

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH - COURT No. III

**Excise Miscellaneous Application No.40320 & 40319 of 2024**

**in**

**Excise Appeal No.42353 & 42354 of 2014**

(Arising out of Order-in-Appeal Nos. 172 & 173/2014 (M-III) dated 05.08.2014  
passed by the Commissioner of Central Excise (Appeals), Chennai)

**M/s. Indo Cable Industries,**

77/12C, 2<sup>nd</sup> Floor,  
Ganesh Complex,  
Hosur – 635 109

**.... Appellant**

*VERSUS*

**The Commissioner of CGST & Central Excise**

No.1, Foulkes Compound Anaimedu,  
Salem – 636 001.

**...Respondent**

**APPEARANCE :**

Shri. G. Natarajan, Advocate, for the Appellant

Shri. R. Rajaraman, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.41005-41006/2024**

DATE OF HEARING: 23.07.2024

DATE OF DECISION :31.07.2024

**Per Ms. Sulekha Beevi. C.S**

These two appeals being the same and connected, they were heard together and disposed of by this common order.

2. Brief facts are that appellants are engaged in manufacture of wiring harness falling under Chapter 85 of the Central Excise Tariff Act 1985. They clear the excisable goods (wiring harness) on payment of duty to M/s. Mining Material Movements, Pvt Limited, Bangalore (hereafter referred to as Principal Manufacturer) after completion of

job work. The appellant received certain materials from the principal manufacturer free of cost, assembled them into wiring harness and clear the same to the principal manufacturer on payment of duty. The materials supplied free of cost to the appellant by the principal manufacturer are Cenvat availed components which are sent under job work challans in terms of Rule 4 (5) (a) of Cenvat Credit Rules 2004.

3. While paying the central excise duty, the appellant did not include the cost of free supply materials in the assessable value. The department was of the view that the cost of free supply materials has to be included in the assessable value of goods in terms of Rule 10 (A) (iii) of Central Excise Valuation Rules 2000, read with Rule 6 of the said Rules. The free supply materials are to be treated as additional consideration which to be added to the transaction value. Show cause notice for the different periods from April 2007 to July 2010, (duty Rs.3,60,087/-) and August 2010 to July 2011 (duty Rs.1,10,205/-) was issued to the appellant proposing to demand the duty along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence, these appeals.

4. The Ld. Counsel G. Natarajan, appeared and argued for the appellant. It is submitted that the appellant manufactured wiring harness by using free materials supplied by the principal manufacturer and also adding their own materials. Though the wiring harness was

cleared to the principal manufacturer on payment of central excise duty. The appellant is entitled for exemption from payment of duty in terms of Notification No.214/86. For this reason the demand cannot sustain. All conditions prescribed in the said notification are complied in this case. Though it is alleged that the appellant has not filed the declaration as required by the said notification, it is only procedural in nature. The Tribunal in the case of Salem Weldmesh Vs CCE 2007 (218) ELT 405 (Tribunal Chennai) has held that the demand of duty on the job worker cannot sustain when the principal manufacturer has discharged central excise duty, though the declaration has not been filed by the principal manufacturer under Notification No. 214/86.

5. The admitted facts are that the principal manufacturer has availed Cenvat credit on the free supplies sent to the appellant under Rule 4 (5) (a) of Cenvat Credit Rules. The appellant used these materials and also their own materials for manufacture of the wiring harness. Goods cleared by the appellant were used by the principal manufacturer for further manufacture and was not sold by principal manufacturer as such. Thus the goods cleared by the appellant were captively used for manufacture of finished product.

6. The method of valuation to be adopted for job work goods as provided in Rule 10A has been introduced w.e.f. 01.04.2007. The appellant had discharged duty by arriving at the assessable value by not including the cost of the raw materials. It is not a case where the appellant has not discharged central excise duty at all. The Ld. Counsel argued that the department has invoked Rule 10 A (iii) read with Rule

6 of Central Excise Valuation Rules 2000 to confirm the duty demand. It is pointed out that Rule 6 of the Valuation Rules cannot be pressed into application at all. In the present case, it is construed by the department that the supply of raw materials is an additional consideration received by the appellant. The provisions under Rule 6 would be applicable only if the principal manufacturer is receiving additional consideration at the time of sale of the finished products which have been supplied after job work. In the present case, the principal manufacturer is not selling the wiring harness cleared by the appellant, but is captively consuming them for further manufacture. The free supplies given to the appellant cannot be considered as an additional consideration. It is also to be noted that the principal manufacturer has availed cenvat credit of the material supply to the appellant whereas the appellant has not availed credit of duty of such free supplied raw materials. It cannot be considered as an additional consideration.

7. The Ld. Counsel relied upon the decision of the Tribunal in the case of Rolastar Pvt Ltd Versus CCE 2012 (276) ELT 87 Tribunal Ahmadabad, which has been affirmed by the Hon'ble Apex Court as reported in 2013 (298) ELT A 186 Supreme Court.

8. The Ld. Counsel argued on the grounds of limitation also. It is submitted that the demand from April 2007 to January 2010 is raised by way of invocation of extended period. It is alleged by the department that the appellant has suppressed facts with intention to evade payment of duty. The entire figures have been taken from the

accounts maintained by the appellant. The appellant has discharged the duty on the assessable value arrived at by them without including the value of free supplies on bona fide belief that these free supplies are not to be included. The issue is purely interpretational in nature. There were litigations pending before various forums as to the method of arriving at the assessable value of job work goods when the principal manufacturer is also discharging central excise duty. There was confusion with regard to the inclusion of the value of free supplies to arrive at the assessable value. Further, the entire situation is revenue neutral. Even if the appellant paid duty, the principal manufacturer would be eligible for credit. The decision in the case of Jay Yuhim Ltd., Vs. Commissioner 2001 (137) ELT 1098 was referred to by the Ld. Counsel for appellant. The decision of the Hon'ble Apex Court in the case of International Auto Limited Versus CCE 2005 (183) ELT 239 S.C. and Commissioner Versus Motherson & Sumi Systems Limited 2008 (228) ELT A 64 S.C. were relied. The Ld. Counsel prayed that the appeals may be allowed.

9. The Ld. AR Shri R. Rajaraman appeared and argued for the department. The findings in the impugned order was reiterated. Para 11 & 12 of the order passed by the adjudicating authority vide O-in-O No. 25/2011, dated 18.11.2011 was referred to by the Ld. Authorised Representative.

*11. Where the excisable goods are produced or manufactured by a job-worker, on behalf of the principal manufacturer, then the assessable value is to be arrived at as per Rule 10A of Central Excise (Valuation) Rules, 2000. In this case, the Assessable Value is to be arrived at as per Rule 10A (iii) and Rule 6 of Central Excise Valuation Rules, 2000 is*

*the appropriate provision to arrive at the assessable value i.e., the value of the goods supplied free of cost is to be considered as additional consideration and is to added to arrive at the Transaction Value.*

*12. As the assessee has not included the cost of the raw materials/inputs supplied by the principal manufacturer it appears that the value adopted by them is not in accordance with the provisions of Section 4 of Central Excise Act, 1944 read with Rule 10A(iii) and Rule 6 of Valuation Rules, 2000. Also, the duty payment by the assessee on the transactions with "MMMPL" is not in accordance with the provisions of Rules 4, 6 and 8 of the Central Excise Rules, 2002 and which resulted in short payment of duty.*

It is submitted that the confirmation of duty demand with interest and penalties imposed are legal and proper. The Ld. AR prayed that the appeals may be dismissed.

10. Heard both sides.

11. The issue that arises for consideration is whether the demand of duty raised invoking Rule 10A (iii) read with Rule 6 of Central Excise Valuation Rules, 2000 alleging that the value of goods supplied free of cost by the principal manufacturer has to be included to arrive at the assessable value (transaction value) is legal and proper. Rule 10A reads as under: -

*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.-*  
*(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."*

It can be seen from the above reproduced provisions that provisions of Rule 10A can be applied when excisable goods are produced or manufactured by a job worker on behalf of a person and cleared to the buyer of the principal and/or cleared to a depot or a consignment agent. The intention of the Legislature was to capture the tax on the goods, on the value of the said goods when cleared to the ultimate consumers. In the case in hand, we find that provisions of Rule 10A (i) and (ii) does not apply as recorded correctly by the first appellate authority. Provisions of Rule 10A (iii) gets attracted as 10A(i) or (ii) does not apply. The said provision (iii) very clearly mandate that in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable shall mutatis and mutandis apply for

determination of value of the excisable goods. The demand has been raised invoking Rule (6) also.

Rule 6 of the Central Excise Valuation Rules 2000 reads as under: -

Rule 6 "where the excisable goods are sold in the circumstances specified in clause a of subsection 1 of section 4 of the Act except the circumstances where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessor".

12. After the introduction of Rule 10 A, the practice of discharging the duty on cost construction method by the Job Worker is not applicable. The provisions under Rule 10 A of Central Excise Valuation (Determination of Price of excisable goods), Rules 2000 has to be applied. In the present case, the Cenvated raw materials have been supplied free of cost to the appellant by the principal manufacturer. However, while clearing the wiring harness, the appellant has not included the value of these free materials in the assessable value. The department has thus construed that price is not the sole consideration for sale of the wiring harness by the Job Worker to the principal manufacturer. The value of the free materials has not been included in the assessable value while clearing the goods to the principal manufacturer, even though such goods are captively consumed by the principal manufacturer. It is to be noted that appellant (job worker) has not availed Cenvat on the inputs received free of cost. The cost



of the intermediate product has been included for arriving at the assessable value by the principal manufacturer who has availed the credit on the free inputs supplied. The principal manufacturer would be eligible to avail credit of duty paid on intermediate product (wiring harness) by the appellant. The whole situation is revenue neutral.

13. The show cause notice for the period April 2007 to July 2010 is issued on 18.02.2011 and the show cause notice for the period August 2010 to July 2011 is issued on 25.08.2011. Therefore, part of the demand falls within the extended period. We have to say that the issue of valuation of job worked goods was in controversy for a long time. The Hon'ble Supreme Court in the case of Ujagar Print 1989 (39) ELT 493 held as to how the value has to be arrived. Board has also issued various circulars. Thereafter in 2007 Rule 10 A was introduced. The appellant has discharged the central excise duty on the products cleared by them. There is no positive act of suppression established against the appellant except for the allegation that the value of free materials was not included for payment of central excise duty. These free materials have been received by the appellant from the principal manufacturer on job work challans. These being the facts, we are of the considered opinion that the invocation of extended period cannot sustain. For this reason, the demand raised invoking the extended period requires to be set aside. For the same reasons, the penalty imposed in respect of both show cause notices are set aside. The appellant is liable to pay duty along with interest for the normal period only.

14. The impugned orders are modified in above terms. The appeals are partly allowed with consequential reliefs, if any.

15. The above Miscellaneous application is filed by the department for change of cause title due to re-organisation of the Commissionerate. The request is allowed. Miscellaneous application for change of cause title is allowed. Registry is directed to amend the cause title accordingly.

(Order pronounced in the open court on 31.07.2024)

**(VASA SESHAGIRI RAO)**  
Member (Technical)

**(SULEKHA BEEVI. C.S)**  
Member (Judicial)