

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2642 of 2010

[Arising out of Order-in-Appeal No. 257 & 258/2010-CE dated 27.09.2010
passed by the Commissioner of Central Excise (Appeals-I), Bangalore]

Cosmos Conductors Pvt Ltd

.....Appellant

No. 39A, Sathyamangala,
Industrial Area,
Tumkur, Karnataka – 572104

VERSUS

Commissioner of C.E., Bangalore-II

.....Respondent

PB No. 5400, C R Building,
Queens Road, Bangalore 560001

with

Excise Appeal No. 2643 of 2010

[Arising out of Order-in-Appeal No. 257 & 258/2010-CE dated 27.09.2010
passed by the Commissioner of Central Excise (Appeals-I), Bangalore]

Ramachandra M.G., Manager

.....Appellant

M/s Cosmos Conductors Pvt Ltd
No. 39A, Sathyamangala,
Industrial Area,
Tumkur, Karnataka – 572104

VERSUS

Commissioner of C.E., Bangalore-II

.....Respondent

PB No. 5400, C R Building,
Queens Road, Bangalore 560001

APPEARANCE:

Present for the Appellant: Sh. M.S. Nagaraj, Advocate

Present for the Respondent: Sh. Dyamappa Airani, Dy. Commr. (A.R.)

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

E/2642/2010 & E/2643/2010

FINAL ORDER NO. 21205-21206/2023

DATE OF HEARING: 07.07.2023

DATE OF DECISION: 03.11.2023

PER D. M. MISRA

These two appeals are filed against Order-in-Appeal No. 257 & 258/2010-CE dated 27.09.2010 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated facts of the case are that the appellants are engaged in manufacture of insulated copper conductors falling under Chapter sub-heading 85441190 of the Central Excise Tariff Act, 1985. Also, they undertake manufacture of said goods on job work basis. During the period from 01.04.2007 to 08.09.2008, the appellants had carried out manufacture of said goods on job work basis on inputs supplied by the principal manufacturers, however, short paid duty of Rs.20,02,796/- on the value of the said job worked goods. Accordingly, show cause notice was issued to them on 31.03.2009 for recovery of the differential duty of Rs.20,02,796/- for the period from 01.04.2007 to 08.09.2008 with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the Id. Commissioner (Appeals) who in turn upheld the order of adjudicating authority; hence the present appeals.

3.1 At the outset, the Id. Advocate for the appellants has submitted that the appellants undertake manufacture of insulated copper conductors on job work basis for the customers namely (i)M/s Kaytee Switchgear Ltd; (ii)M/s BHEL; (iii)M/s Universal Power Transformers and others. The said customers procured duty paid copper rods and were sending it to the appellants, who in turn, availed CENVAT Credit of the duty paid on the said copper rods and manufacture insulated copper conductors and clear the finished goods to the said customers on payment of appropriate excise duty. The appellants determined the assessable value of job worked goods taking into consideration the cost of the raw materials and the processing charges (job work charges) and paid appropriate duty on the same for the said period.

3.2 He has submitted that since the insulated copper conductors were not sold either by the appellants or by the principal manufacturers on principal-to-principal basis on clearance from the appellant's factory, but were captively consumed by the principal manufactures at their factory in the manufacturing of their final products, hence, it is alleged by the Revenue that the valuation should have been done in accordance with sub-rule (iii) of Rule 10A of the Central Excise Valuation Rules, 2000. Further, as the goods were captively consumed by the principal manufacturers, accordingly, Rule 8 of the Central Excise Valuation Rules, 2000 is applicable and the value should have been 110% of the cost of production of the excisable goods.

3.3 He has further submitted that the appellants have not manufactured the insulated copper conductors for and on behalf of the customers and they were using their own power, labour, also purchased other inputs and used it for manufacture of the final products, which were cleared against excise invoices after payment of excise duty to the principal manufacturers. Therefore, Rule 8 of the Central Excise valuation rules, 2000 not applicable.

3.4 He has also submitted that the transactions are on principal-to-principal basis, therefore, the assessable value of the insulated copper conductors was correctly determined by the appellants taking into consideration the value of all raw materials used plus processing charges in accordance with the principle of law laid down by the Hon'ble Supreme Court in the case of *Ujjagar Prints & Others vs. UOI – 1988 (38) ELT 535 (SC)* and clarificatory judgment reported in *1989 (39) ELT 493 (SC)*.

3.5 Referring to Rule 10A of the Central Excise Valuation Rules, 2000 which has been inserted w.e.f. 01.04.2007, the Id. Advocate submits that under the said rule, sub-rule (iii) though applicable, however, determination of value adopting Rule 8 of the Central Excise Valuation Rules, 2000 is incorrect as the ingredients of Rule 8 are not satisfied in the present case. In support, he has referred to the following judgments:-

1) *CCE, Pune vs Mahindra Ugin Steel Co Ltd – 2015 (318) ELT 592 (SC)*.

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- 2) *Roalstar Pvt Ltd vs CCE, Daman – 2012 (276) ELT 87 (Tri. Ahmd)* approved by Hon'ble Supreme Court in *CCE, Daman vs Roalstar Pvt Ltd – 2013 (298) ELT A186 (SC)*.
- 3) *CCE, Ahmedabad-II vs Reclamantion Welding Ltd – 2014 (308) ELT 542 (Tri. Ahmd)*.
- 4) *Indian Extrusions vs CCE, Mumbai – 2012 (283) ELT 209 (Tri. Mum)*
- 5) *CCE, Ahmedabad vs Palco Metals Ltd – 2011 (23) STR 289 (Tri. Ahmd)*
- 6) *Advance Surfactants India Ltd vs. CCE, Mangalore – 2011 (274) ELT 261 (Tri. Bang.)*

3.6 Further, he submits that therefore, the confirmation of differential duty, interest and penalty are not sustainable and the amount deposited during the adjudication proceeding, be refunded to the appellants. Further, he submits that imposition of personal penalty of Rs. 5,00,000/- on Sh. Ramchandra G.M. is unsustainable, hence, be set aside.

4. Per contra, the Id. A.R. for the Revenue reiterates the findings of the Id. Commissioner (Appeals). He submits that the Id. Commissioner (Appeals) in the impugned order analysing the Rule 10A inserted w.e.f. 01.04.2007 held that sub-rule (iii) of Rule 10A of the Central Excise Valuation Rules, 2000 be applicable in the circumstances of the case and since principal manufactures consumed the goods captively, therefore, Rule 8 of the Central Excise Valuation Rules, 2000 be applicable.

5. Heard both sides and perused the records.

6. The short issue involved in present appeals is : determination of assessable value of insulated copper conductors manufactured by the appellants on job work basis during the period 01.04.2007 to 08.09.2008.

7. The Revenue's contention is that the value of the insulated copper conductor manufactured on job work basis be determined under sub-rule (iii) of Rule 10A read with Rule 8 of the Central Excise Valuation Rules, 2000. The contention of the appellant on the other hand is that since the ingredients of Rule 8 of the Central Excise Valuation Rules, 2000 are not satisfied therefore, the assessable value be determined following the ratio laid down in *Ujjagar Print's* case.

8. To appreciate the point in dispute, the relevant Rule 8, Rule 10A and Rule 11 of Central Excise Valuation Rules, 2000 are reproduced below:

"RULE 8. *Where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods.*

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*

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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.

RULE 11. *If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the*

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principles and general provisions of these rules and sub-section (1) of section 4 of the Act.”

9. Undisputed facts are that the appellants received raw material namely duty paid copper conductors from various principal manufacturers, availed CENVAT Credit of the duty paid on the said inputs, utilized the said copper conductors along with other raw material procured by them and manufactured insulated copper conductors on job work basis in their own factory. The insulated copper conductors are later cleared to the principal manufacturers on payment of duty and the principal manufacturers in turn captively consumed the goods in the manufacture of their finished products after availing credit of the duty paid on the job worked goods by the appellant.

10. After the insertion of Rule 10A in the Central Excise Valuation Rules, 2000, the department disputed the method of assessment adopted by the appellants. It is the contention of the department that as per sub-rule (iii) of the said Rule 10A read with Rule 8 of the Central Excise Valuation Rules, 2000, the valuation of the job worked goods be 110% of the cost of production or manufacture of the excisable goods, since the principal manufactures who received the job worked goods instead of selling the same, captively consumed in the manufacture of finished goods.

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11. We find that this issue is no more res-integra and has been considered by this Tribunal in the case of *Roalstar Pvt Ltd vs CCE, Daman – 2012 (276) ELT 87 (Tri. Ahmd)* taking note of the amended provisions, namely, Rule 10A of Central Excise Valuation Rules, 2000 and Circulars issued on the subject by the Board from time to time and following the earlier order, held as follows:

"8. *We find that in an identical situation, this Bench of the Tribunal in the case of Palco Metals Ltd. in Final Order No. A/754/WZB/AHD/2011, dated 28-4-11 [2011 (23) S.T.R. 389 (Tri.)] took a view which is reproduced as under :*

7. Admittedly, the goods were manufactured by the appellant though out of the raw material supplied by M/s. Sai Flipped Coil Pvt. Limited, the liability to pay duty on the said goods was on the appellant and not on M/s. Sai Flipped Coil Pvt. Limited. Since the goods were not sold by the appellant to M/s. Sai Flipped Coil Pvt. Limited, the sale value of the same were not available. The Hon'ble Supreme Court in the case of Ujagar Prints have clearly laid down that in such a scenario the value of the final products leaving the factory of the job worker would be the cost of the raw material and the processing charges, which include the profit made by the job worker. There is no dispute that the appellant adopted the said procedure to arrive at the assessable value."

The said judgment was later upheld by the Hon'ble Supreme Court rejected the appeal filed by the Revenue reported as *CCE, Daman vs Roalstar Pvt Ltd – 2013 (298) ELT A186 (SC)*.

12. The Hon'ble Supreme Court in the case of *CCE, Pune vs Mahindra UGINE Steel Co Ltd* (supra) interpreting Rule 8 and Rule 11 of Central Excise Valuation Rules, 2000 for determination of the assessable value of the goods manufactured on job work basis held that Rule 11 would be applicable in arriving at the assessable value of the excisable goods. In the said case, the respondent was engaged in the manufacture of motor vehicle parts from the raw material supplied by the manufacturers of the motor vehicles on labour charge basis. The manufactured motor vehicle parts are later supplied to the principal manufacturers who used the said parts in manufacture of vehicles. The question before the Hon'ble Supreme Court was whether Rule 8 of the Central Excise Valuation Rules, 2000 or Rule 11 would apply in arriving at the valuation of the goods at the end of the assessee. After interpreting Rule 8 and other Rules of Central Excise Valuation Rules, 2000, their Lordships held as follows:

"3. *The question before us, in the present appeal, is as to whether Rule 8 of the Central Excise (Valuation) Rules, 2000 (hereinafter referred to as 'the Rules') or Rule 11 thereof would apply in arriving at the valuation of the goods at the end of the respondent/assessee. As per the appellant/Department Rule 8 is applicable and therefore, the value has to be 115% of the cost of production. Rule 8 reads as under :*

"RULE 8 : *Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles,*

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the value shall be one hundred and fifteen per cent of the cost of production or manufacture of such goods.”

4. *On the face of it Rule 8 will have no application to the facts of the present case. It is rightly pointed out by the CEGAT that for the applicability of this Rule two requirements are to be fulfilled. The first is that the excisable goods that the assessee manufactures are not sold by him and the second requirement is that these goods must be used for consumption either by him or on his behalf in the production or manufacture of other articles. In the present case, first condition is undoubtedly satisfied as the goods are not sold by the respondent. However, second condition is not at all met or fulfilled inasmuch as the goods are not used by the assessee for consumption either by him or on his behalf in the production or manufacture of other articles. As stated above, these goods are supplied to the manufacturer of the motor vehicles.*

12. *Once we come to the conclusion that Rule 8 is not applicable in the case of the respondent, it is Rule 11 only which becomes applicable as that is residuary provision for arriving at the value of any excisable goods which are not determined under any other rule.”*

13. Even though the aforesaid judgement was delivered prior to insertion of Rule 10A, however, there is no change in the wordings of Rule 8 after 01.03.2007, and the facts of the present case do not fall either under sub-rule (i) or sub-rule (ii) of Rule 10A of Central Excise Valuation Rules, 2000. Thus, following the

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principle laid down in aforesaid judgments, we are of the opinion that Rule 8 of Central Excise Valuation Rules, 2000 is not applicable to the facts of the present case. Accordingly, we do not find merit in the impugned order passed by the Id. Commissioner (Appeals). Consequently, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in the court on 03/11/2023)

(D. M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

RA_Saifi