

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 1956 OF 2012

[Arising out of Order-in-Appeal No: BC/256/MUM-III/2012-13 dated 24th September 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Patel Profiles Pvt Ltd
Plot No. A-196, Road No. 16A
Wagle Industrial Estate, Thane - 400604 *... Appellant*

versus

**Commissioner of Central Excise
Mumbai – III**
Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604 *...Respondent*

WITH

EXCISE APPEAL NO: 1957 OF 2012

[Arising out of Order-in-Appeal No: BC/290/MUM-III/2012-13 dated 24th September 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Vipul Patel
Patel Profiles Pvt Ltd
Plot No. A-196, Road No. 16A,
Wagle Industrial Estate, Thane - 400604 *... Appellant*

versus

**Commissioner of Central Excise
Mumbai – III**
Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604 *...Respondent*

WITH

EXCISE APPEAL NO: 1958 OF 2012

[Arising out of Order-in-Appeal No: BC/257/MUM-III/2012-13 dated 27th September 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Excel Tech Engineers Pvt Ltd

Plot No. B-58/2, Road No. 31,
Wagle Industrial Estate, Thane - 400604

... Appellant

versus

Commissioner of Central Excise

Mumbai – III

Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604

...Respondent

WITH

EXCISE APPEAL NO: 1960 OF 2012

[Arising out of Order-in-Appeal No: BC/290/MUM-III/2012-13 dated 24th September 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Jayesh Panchal

Excel Tech Engineers Pvt Ltd
Plot No. A-196, Road No. 16A,
Wagle Industrial Estate, Thane - 400604

... Appellant

versus

Commissioner of Central Excise

Mumbai – III

Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604

...Respondent

APPEARANCE:

Shri Sanjay Dwivedi, Advocate for the appellants

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

WITH

EXCISE APPEAL NO: 85534 OF 2013

[Arising out of Order-in-Appeal No: BC/379-380/MUM-III/2012-13 dated 21st November 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Sunil Chellani

Morgan Construction Co India P Ltd
Plot No. D-41, TTC MIDC Area, Turbhe
Navi Mumbai

... Appellant

versus

Commissioner of Central Excise

Mumbai – III

Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604

...Respondent

WITH

EXCISE APPEAL NO: 85538 OF 2013

[Arising out of Order-in-Appeal No: BC/379-380/MUM-III/2012-13 dated 21st November 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Siemens Ltd

Plot No. D-41, TTC MIDC Area, Turbhe
Navi Mumbai

... Appellant

versus

Commissioner of Central Excise

Mumbai – III

Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604

...Respondent

WITH

EXCISE APPEAL NO: 85541 OF 2013

[Arising out of Order-in-Appeal No: BC/385-386/MUM-III/2012-13 dated 21st November 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Siemens Ltd

Plot No. D-41, TTC MIDC Area, Turbhe
Navi Mumbai

... Appellant

versus

Commissioner of Central Excise

Mumbai – III

Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604

...Respondent

AND

EXCISE APPEAL NO: 85542 OF 2013

[Arising out of Order-in-Appeal No: BC/385-386/MUM-III/2012-13 dated 21st November 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Sunil Chellani

Morgan Construction Co India P Ltd
Plot No. D-41, TTC MIDC Area, Turbhe
Navi Mumbai

... Appellant

versus

Commissioner of Central Excise

Mumbai – III

Vardaan Trade Centre, Wagle Industrial Estate
Thane West - 400604

...Respondent

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellants

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86781-86788 /2023

DATE OF HEARING: 15/06/2023

DATE OF DECISION: 11/10/2023

PER: C J MATHEW

This is a saga involving two contracting parties, M/s Morgan Construction Co India Pvt Ltd (in appeal before us under the name and style of M/s Siemens Ltd) and M/s Jindal Steel Works Ltd for

turnkey execution of 'steel rolling mill' by the former at the facility of the latter and involving two manufacturers of parts/components, viz., M/s Patel Profiles Pvt Ltd and M/s Excel Tech Engineers Pvt Ltd, who participated peripherally in the project by arranging for sale of equipment produced by them by deploying goods supplied 'free of cost' by the project executor that were then delivered at the site of M/s Jindal Steel Works Ltd under cover of invoices evidencing payment of appropriate duties of central excise. As these same equipment also happened to be billed separately by M/s Morgan Construction Co Pvt Ltd to M/s Jindal Steel Works Ltd at prices different from, and higher than, that in the excise invoices of M/s Patel Profiles Pvt Ltd and M/s Excel Tech Engineers Pvt Ltd, jurisdictional central excise authorities objected to the value adopted for computation of duties of central excise by insisting that rule 10A of Central Excise (Determination of Price of Excisable Goods) Rules, 2000 required that the value in the commercial invoices of M/s Morgan Construction Co India Pvt Ltd should instead have been.

2. It was alleged that M/s Patel Profiles Pvt Ltd had effected clearances to the project site by discharging duty liability of ₹ 11,70,248 on assessable value of ₹ 81,15,466 on which M/s Morgan Construction Co India Pvt Ltd had raised invoices of ₹ 92,15,555 on M/s Jindal Steel Works Ltd resulting in short-payment of ₹ 1,58,635. Recovery of the said amount under section 11A of Central Excise Act,

1944, along with applicable interest under section 11AB of Central Excise Act, 1944, besides imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 in addition to fine of ₹ 10,000 under rule 25 of Central Excise Rules, 2002 in lieu of confiscation and penalty of ₹ 1,58,635 on M/s Morgan Construction Co India Pvt Ltd as well as ₹ 5,000 each on individuals, Shri Sunil Chelan and Shri Vipul Patel, under rule 26 of Central Excise Rules, 2002 came to be challenged before the first appellate authority without success and order¹ of the Commissioner of Central Excise (Appeals), Mumbai-III is in appeal here by M/s M/s Patel Profiles Pvt Ltd as are orders relating to the others fastened with penalties.

3. Likewise, it was alleged that M/s Excel Tech Engineers Pvt Ltd had effected clearances to the project site by discharging duty liability of ₹ 46,75,415 on assessable value of ₹ 3,24,23,115 on which M/s Morgan Construction Co India Pvt Ltd had raised invoices of ₹3,48,02,000 on M/s Jindal Steel Works Ltd resulting in short-payment of ₹ 3,43,033. Recovery of the said amount under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, besides imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 in addition to fine of ₹ 10,000 under rule 25 of Central Excise Rules, 2002 in lieu of confiscation and penalty of ₹ 3,43,033 on M/s

¹ [order-in-appeal no. BC/256/MUM-III/2012-13 dated 24th September 2012]

Morgan Construction Co India Pvt Ltd as well as of ₹ 5000 each on individuals, Shri Sunil Chellani and Shri Jayesh Panchal, under rule 26 of Central Excise Rules, 2002 came to be challenged before the first appellate authority without success and order² of the Commissioner of Central Excise (Appeals), Mumbai-III is in appeal here by M/s Excel Tech Engineers Pvt Ltd as are orders relating to the others fastened with penalties.

4. Impliedly, the central excise authorities appear to have proceeded on the premise that rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is a self-contained, stand-alone, mandate of law that is triggered by applicability of

***‘Explanation** – For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by another person authorised by him.’*

therein. That logic does not appeal as it is not conceivable that liability under a rule can be triggered by an Explanation below it and, more especially, from a definition that is contextual in a transaction with ‘job-worker’ being adjunct thereto. More so, from lack of acknowledgement of such entity in the Central Excise Act, 2004 or the versions of Central Excise Rules despite that model of production

² [order-in-appeal no. BC/257/MUM-III/2012-13 dated 27th September 2012]

having been in existence for a long while, is the unlikelihood. Taxation of produce of 'job-worker' was also not impeded for several years after the rules for valuation was notified. It would appear, therefore, that, save for certain specific purpose, such as determination of 'duty liability' or entitlement to 'exemption', 'job-worker' has no legal existence in central excise law other than as a manufacturer. Moreover, the lack of definition of the other expression – 'principal manufacturer' – in the Explanation *supra* or in the statute would make it appear that 'job-worker' is nothing but an ancillary manufacturer. Hence, doubt arises as to the intended coverage of rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and determination of its applicability.

5. The historical aspect of the dilemma was, as pointed out by Learned Counsel for the appellant and though in a different context, dealt by the Tribunal in *Jabil Circuit India Pvt Ltd and another v. Commissioner of Central Excise, Pune –III* [2019 (12) TMI 636 – CESTAT MUMBAI] thus

'6. The issue of valuation of goods in the hands of 'job-worker' is one which is vexed the Tribunal and central excise authorities for long. It is obvious that in situations of the manufacture having been contracted out to specialists the declared value is not necessarily the base for determining the duty liability. The decisions, pertaining to job-workers and their excisability, and subsequently, the assessments, were rendered for the period before the Central Excise Tariff Act,

1985 came into force. The 'job-worker' modal, which was very much in vogue, did not pose a challenge to tax coverage till 1975 as excisable goods were unambiguously enumerated. In 1975, coinciding also with the new Central Excise Valuation (Determination of Price of Excisable Goods) Rules, the residuary, and generic, entry was brought into force as 'tariff item 68', the scope for taxation of such activity as 'manufacture', and thereby excisability, needed interpretation. The exhaustive tariff that has been in place since 1985 expanded the scope of 'manufacturing' as dutiable activity under section 3 of Central Excise Act, 1944. It was in this environment of judicial resolution of dispute pertaining to the period of tariff uncertainty that the modal, was acknowledged, shifting the dutiability from the job-worker, even though construed as manufacturer, to the principal, who did not undertake that manufacturing, was acknowledged, by conditional exemption and, in the absence of any specific rule to govern the valuation for ascertainment of liability when discharged by job-worker, the authority of Ujagar Prints Ltd etc. v. Union of India v. [1989 AIR 516] was drawn upon. The blurring of distinction between 'job-worker' and 'principal manufacturer', except for determination of commercial equation, reduced the valuation issues in the hands of principal manufacturer to conformity with 'place of removal'. The belated interpolation of rule 10A in the said Rules also points out to the same want of definition.

7. *In effect, a 'job-worker' works on raw materials supplied by the 'principal manufacturer' and is denied an option to sell the goods that emerge thereby and, in that context, the liability fastened on to someone, other than the manufacturer, on the basis of contract of price. It is seen from the records that on a former occasion when the taxability of 'set-top-boxes' and non-inclusion of the value of material*

supplied therewith, rule 6 of the said Rules was held to be appropriate in accordance with

'Rule 10A -- Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then, -

in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods :

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation. - For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.'

It contains an option of delivery from the premises of 'job-worker', upon sale by the 'principal-manufacturer', and, in the event of transfer of the said goods to some other places, sale thereafter by the principal-manufacturer. The job-worker has been held to be a 'manufacturer' on behalf of 'principal-manufacturer' and the supply of inputs for goods by either the 'principal-manufacturer' or any other person authorized by him, to suffice as 'job-worker'.

8. Quality is the hallmark of modern trade and, in particular, in securing of electronic equipment. In these circumstances, it is but natural for quality control to be ensured by identifying the vendors from whom the raw

materials are to be procured by the manufacturer. The question that arises is whether this may be considered as inputs supplied by the 'principal-manufacturer' or its agent. That vendors vetted were short-listed by Thomson Holdings India Pvt Ltd as exclusive suppliers is not in doubt. In our view, however, the said raw materials or inputs not being procured from M/s Tecnicolor India Pvt Ltd and from agents render such a proposition to be untenable. As pointed out by Learned Counsel, the fundamental difference lies in the payment effected by the appellants to the supplier of the approved raw materials. In Commissioner of Central Excise, Hyderabad v. Innocorp Ltd [2012-TIOL-956-CESTAT-BANG], it was held that

'7.4 It is true that stringent quality standards were prescribed by TUPPERWARE to be strictly maintained by the manufacturers at every stage of the manufacture. TUPPERWARE could inspect the process of manufacture to ensure that the specified quality standards for the products were being maintained. They also had the liberty to reject the finished goods which did not conform to the specified standards. These things are part of normal commercial practice in respect of business houses who insist on the quality of their merchandise. These cannot be considerations to hold that the manufacturing activities of the assesseees were under extensive control of TUPPERWARE reducing the status of the manufacturers to job workers. That the brand name of TUPPERWARE was affixed on the finished goods by the assesseees is also immaterial. In this context, in our view, the learned Commissioner is justified in having claimed support from the decisions in the cases of Poona Bottling Co. Ltd. etc.

7.5 The third requirement [vide para (7.1) supra] for the assesseees to be job workers of TUPPERWARE has also not been satisfied in this case inasmuch as the goods were not manufactured from any inputs supplied by TUPPERWARE or by any other person authorized by them. It is not in dispute that the necessary raw materials and packing materials were procured by the assesseees from suppliers named by TUPPERWARE. The cost of these materials were expressly recognized as expense of the assesseees. That the suppliers were chosen by the assesseees from a panel furnished by TUPPERWARE does not mean that the actual suppliers were authorized by TUPPERWARE to supply the materials to the assesseees.

Insofar as the moulds are concerned, undisputedly, they were returned by the assesseees to TUPPERWARE after use (without availing Cenvat credit) and the amortised value thereof was included in the assessable value of the finished goods. On these facts, it has to be held that the third condition also remains unfulfilled in this case. In the result, the respondents in these appeals were not manufacturing the subject goods as job workers “on behalf of” TUPPERWARE. Needless to say, therefore, that Rule 10A was not applicable to the assessment of the subject goods.’

and, likewise, in Coromandel Paints Ltd v. Commissioner of Central Excise, Visakhapatnam [2010 (260) ELT 440 (Tri.-Bang.)], it was opined that

‘11. We are of a considered view that the agreement between the assessee/appellant and SIPL is of very commercial nature and hence, any items which are procured for specific manufacturing of paints, SIPL can definitely indicate the specific use. It is to be seen that there is no clause in the agreement which would indicate that the appellant herein has to return the said raw material/packing material without any charge i.e. to say they are bound to return without any consideration. We find that clause No. 11 was relied upon by the Id. SDR to say that the compensation which was given was based upon the material cost + additional specific profit. In our considered view, this in itself cannot be said that the relationship between the appellant and SIPL is that of a job worker and principal manufacturer and the compensation received by a person or a company, can be decided in any manner mutually acceptable to the contracting parties. The specific clause No. 11 of the agreement in no way suggests anyone to take a view that the appellant was a job worker of SIPL. Further, we find that clause No. 15D of the said agreement which we are reproducing herein under would indicate the relationship between the appellant and SIPL.

“15D. This agreement is devised as “AGREEMENT FOR MANUFACTURE AND SUPPLY OF PAINTS” for the limited purpose of defining the remuneration/margin of profit eligible to be retained by M/s. Coromandel Paints Ltd., Visakhapatnam, in pursuance of this agreement. The production and supply of paints by Coromandel to Sigmakalon will be on principal to principal basis and all applicable taxes on such sale shall be paid by Coromandel at the time of its supply.

For all statutory purposes, including payments of taxes, compliance of labour and other loss, including the

responsibility of manufacturing quality paints as per the prescribed specification, M/s. Coromandel Paints Ltd. shall be manufacturer and is expected to discharge the entire liability cast on them as manufacturer, under this agreement.

Excise duty, sales tax and other levies will have to be paid by Coromandel treating the same as sales to Sigmakalon, on the full value determined and agreed between the parties from time to time.”

12. It was argued by the Id. SDR relying on the findings by the lower authorities that the said clause is only for the limited purposes of defining the remuneration/margin of profit for discharge of applicable taxes. It can be seen from the above reproduced clause, entire tenor of the agreement was for manufacture and supply of paints, is totally on principal to principal basis and the indication in the said clause specifically indicates that all the taxes have to be paid on such sale prices at the time of supply of paints by the appellant. It is also seen that the agreement between both the parties is indicating that the prices which are charged by M/s. Coromandel should be treated as sale to SIPL and on the full value they have to discharge the duty liability and sales tax.’

9. Thus, it would appear that short-listing of vendors cannot be construed as supply on behalf of ‘principal-manufacturer’ because payment was made directly to the supplier of the goods by the appellant. Though in the context of CENVAT credit availability, it has been held in Miraj Drymix (P) Ltd v. Commissioner of CGST, Alwar [2018 (8) TMI 162 -CESTAT NEW DELHI]

‘24. Furthermore, Rule 4 of Cenvat Credit Rules, 2004 clarifies the Legislature’s intent behind the definition of “job-worker”. The Rule prescribes that, a manufacturer shall be entitled to take credit with respect to inputs when the goods are directly sent from the vendor to the job-worker. This can only be in a scenario wherein the principal E/51653 -51656/2017 manufacturer (viz. recipient of job-worked goods) has paid for the goods to the vendor and asked him to deliver the same to the job-worker. Thus, it becomes even more perspicuous from the said provision that the law pre-supposes free of cost supply of raw materials as a mandatory test in case of job work transactions.’

and similar disputes having been considered in Sujhan

Instruments v. Commissioner of Central Excise, Chennai-II
 [2018 (7) TMI 420 – CESTAT-CHENNAI], it was held that

‘8.5 Thus just because the goods manufactured or produced by Sujhan are purchased by Honeywell on contract that should detract from acceptance of the transaction between Sujhan and Honeywell to be one of principal to principal basis. The arrangement between Sujhan and Honeywell, in our view, is on the lines of ‘contract manufacturing’ as distinguished from ‘job worker’. The contract manufacturers are not supplied with the raw material from principal manufacturers, like ‘job workers’, but they are required to purchase them from the market, very often from vendors who are approved by the principal manufacturer for quality point of view. The principal then buys finished products from the contract margin and very often sales them to his core customer, sometimes with enhanced margin. Department has also not unearthed or brought out anything on record to suspect that the contract between Sujhan and Honeywell is only a camouflage for job working. There is also no evidence put forth to indicate that apart from the value invoices by Sujhan to Honeywell there is an additional value component which is separately paid by the latter to the former or that there is any additional flow back of funds. This being the case, there is no reason on account of invoice value between Sujhan and Honeywell should not be treated as the —transaction value[¶] under Section 4 (1) (a) of the Central Excise Act, 1944.

8.6 While arriving at this conclusion, we draw sustenance from the ratio of the Tribunal’s decision in *Coromandal Paints- 2010 (260) ELT 440 (Tri.- Bang.)*. In that case, the Coromandal Paints and SIPL had entered into agreement for manufacture and supply of paints, with all taxes to be paid on sale price by the latter. The agreement indicated that prices charged by the former are treated as sale to SIPL on which value Central Excise duty and sales tax was being discharged. The Tribunal following the ratio already laid down in *Gillette Diversified Operations Ltd. Vs Commissioner – 2007 (217) ELT 51 (Tribunal)* held that by merely indicating vendors of raw materials or by giving advance for procuring raw material or even installing equipment given by SIPL would not render Coromandal as a job worker.’

10. In view of the above circumstances, we are of the view that the definition of ‘job-worker’, as incorporated in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 would not cover the

transactions, as well as the activities, that characteristic occur in the present dispute. Resort to rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is, therefore, not legal and proper.'

Thus it was that 'job-workers' were brought under the aegis of the Central Excise Act, 1944 in a tax levy scheme prevailing till Central Excise Tariff Act, 1985 was enacted and, through judicial determination including a method for valuing of such goods in the hands of 'job-workers', obliged to discharge liability devolving on manufacturers. Coinciding with the substituting regime of 'rate of duty' within which every manufactured goods could be emplaced, recognition of 'job-work' as a model of economic activity was also acknowledged through notification no. 214/86-CE dated 25th March 1986 issued under section 5A of Central Excise Act, 1944 in situation of the 'principal manufacturer' subsuming the taxable activity of 'job-worker' within consideration realized upon further utilisation of the product emanating from the 'job-worker' to assume responsibility for discharging liability of the precursor stage determined under Central Excise Act, 1944. Thus, a 'job-worker' was nothing but a manufacturer who did not have an obligation under Central Excise Act, 1944 by special treatment and, *de hors* that special treatment, was nothing but a manufacturer.

6. The scheme of valuation for purposes of assessment to duty, set out as

‘4. Valuation of excisable goods for purposes of charging of duty of excise.—

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—

- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.*

Explanation.— For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

(2) xxxx

(3) For the purposes of this section,—

- (a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;*
- (b) persons shall be deemed to be “related” if—*

(i) *they are inter-connected undertakings;*

(ii) *xxxxxxx*

Explanation.—In this clause—

(i) *“inter-connected undertakings” shall have the meaning assigned to it in clause (g) of section 2 of Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969); and*

(ii) *“relative” shall have the meaning assigned to it in clause (41) of Section 2 of the Companies Act, 1956 (1 of 1956);*

(c) *“place of removal” means—*

xxxxxx

from where such goods are removed;

(cc) *“time of removal”,*

(d) *“transaction value”
actually paid or actually payable on such goods.’*

in Central Excise Act, 1944 and

‘3. The value of any excisable goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with these rules.’

of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, leaves no room for doubt on the primacy of ‘transaction value’ of goods which are ‘sold’ to ‘unrelated person’ at the ‘time of payment of duty’ on ‘removal from the factory’ of

‘assessee’ and ‘price being the sole consideration’ with the several rules coming into play only when alignment of all these aspects together in a ‘transaction’ is found wanting to detract from acceptability of the consideration.

7. A ‘job-worker’ may be engaged to manufacture a particular product that is cleared to buyers at the facility itself, that is brought back for further manufacturing as prelude to clearance on payment of duty at the premises of the principal or to be delivered at a pre-arranged place for the principal to undertake commercial placement in the marketplace. This, however, bears uncanny resemblance to a normal manufacturing ‘value addition chain’ when it comes to clearance from premises of ‘job-worker’ to another customer with the second alternative mirroring the circumstances in which judicial determination in *re Ujagar Prints* was rendered. It was the third, and last, engagement in the supply chain that was left without appropriate mechanism till Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 was amended with effect from 1st April 2007. Nonetheless and by virtue of acknowledgement in the rules framed under the empowerment in section 4(2) of Central Excise Act, 1944, ‘transaction value’ may be discarded for assessment only upon identification of the ‘fatal flaw’, such as it were. Before us, the dispute is of applicability of rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 which,

itself, is intended to coast over the non-acceptability of ‘transaction value’ as ‘assessable value’ owing to non-aligning of one of the characteristics of the latter with the rest; our appellate jurisdiction is, thus, circumscribed to mere ascertainment of determination by the central excise authorities of that lack in the value adopted by M/s Patel Profiles Pvt Ltd and M/s Excel Tech Engineers Pvt Ltd for clearance of the impugned goods. We turn to address that with the presentations at the bar to enlighten us.

8. Learned Counsel for appellants contended that both M/s Patel Profiles Pvt Ltd and M/s Excel Tech Engineers Pvt Ltd are suppliers of goods that M/s Siemens Ltd, contracted by M/s Jindal Steel Works Ltd to execute a turnkey project, ordered with them for delivery at site on ‘principal-to-principal’ basis and such delivery at the site of the project does not render those to have been on behalf of the buyer of the goods. It was also argued that the method of payment adopted by the M/s Jindal Steel Works Ltd did not alter the transactional engagement among the appellant-companies to resort to the valuation scheme in the Rules. Furthermore, it was contended that the manufacturing process was not limited to the ‘cost-free’ supply effected by M/s Siemens Ltd but required other materials too. Reliance was placed on the decision of the Tribunal in *Commissioner of Central Excise, Hyderabad v. Innocorp Ltd* [2013 (9) TMI 382 – CESTAT BANGALORE]. According to Learned Counsel, there is no

evidence that goods were manufactured by M/s Patel Profiles Pvt Ltd and M/s Excel Tech Engineers Pvt Ltd on behalf of M/s Siemens Ltd which is pre-requisite for rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to be applicable. Relying on the decision of the Hon'ble High Court of Punjab & Haryana in *Commissioner of Central Excise, Delhi-III v. Vee Gee Faucets Pvt Ltd* [2015 (329) ELT 76 (P&H)] and in *Kampdeep Marketing Pvt Ltd v. Commissioner of Central Excise, Indore* [2004 (165) ELT 206 (Tri-Del)], it was also contended that ingredients for invoking of rule 26 of Central Excise Rules, 2002 did not exist.

9. According to Learned Authorized Representative, the transactional arrangement made it abundantly clear that M/s Patel Profiles Pvt Ltd and M/s Excel Tech Engineers Pvt Ltd are 'job-workers' of M/s Siemens Ltd and, therefore, inescapably warranting recourse to rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. He submitted that the manner in which the exercise was undertaken called for penal action against all the appellants. He placed reliance on the decision of the Tribunal in *Sita Singh & Sons P Ltd v. Commissioner of Central Excise, Delhi-IV* [2016 (337) ELT 441 (Tri-Chan)] and in *Hyva (India) Pvt Ltd v. Commissioner of Central Excise, Belapur* [2013 (292) ELT 59 (Tri-Mumbai)].

10. The case of central excise authorities is that

‘10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then, -

(i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;

(iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods :

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation. - For the purposes of this rule, job-worker means a person engaged in the manufacture or production of

goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.'

of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is attracted as the two vendors in the impugned transactions are 'job-workers' within the meaning assigned therein. Indeed, the dispute over the 'princely sum' of ₹ 1,58,635 and ₹ 3,43,033 rests upon this fine point of distinction with the appellants claiming to be independent manufacturers who were merely supplied with some inputs necessary for manufacture and whose 'transaction value' is unimpeachably aligned for assessment to duty.

11. A method of valuation for goods entrusted to be manufactured by 'job-worker' was incorporated only with effect from 1st April 2007 in Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and, quite undubitably, to fill a necessary want in the context of transactions not fitting within the existing rules which provided alternatives to non-fitment within section 4(1) of Central Excise Act, 1944 owing to non-conformity with one or the other desiderata of 'transaction value' for assessment. These are sale by assessee, for delivery at time and place of removal, where the assessee and buyer are not related and price is the sole consideration for sale. Thus, rule 5 comes into its own when the price between seller and buyer is contingent upon delivery other than at the factory of

manufacture warranting exclusion of post-removal charges from assessable value, rule 6 when money flow between buyer and seller attributable to a transaction in goods exceeds that in the sale agreement, rule 7 when removal is, itself, not at the factory of manufacture, rule 8 when goods are not sold and rule 9 and rule 10 when sale is to related, and to interconnected, persons. It may be noted that, in all of these, the source of the goods is the ‘assessee’ who engages with the buyer. The incorporation, insofar as ‘job-work’ is concerned, would have emerged from the imperative to handle a situation where the manufacturer, though a producer, is not the seller but does deliver to the buyer even though consideration for the goods is received by the seller. Essential to such framework arrangement is that ‘inputs’ should be supplied by the seller.

12. It is not outside the normal scheme of manufacture for a contract supplier to receive some inputs for undertaking manufacture but such restricted supply will not render the transaction susceptible to treatment as ‘job work’ unless the producer procures only for such principal. That such supplies, made free of cost, takes the transaction outside the scope of transaction value without having to be dealt with as ‘job-work’ is apparent from rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Even where all inputs are supplied by the ‘principal manufacturer’, that does not suffice for invoking rule 10A of Central Excise Valuation

(Determination of Price of Excisable Goods) Rules, 2000 which is intended when the 'principal manufacturer' contracts for the said goods to be sold to the buyer from the premises of the 'job-worker' only with either section 4 or by deployment of some other rule in other cases. Thus, even though rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is intended for 'job-work', it does not come into play for all manner of 'job-work' but only when 'inputs' are supplied and sale is effected to the buyer by the principal manufacturer.

13. It is the imperative of a want in the 'transaction value' of the assessee that is contemplated, by the rules intended by section 4(1)(b) of Central Excise Act, 1944, to stand in as alternative in the design of each of the methods of valuation in Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Thus, in the absence of 'sale', rule 4 is applicable, rule 5 when sale occurs beyond place of removal, rule 6 when the excisable goods are sold at a price that is not the sole consideration, rule 7 when sale takes place beyond both time and place of removal, rule 8 when goods are captively consumed by the assessee and rule 9 and 10 when clearance is not to independent person. A common characteristic of all of these, except where there is no sale, is sale by assessee. For the purposes of section 4 of Central Excise Act, 1944, assessee has been circumscribed with no other definition elsewhere in the statute and 'sale' defined in

section 2 of Central Excise Act, 1944. It would, thus, appear that the several rules, as originally included, were intended to make up for deficiencies in sale by assessee. Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is certainly intended for sale but by person other than assessee. Our analysis *supra* leaves no room for doubt that, irrespective of any contractual arrangement of title to the goods, the producer is the ‘manufacturer’ and, thereby, the assessee.

14. And yet notification no. 214/86-CE dated 25th March 1986 relieves such manufacturer of liability to pay duty upon ‘principal manufacturer’, not being ‘assessee’, assuming the obligation without the mantle of ‘manufacturer’ or ‘assessee’ being draped thereupon which the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 had made no provision to deal with sale in which the manufacturer was not involved. It is that gap, relating to an acknowledged transaction, which was sought to be remedied thus. In the impugned transaction, a further sale by a ‘trader’ in due course has been assumed to be the trade contemplated in rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - a sale that did occur but was ignored by the lower authorities. A second sale, even if was acceptable as sale, does not make it a first sale. Therefore, that trade sale has no bearing on the transaction of clearance from the factories

other than of M/s Siemens India Ltd.

15. From a harmonious reading of section 4 of Central Excise Act, 1944 and of the attendant Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, it is abundantly clear that it is not the method of valuation that determines the applicability but that the method flows from the identification of the rule most apt for each transaction. Once a transaction has occurred between two entities as buyer and seller with consideration having been made over, a subsequent transaction may, even if it be sale, not become the first sale contemplated in the several rules. 'Job work' existed before April 2007 and incorporation effected thereafter was not intended to cover every 'job-worker' as per common parlance but of specific situations contemplated in rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. That has not been demonstrated in the orders of the lower authorities.

16. That the transactions impugned in these appeals is between M/s Siemens Ltd on the one hand and either of M/s Patel Profiles Pvt Ltd or M/s Excel Tech Engineers Pvt Ltd on the other is not in dispute. It is also not contested that the latter received payments from the former and it is not disputed that other inputs had been procured by them for undertaking manufacture. In the light of these circumstances, it cannot be said that the goods supplied at the project

site was to M/s Jindal Steel Works Ltd on behalf of M/s Siemens Ltd. Accordingly, the demands fail as do the detriments. Impugned orders are set aside to allow the appeals.

(Order pronounced in the open court on 11/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*