the job worker. However, similar issue was considered by the Hon'ble Apex Court in the case of International Auto Ltd. cited supra. In that case, the appellant was a job worker for floor plate assemblies for TELCO. The said assemblies were used by TELCO in the manufacture of excavators. TELCO supplied inputs to the appellant for the purpose of manufacture of assemblies on which credit had been taken by TELCO. The appellant used TELCO's inputs as well as its own inputs in manufacturing the assemblies. It cleared the assemblies from its factory upon payment of excise duty on the completed floor plate assemblies by including the value of only the inputs put in by the appellant and adding, thereto, its service charges. However, revenue proceeded against the appellants with a show cause notice proposing the inclusion of the value of TELCO's inputs in the assemblies for the purpose of duty. The appellant challenged it. The Tribunal confirmed the stand of the revenue by relying on the Apex Court's decision in the case of Burn Standard-Co. Ltd. and Another u. UOI- 1992 (60) E.LT. 671 (S.C.). When the issue reached the Apex Court, the Apex Court reversed the decision. The appellant prayed that it cannot be allowed upon to pay duty in respect of the inputs supplied by TELCO and therefore, the value of such inputs carrot be added to the value of the assemblies.

6.2 The above decision of the Hon'ble Apex Court was followed by Mumbai Bench in the case of M/s. Lawkim Ltd. v. CCE, Pune-2 (supra). The charge against M/s. Lawkim Ltd. was that they did not include the cost of material supplied free by M/s.

Tecumseh Products India Pvt. Ltd. and did not include sale proceeds of scrap generated during the course of manufacture and retained by the assessee, in the assessable value of goods cleared for M/s. Tecumseh Products India Pvt. Ltd. for purpose of payment of Central Excise duty: Relying on the International Auto case, the Bench held that the intermediate product manufactured by job worker is not liable to pay duty in terms of Rule 4 (5)(a) of the Cenvat Credit Rules. The observations of the Tribunal in Para 5-8 are reproduced below.

"5. It is not in dispute that the inputs for stator laminations and stator stacks manufactured by the assessee and cleared to M/s. Tecumseh Products India Pvt. Ltd. were duty paid and that they were purchased by M/s. Tecumseh Products India Pvt. Ltd. and supplied to the assessees directly from the manufacturers of the raw material. It is also not in dispute that the assessee had taken Cenvat credit of the duty paid on such inputs and passed on the benefit to M/s. Tecumseh Products India Pvt. Ltd. In terms of Rule 4(5)(a) of the Cenvat Credit Rules, a manufacturer of final products can take credit on inputs received in its factory and send them to the job worker for the manufacture of intermediate product and receive the same for use in the manufacture of final products. Rule 4(5)(a) reads as under:-

"Rule 4(5)(a): The Cenvat credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, reconditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the assessee taking the Cenvat credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer shall pay an amour equivalent to the Cenvat credit attributable to the inputs or capital goods by debiting the Cenvat credit or otherwise, but the manufacturer can take the Cenvat credit again when the inputs or capital goods are received back in his factory."

In such a situation, a job worker who manufactures the intermediate product, is not liable to pay any duty thereon. 6.

Rule 4(6) provides that the Commissioner of Central Excise having jurisdiction over the factory of the manufacturer of the final products who has sent the inputs or partially processed the inputs outside his factory to a job worker, may allow final products to be cleared from the premises of the job worker subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid. A combined reading of the above rules would clearly show that where a person is taking Cenvat credit on the inputs, he can send the inputs to the job worker for the manufacture of intermediate product and bring the intermediate product to his factory for further use in the manufacture of final product and either clear the final product on payment of duty or clear intermediate product on payment of duty either from the job worker's end itself or from the factory of the raw material supplier. The rule requires the input supplier to pay duty on the intermediate product if it is not used further in the manufacture of final product and does not require the job worker to pay duty on the intermediate product. The same position prevailed under the erstwhile Central Excise Rules as seen from Rule 57F(4) irrespective of the fact that the goods manufactured by the job worker out of inputs received under Rule 57F(4) were not covered under Notification 214/86- C.E., dated 25-3-1986 as amended. In the case of International Auto Ltd. cited supra, the apex court held that when inputs on which credit is taken are removed under Rule 57F(2)(b) of the Central Excise Rules, 1944, which is similar to Rule 4(5)(a), to the job worker in the manufacture of intermediate product, then the intermediate product manufactured by the job worker is not liable to duty in terms of the rule. The above decision also disposes of Civil Appeal Nos. 4086-87 of 2001 of Jay Yuhshin Ltd. Jay Yuhshin Ltd. was engaged in the manufacture of floor plates, parts and accessories of goods falling under Chapters 83, 84 and 87 of the schedule to the CETA, 1985 and in respect of some of the items manufactured by them, they received components from M/s. Maruti Udyog Ltd. (hereinafter referred to as MUL) on payment of duty under cover of invoice issued under Rule 578, and availed credit of the duty paid and used the components in the manufacture of final products which were cleared to. MUL, and

MUL, in turn, took credit of duty paid by Jay Yuhshin on the floor plates etc. Jay Yuhshin did not include the cost of free supply of components in the value of their final product. The demand of duty on goods manufactured and sold by Jay Yuhshin to MUL by inclusion of the value of material supplied free of cost to MUL, was confirmed by the excise authorities on the ground that short levy had occurred due to suppression of the fact of non-inclusion of the value of such raw material. On appeal by Jay Yuhshin, the matter was referred to Larger Bench of Tribunal which vide its order reported in 2000 (119) ELT. 718, held that Jay Yuhshin had suppressed the fact of non-inclusion and, therefore, short levy was due to such suppression. The Bench rejected the contention that 'there was no intention to evade payment of duty as the entire duty paid by Jay Yuhshin was available as credit to MUL. Following the Larger Bench's decision, the Division Bench of the Tribunal upheld the Commissioner's order and rejected the appeal of the assessee, in its order reported at 2001 (137) E.LT. 1098. The matter was carried in appeal to the Apex Court which, vide its decision cited supra, held as under:-

6. We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product, in that case, the final product was wagons and the question was whether the items which were supplied free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first *distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 577(2) Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.*

7. In this appeal as we have already noted, the final product was the excavator. According to the Modvat scheme, it is the Modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product. The Tribunal having misconstrued the provisions of Rule 57F(2)(b), its decision cannot stand. The decision of the Tribunal is accordingly set aside and the appeal is allowed.

In C.A. Nos. 4086-87/2001:

8. For the reasons elaborated by us in the judgment delivered in C.A. No. 176/2000 (M/s. International Auto Ltd. v. Commissioner of Central Excise, Bihar) these appeals must be allowed. The penalty imposed on the appellant is set aside. However, it is recorded that the appellant is not claiming refund of any duty that had been paid by it pursuant to the demand which is set aside by us."

7. In the case of Jay Yuhshin disposed of by the above judgment, the movement of goods supplied free of cost from MUL to Jay Yuhshin was not under Modvat procedure and yet proceedings initiated against Jay Yuhshin to include cost of components so supplied by MUL in the assessable value of the finished product manufactured by Jay Yuhshin and resultant differential duty demand were set aside. The distinction made by the adjudicating authority between the facts of the present case and the apex court's judgment cited supra, namely that the movement of inputs from raw material supplied to job worker was under Modvat Rules in the Jay Yuhshin's case while in the present case, movement of goods purchased by Tecumseh Products India Pvt. Ltd. and supplied to Lawkim Ltd. was not under Modvat Rules, does not exist. The decision in the case of Mahindra Ugine Steel Co. Ltd. (Final Order No. A/60-63/07/C-1 dated 23-1-2007 [2007 (211) ELT. 73(T)]) holding that value of *scrap/waste retained by the job worker is to be included in the value of components manufactured on job work basis as realization of sale proceeds would amount to additional consideration, relied upon by the learned SDR to support the findings of the Commissioner, does not come to the rescue of the Revenue, in view of the fact that in the International Auto case, the Apex Court has distinguished the decision in Burn Standard Co. Ltd. [1990 (60) E..L.T. 671 (S.C.)] which was relied upon by the Tribunal in the Musco case, as seen from Paragraph 6 of the International Auto judgment. 8.1The ratio of the International Auto Ltd. judgment is applicable on all fours to the facts of the present case and following the ratio thereof, we set aside the Impugned order and allow the appeals."*

6.3 We find that the General Engineering case was decided on 10-3- 2005 but the International Auto case was decided later on 17-3-2005. This case has been applied to the M/s. Lawkim Ltd. case, whose facts are identical to the present case. If the intermediary products are not liable to duty at the hands of the job worker, then the question of adding the value of scrap does not arise at all.

6.4 The Kolkata Bench in the case of Orissa Industries Ltd. v. CCE, Bhuvaneswar (supra) have also relied on the International Auto case and held that the job worker (intermediate manufacturer) need not pay differential duty by taking value inclusive of cost of raw materials, as raw materials supplier would be entitled to credit or Intermediate goods could be returned without payment of duty under Rule 57F procedure. If the intermediary product is not liable for duty, the question of adding the value of scrap does not arise at all. In these circumstances, in our view, the value of scrap need not be included in the assessable value of the products manufactured by the appellant.

6.5 Moreover, we do not find any justification for invoking the longer period. The show cause notice itself is relying on various documents which were submitted by the appellant to the department. If the department had scrutinized the records properly, they could have issued the show cause notice well in time. Therefore, the longer period is not applicable.

6.6 Another point to be noted is that whatever duty is paid by the appellant is taken as credit by M/s. WIL. Definitely, there is revenue neutrality and this has a bearing on the question of invoking the longer period, because whatever duty is borne by the appellant will in turn be passed as cenvat credit to M/s. WIL. In these circumstances also, the longer period cannot be invoked. Various other questions have been raised by the appellants regarding invisible loss, etc. We do not think that it is necessary for us to go into the question, especially in view of the revenue neutrality pleaded by the appellant. Therefore, we are not going into the question of the correct quantification on account of invisible losses.

6.7 In view of the above, we allow the appeal with consequential relief.

29. The Hon'ble CESTAT, Bangalore held that value of scrap need not to be included in assessable value of the goods manufactured on job work basis provided landed cost of the raw material is taken for the calculation of the assessable value of goods and the retention of scrap/ waste does not depress the conversion charges.

30. As regarding landed cost of the raw material, there is no dispute. The Show cause notice and Order-In-Originals nowhere dispute this claim of the appellant. In fact in the show cause notice and order-in original it is stated that "Noticee were taking cenvat credit of duty paid on the billets/ blooms received from the principal manufacturer and were clearing the rolled products manufactured therefrom, an payment of duty on value arrived at by adopting costing method i.e. landed cost of raw material plus conversion charges".

31. Further as discussed earlier, I find that sale proceeds from scrap arised and retained by the Appellant was having no effect on the conversion charges.

32. I further observed that the Commissioner (Appeals) Nagpur while deciding the stay application in appeal No. 252/10 and 253/10, observed that the case is identical with case of P R Rolling Mills Pvt. Ltd. Vs. CCE 2010 (249) ELT 232 and the said decision has been challenged by the Department in the Hon'ble Supreme Court and hence recovery of dues unconditionally *stayed till the decision in the Hon'ble Supreme Court.*

33. During the period, the status of case and the grounds of appeal were obtained from the Commissioner of Central Excise Tirupati, a concerned Commissionerate. On going through these grounds of appeal, I observed that department has relied upon the cases of Jai Engineering, M/s Lloyds Steel Industries and M/s General Engineering Work decided by the Hon'ble Supreme Court referred earlier. However the Hon'ble Supreme Court has dismissed the appeal by department on merits, thus upholding the Tribunal decision in the case of P R Rolling Mills Pvt. Ltd. Vs. CCE 2010-(249) ELT 232

34. Applying the ratio of the above judgment in case of P R Rolling Mills Pvt. Ltd. Vs. CCE 2010 (249) ELT 232 and other findings detailed above, I hold that the money value of the scrap retained by the appellant does not represents additional consideration for the appellant and it is not liable to be included in the assessable value of job worked goods being cleared on payment of duty to the principal manufacturer. The retention of scrap/ waste arised during job work does not depress the job work conversion charges, the same are not included in the assessable value."

4.4 Following the judicial precedence we do not find any merits in impugned order or the submissions made by the authorized representative.

5.1 Appeals are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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