CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85252 OF 2013

[Arising out of Order-in-Original No: 17/CEX/COMMR/2012 dated 17th October 2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad.]

Bajaj Auto Ltd
Waluj, Aurangabad - 431136 … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
N5 Town Centre, CIDCO, Aurangabad - 431030 ***…Respondent***

WITH

EXCISE APPEAL NO: 85288 OF 2013

[Arising out of Order-in-Original No: 17/CEX/COMMR/2012 dated 17th October 2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad.]

Ranjit Gupta
Vice President (Retd)
Bajaj Auto Ltd, Waluj, Aurangabad - 431136 … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
N5 Town Centre, CIDCO, Aurangabad - 431030 ***…Respondent***

APPEARANCE:

Shri Makrand Joshi, Advocate for the appellants

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the respondent

WITH

EXCISE APPEAL NO: 85398 OF 2013

[Arising out of Order-in-Original No: 17/CEX/COMMR/2012 dated 17th October 2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad.]

Aurangabad Electricals Ltd
Plot No. B-23, MIDC, Waluj, Aurangabad … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
N5 Town Centre, CIDCO, Aurangabad - 431030 ***…Respondent***

AND

EXCISE APPEAL NO: 85399 OF 2013

[Arising out of Order-in-Original No: 17/CEX/COMMR/2012 dated 17th October 2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad.]

Anil R Mali
Aurangabad Electricals Ltd
Plot No. B-23, MIDC, Waluj, Aurangabad … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
N5 Town Centre, CIDCO, Aurangabad - 431030 ***…Respondent***

APPEARANCE:

Shri A B Naval, Chartered Accountant for the appellants

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86411-86414/2023

DATE OF HEARING: 02/06/2023
DATE OF DECISION: 28/09/2023

PER: C J MATHEW

All these appeals, arising from the same impugned order and in relation to 'job work' undertaken by M/s Aurangabad Electricals Ltd for supply of 'magneto assembly' and 'transmission shaft' to M/s Bajaj Auto Limited using material supplied by the latter, are disposed off by this common order. The order[1] of Commissioner of Central Excise, Customs & Service Tax, Aurangabad had, on the finding that duty liability to be discharged by the 'job-worker' had been computed without including certain costs and expenditure pertaining to supplies by the principal manufacturer, confirmed duty liability of ₹ 65,57,238 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, for the period from April 1996 to December 2000 besides imposing penalty under section 11AC of Central Excise Act, 1944 on M/s Aurangabad Electricals Ltd, in addition to penalties under rule 209A of Central Excise Rules, 1944 on other appellants.

2. Essentially, proposal for recovery of differential duty of ₹ 84,27,889/- was a consequence of alleged 'less charging' in the value of supplied inputs, and discharge of 1% on freight and 5% on

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[1] [order-in-original no.17/CEX/COMMR/2012 dated 17th October 2012]

unloading charges and 15% on profit and overheads and confirmed in an earlier round of proceedings that, in due course, was remanded back to the Tribunal by the Hon'ble Supreme Court and, thereafter, by the Tribunal to the adjudicating authority. The present appeals arise out of the *de novo* proceedings.

3. Learned Chartered Accountant, appearing for M/s Aurangabad Electricals Ltd and Shri Anil R Mali, submitted that, as duty was paid at each stage of the transaction, including upon return to the principal manufacturer, there is no scope for alleging that goods were undervalued. It was also contended that the 'landed price' of inputs was known only to M/s Bajaj Auto Ltd and that M/s Aurangabad Electricals Ltd had merely relied upon the documentary evidence therefrom for computation of the assessable value. Reliance was placed on the decision of the Hon'ble Supreme Court in *International Auto Ltd v. Commissioner of Central Excise, Bihar [2005 (183) ELT 239 (SC)]* and of the Tribunal in *SRF Ltd v. Commissioner of Central Excise, Chennai [2007 (220) ELT 201 (Tri-Chennai]*. It was further contended that the adjudicating authority had failed to take note of their claim that the expenses incurred by them had already been taken into account in computing the assessable value at their end. It was also contended that the adjudicating authority had erred in proceeding on assumptions and presumptions without valid authority of law.

4. We have heard Learned Counsel for M/s Bajaj Auto Ltd and Shri Ranjit Gupta dispute the correctness of imposition of penalty under rule 209A of Central Excise Rules, 1944.

5. Learned Authorized Representative submitted that it is on record that M/s Bajaj Auto Ltd had billed the 'job-worker' at less than or at same rate as charged by their suppliers; this, he pointed out, was tantamount to additional consideration liable to be included in assessable value. It was also contended by him that, in the absence of voluntary disclosure from both parties, it was open to the central excise authorities to rely upon available data for determination of assessable value.

6. The primary claim preferred on behalf of M/s Aurangabad Electricals Ltd is that, in 'job-work' transactions, there is no scope for alleging undervaluation or any authority under law to revise the assessable value. That, it must be conceded, cannot be denied when 'domino effect' of such undervaluation has not been demonstrated with reference to assessable value of the final product in which the product emanating from the 'job-worker' facility has been incorporated. There are, however, two aspects to the treatment of 'job-worker' for purposes of levy of excise duty that must be distinguished here – that of 'processing' and that of manufacturer; it is only in the former, and when the principal undertakes to discharge duty on the

final product inclusive of ‘job-work’, that the excisability of the ‘job-worker’ merits overlooking. That is not the situation obtaining here and the ‘job-worker’ is a manufacturer with liability to discharge duties leviable under Central Excise Act, 1944 on clearances effected to the principal manufacturer. Consequently, section 4 of Central Excise Act, 1944 along with Central Excise (Valuation) Rules, 1975 is applicable to the goods cleared by the ‘job-worker’ to the principal as any other manufacturer would be.

7. Clearance of goods by the ‘job-worker’ merits valuation in the same manner that ‘captive consumption’ would and, relying upon ‘cost computation’, in the manner determined by the Hon’ble Supreme Court in *Ujagar Prints etc. v. Union of India [1988 (38) ELT 535 (SC)]*, does not preclude scrutiny of assessing authorities. The charge in the show cause notice is that ‘additional consideration’, as received by the ‘job-worker’, from the principal having paid the cost of transportation and other charges that, otherwise, would, ordinarily, have not been. No evidence has been placed on record to counter this allegation. Furthermore, no evidence has been adduced to suggest that the allegation of pricing as being below that of procurement cost was incorrect. Consequently, the costs involved in the transaction between the ‘job-worker’ and principal require addition to the declared value.

8. That the procedure prescribed in rule 57F of Central Excise

Rules, 1944 were followed cannot alter the excisability or mode of determination of value – such treatment is akin to ‘inputs’ having reached the ‘job-worker’ directly – as the same would have been included in the price at which an ‘independent manufacturer’ would have cleared the goods to the principal. The plea for the privilege of excluding these costs is not tenable.

9. The sole issue, insofar as ‘job-worker’ is concerned is the bar of limitation. The facts have been set out clearly in

> *’10.7 ln this case suppression and of facts has been invoked the extended period under proviso to Section 11A. M/s. AEL has contended that RT-12 returns have been submitted by them and accepted by the Department, therefore extended period. In support they have relied upon the decision in the case of M/s. Tajoomal Karbonless Papers reported as 1993(68)ELT-117(T). I find that in the case of M/s. Tajoomal Karbonless Papers the appellant as well as the Department had entertained a bonafide belief that printing did not form part of value and relevant RT-12s were assessed accordingly. This is not the case here because the Deptt in this case was not aware of the facts that the raw material cost was undervalued. These facts came to the notice of the Department only after investigation into the matter. The Hon'ble CESTAT in the case of M/s. Gujarat Agro Industries Corpn. Ltd. [2000(116)ELT-481(T] has held that the mere fact that the department assessed RT-12 returns cannot establish knowledge on the part of the department. Therefore, the case law relied upon by the M/s. AEL is not relevant as the facts in this case are different. The M/s. AEL has given a declaration on the invoices that the particulars given*

> *thereunder are true and there is no direct or indirect additional consideration. Whereas in this case the prices declared were not true. The M/s. AEL had willfully suppressed the facts with intent to evade duty and as such proviso to Section 11A(1) of Central excise Act, 1944 is rightly applicable in this case for recovery of duty for extended period. I hold that the Hon'ble CESTAT in a Larger Bench decision in the case of M/s. Jay Yuhshin Ltd. V/s. CCE reported as 2000(119)ELT-718(T-LB) has held that "The appellants had stated in the price list declaration that no extra consideration had been received from the suppliers of the inputs despite the known fact that the said inputs were received free of cost, the allegation of suppression of facts in terms of the proviso to Section 11A(1) has to be held to have been established". In this case also, I find that M/s. Bajaj had supplied drawing and designs of the products being manufactured by M/s. AEL free of cost. Accordingly, I determine an amount of Rs.65,57,238/- is recoverable from M/s. AEL. In addition, M/s. AEL is liable to penalty under Section 11AC and is required to pay interest under the then Section 11AB of the Act.'*

by the adjudicating authority. No factual submissions that could contradict these findings are before us and, hence, there is no reason to restrict the demand to the normal period. Insofar as penalty under rule 209A of Central Excise Rules, 1944 is concerned, the collaborative arrangement between the 'job-worker' and the principal is evident from the statements recorded during the investigation. Consequently, there is no reason to interfere with those penalties or that under section 11AC of Central Excise Act, 1944 either.

10. Turning to the appeal of the individuals, it is seen that the adjudicating authority has found that

> *'10.11 Shri Anil R. Mali, Chief Executive Officer of M/s. AEL in his submission has stated that the Department has not produced any evidence to prove that he was in any way connected with the undervaluation of inputs, cleared by M/s. Bajaj to M/s AEL. that he was not concerned with the excisable goods and he did not know or had no reason to believe that the goods were liable to confiscation when the issue involved is regarding valuation and hence Rule 209 A can not be invoked to impose penalty on him. I find, the contentions of Mr.Anil R Mali not sustainable as it has already been established in forgoing paras that there is a dear case of undervaluation with intention to evade payment of Central Excise duty and he played a very active role in this undervaluation. find that Shri Ranjit Gupta, Vice President of M/s. Bajaj, and Shri Anil R. Mali, then Chief Executive Officer of M/s. AEL company were the responsible persons for finalizing the prices of the raw material/inputs and the final products by negotiation and they knew everything about the undervaluation of the goods. They were also concerned persons, who dealt with goods which were liable for confiscation as the same were undervalued and removed in contravention of the provisions of the Central Excise Rules, 1944. Therefore being responsible concerned persons, both of these notice's are liable to penalty under the then Rule of 209A of the then Central Excise Rules, 1944.'*

sufficed to confirm imposition of penalty on Shri Anil R Mali and Shri Ranjit Gupta. Both are employees of the respective corporate entities and there is no evidence of any pecuniary benefit deriving to the two persons directly or indirectly. As ‘limbs’ of their respective employer organizations, they may have had a role in the price-setting but with penalizing of the corporate entities that derived the benefit, it would be improper to penalize the ‘limbs’ for vicarious responsibility.

11. For the above reasons, appeals of M/s Aurangabad Electricals Ltd and M/s Bajaj Auto Ltd are dismissed. Appeals of Shri Ranjit Gupta and Shri Anil R Mali are allowed.

(Order pronounced in the open court on 28/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*