2014 (4) ECS (139) (Tri.- Kol)

In the Customs, Excise & Service Tax Appellate Tribunal

East Zonal Bench Kolkata

M/s. HYVA (INDIA) PVT. LTD.

V/s.

C.C.E. & ST., JAMSHEDPUR

Date of Hearing: 03.03.2014
Date of Decision: 22.05.2014

Sl. Nos. (01-02) Excise Nos. E/A/179, 081/2010

(Arising Out Of Order-In-Original No.46-48/Commissioner/2009 Dated 30.11.2009 Passed by The C.C.E. & S.T., Jamshedpur)

Apearance:
Shri V. Sridharan, SR. Advocate Assisted by
Shri R. Raghavan. Advocate & S.Mirdha — For the Appellant
Shri D.K. Acharyya, SPL Counsel — For the Respondent

CORAM:
Dr. D.M. Misra, Hon'ble Judicial Member
Dr. I.P. Lal, Hon'ble Technical Member

(Order No.FO/A/75263-75318/2014)

"According to Chapter Note V of Chapter 87 of the Central Excise Tariff, building of body or fitting of a structure or equipment on the chassis falling under Heading 8706, amounts to manufacture of motor vehicles. We find that there is no sale of motor vehicles by the appellants either to TML or to any other customers. These vehicles were for the first time sold by TML from their depots and therefore, the clarification that the appellants sold the body, is of no help to them. We find that the chassis were supplied to the appellants free of cost. On fabrication of components of the body, it results into emerging a final product namely, motor vehicle which is distinct from the chassis. Since the said motor vehicles were not sold by the appellants and sold for the first time by TML, the value was to be determined in this case under Rule 10A of the Central Excise Valuation Rules, which provided for determination of value of the final products manufactured on behalf of the principal manufacturer." (para 26)

"The assessable value for the purpose of charging Central Excise duty, where the job workers are transferring the excisable goods to the depots/ sales office/distributors for any other sale by the principal manufacturer,

shall be the transaction value, on which the goods are sold by the principal manufacturer from such place." (para 32)

"However, in the present case, the Assessees/Appellants have not sold the goods namely, motor vehicles, as provided in Section 4(1)(b) of the Act, the value is to be determined in such manner, as may be prescribed. For this purpose, Valuation Rules have been framed and Rule 10A has been inserted in the said Rules with effect from 01.04.2007, to determine the value in such cases, in our opinion, there is no contravention of the provisions of Section 4. We further find that the identical issue has been decided by the two Co-ordinate Benches of the Tribunal in case of Audi Automobiles and Hyva India Pvt. Ltd. (supra)." (para 33)

"The value of the goods supplied by the appellants, is to be determined under Rule 10A of the Central Excise Valuation, 2000 and not under Rule 6." (para 35)

Per: Dr. I. P. Lal:

These appeals are filed by M/s. Hyva (India) Pvt. Ltd. & Others (here-in-after referred to as the Appellants) against the respective Orders passed by the Commissioner of Central Excise, Jamshedpur. Since the issues involved in all these Appeals are common, accordingly, all these Appeals are taken together for disposal.

2. Brief facts of the case are that the Appellants are manufacturers of body-built motor vehicles, namely Dumpers & Tippers falling under Chapter Sub-heading No.87041010 on chassis sent free of cost by M/s. Tata Motors Pvt. Ltd. (here-in-after referred to as TML).

3. It is noticed that the Appellants manufacture the vehicles as per Purchase Order placed by TML. It is evident from the Purchase Orders 4550001493 dated 21.08.2007 (copy of the said Purchase Order is enclosed in Annexure: C to one of the show cause notices dated 12.11.2008 issued to M/s. Hyva India Pvt. Ltd and TML) that TML has placed the order on the Appellants under the Item Category, 'Sub-Contracting', for which Materials Net per Unit Rs.2,53,583/- were supplied by Tata Motors/TELCO. It is observed from the said Purchase Order that for CENVAT Set-Off of Rs.10,300/- paid as Additional Duty and Cess paid by TML on chassis (which is not payable on the vehicles manufactured by the Appellant, M/s. Hyva India) and accordingly, is deducted from the charges payable to the Appellants. Terms and conditions of the Purchase Order further provide that Manufacturing Process is required to be approved by Tata Motors and wherever necessary, Tata Motors Ltd. or their representative shall be afforded the right to verify at source that purchased product by the Appellant, conforms to specified requirement. After manufacture, deliveries of the vehicle should be

made at Tata Motors Ltd. This practice has been followed in respect of each of the Appellant. The Department considered the Appellants to be job workers of M/s. Tata Motors Pvt. Ltd.

4. As per Chapter Note V in Chapter 87 of the Central Excise Tariff, building or fitting of a structure or an equipment on the chassis falling under Chapter Sub-Heading 8706 amounts to manufacture of motor vehicles. The Appellants availed the credit of duty paid on chassis including credit of additional duty of excise of Rs.10,000/- per vehicle and cess paid by TML. On building the body, motor vehicles were dispatched to Regional Sales Depots of TML after paying duty on the value i.e. cost of chassis plus fabrication charges. The final goods namely, motor vehicles, were sold from the Depots by TML at much higher price. Department objected to determination of value as above, which, according to the Department, should have been determined under Rule 10A of Central Excise Valuation Rules, 2000. Accordingly, show cause notices were issued to the Appellants for demanding the duty after determining the value under Rule 10A (inserted with effect from 01.04.2007) of the Central Excise Valuation Rules,2000. The show cause notices were adjudicated by the Commissioner of Central Excise, Jamshedpur, wherein he confirmed the duty along with interest, imposed penalty of equal amount on the Appellants under Section 11AC of the Central Excise Act, 1944 and also the penalty on TML under Rule 26 of Central Excise Rules, 2002. Similar show cause notices were issued to other assessees and similar orders were also passed by the Commissioner of Central Excise, Jamshedpur. Being aggrieved, these Appeals are filed before this Forum.

5. The ld. Sr. Advocate, Shri V. Sridharan appearing on behalf of the Appellants submitted that when the Appellants cleared the body built on chassis, to TML, there was a sale of body for a price, as contemplated under Section 4 of the Sale of Goods Act, 1930. He stated that the transaction between the Appellants and TML were on principal-to-principal basis. Since in this case, the transaction involved transfer of possession of body from the Appellants to TML for consideration, the same amounted to sale of body. He referred to the following case laws, to support his contention that when a fully body-built vehicle is supplied by a body-builder, to a chassis-supplier, there is a sale of body in this regard:-

(i) Patnaik & Company Vs. State of Orissa 1965 (16) STC 364 (SC);

(ii) Machenzies Ltd. Vs. State of Maharastra 1965 (16) STC 518 (SC);

(iii) Commr. of Commercial Taxes Vs. M. G. Brothers 1975 (35) STC 24 (SC);

(iv) Pothula Subba Rao Vs. State of A. P. 1972 (30) STC 69 (AP);

(v) Jiwan Singh & Sons Vs. State of Punjab 1963 (14) STC 957 (P & H);

(vi) Commissioner of Sales Tax Vs. Haji Abdul Majid & Sons 1963 (4) STC 435.

He submitted that as the Appellants sold the body to TML for a price agreed between the assessees and TML, a completely/fully body-built motor vehicle was cleared by the Appellants and accordingly, the duty was being paid on the full value of the vehicle. He further submitted that the applicability of Rule 10A of Central Excise Valuation Rules, 2000 (here-in-after referred to as the said Rules) is not relevant in the present case, as the value is being determined by a specific provision of Rule 6 of the said Rules read with Section 4(1)(a) of the Central Excise Act, 1944, and while applying the Valuation Rules, one has to go sequentially through the Valuation Rules, since all the ingredients of Section 4(1)(a) were fulfilled, except that the chassis on which the body was built, was supplied free of cost, by TML, therefore, in terms of Rule 6 of Valuation Rules, the Appellants while determining the value, added the cost of chassis including the body building charges. He relied upon the decision of Larger Bench in the case of Ispat Industries Vs. CCE reported in 2007 (209) ELT 185 in this regard. He submitted that in this case, for determination of the value of the vehicles, Rule 10A is not applicable.

6. The ld. Sr. Advocate submitted that as per Explanation to Rule 10A, for attracting the provisions of Rule 10A, the basic criteria are that an appellant should be "a job-worker" manufacturing goods "on behalf of" a principal manufacturer, "from any input or goods" supplied by the principal manufacturer. It is the contention that in the present Appeals, the above conditions are not fulfilled and therefore, the provisions of Rule 10A are not applicable.

7. He submitted that as the transaction between the present Appellants and TML was on principal-to-principal basis, their case was not covered under the category of "on behalf of". In support of his contention he relied upon the following judgments:-

(i) Basant Industries Vs. Collector of Central Excise 1995 (75) ELT 21 ;

(ii) Mahavir Metal Industries Vs. CCE 1987 (28) ELT 85 (T) ;

(iii) Poona Bottling Co. Ltd. & Anrs. Vs. UOI 1981 (8) ELT 389 (Del.);

(iv) Spencer and Co. Ltd. Vs. ACCE 1083 (14) ELT 2098 (Mad.) ;

(v) Steel City Beverages Pvt. Ltd. Vs. UOI 1986 (23) ELT 147 (Pat.).

8. Ld. Senior Advocate further contended that Rule 10A consciously and deliberately employs the expression, "on behalf of". This expression has been interpreted authoritatively by the Hon'ble Supreme Court long ago. The Apex Court in the case of W.O. Holdsworth & Ors. Vs. State of UP: 1957 (AIR) SC 887, had authoritatively held that the words, 'on behalf of' refer to an agent only.

9. He further submitted that Rule 10A does not employ the expressions, "for" or "on behalf of", unlike Business Auxiliary Service as amended by Finance Act, 2005, and submitted that the expression, "on behalf of" is narrower than, and different from, the expressions, "for" or "on behalf of". He relied upon the decision of the Tribunal as follows:

(i) M/s Auto Coats Vs CCE & ST, Coimbatore 2009-TIOL-689-CESTAT-Madras;

(ii) Sonic Watches Ltd. Vs. CCE, Vadodara 2010-TIOL-1518-CESTAT,Ahmedabad;

(iii) M/s Marvito Engineering Industries vs. CCE, Vadadara 2012-TIOL-1070-CESTAT, Ahmadabad.

The emphasis laid on these decisions is that the use of the expression, "on behalf of", is attracted in case of a tripartite situation i.e., there should be three parties namely, Principal, Job Worker and Outsider, while as in the instant case, only two parties are involved. For these reasons also, Rule 10A would not apply to the present case. In support, he relied upon the Board's Circular No.F.132/111/2007/CX.4 dated 18.07.2007, wherein the Board clarified in the matter of taxability of Business Auxiliary Service, that to qualify the activity of processing of goods as "provision of service on behalf of client under category of BAS", there must be three parties i.e. the client is obliged to provide some service to a third person; but instead of the client providing such service, the service provider provides such service to a third person on behalf of the client i.e. acting as an agent of the client. It is the submission that the expression, "on behalf of", cannot be synonymous to the expressions, "for" or "'on behalf of". The ld. Sr. Advocate also cited various Notifications issued by the Central Government. In these Notifications, the distinction between the phrases, "on behalf of" and "by or on behalf of", is also maintained.

The ld. Sr. Advocate further submitted that the expression, "from" used in the above Explanation connotes that the commodity in taxation under Rule 10A, should come out of the goods supplied by principal manufacturer. However, in the present case, the commodity in taxation is not coming exclusively out of the goods supplied by principal manufacturer. The ld. Advocate submitted that the word, "any", would be synonymous to "all" or "every", as interpreted by the Apex Court in the case of Shri

Balaganesan Metals Vs M.N. Shanmugham Chetty and Others : (1987) 2 SCC 707. In other words, the use of the expression, "any", implies that for attracting the provisions of Rule 10A, every material should be supplied to the job worker/assessee by the principal manufacturer. As against this, in the present case, the Appellants put their own materials on the chassis supplied by TML during manufacture of the body-built vehicles and the value-addition was 19%.

10. He further submitted that in case of CCE Vs. Innocorp Ltd.: 2013 (292) ELT 59 (T), wherein the appellant was manufacturing plastic kitchenware and tableware under the brand name, "Tupperware" for M/s Tupperware India Pvt. Ltd. in terms of a manufacturing agreement, and moulds required for manufacture of those products were supplied by M/s. Tupperware, and duty was discharged by M/s. Innocorp Ltd. on the sale price of the kitchenware plus amortized cost of moulds under Section 4 of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Rules, 1944. The Tribunal held that as the transactions were on principal-to-principal basis and not "on behalf of", therefore, Rule 10A of the Valuation Rules was not applicable. It is contended that Rule 10A should be read down to be applicable in the case of agency and not where the transaction is on principal-to-principal basis.

11. It is submitted that in their own case i.e TELCO Vs. UOI reported in 1988 (35) ELT 617 (Pat), the Hon'ble High Court of Patna, held that the body builders, who build bodies on the chassis supplied by TELCO, are independent manufacturers, and it cannot be said that they manufacture bodies on behalf of TELCO. It is also submitted that the appeal filed by the Revenue in this particular case, was dismissed by the Hon'ble Supreme Court as reported in 1997 (94) ELT A128 (SC).

12. The ld. Sr. Advocate submitted that Rule 10A has been enacted pursuant to recommendation of the Expert Committee on the issue of job workers chaired by Dutta Majumder Committee. The Committee recognized the use of the expressions, "for" or "on behalf of". Further, the Central Government confined the difference to the phrase, "on behalf of" only. The Committee further referred to earlier Batra Report, where there was a mention of the opinion of Law Ministry. The said opinion stated that without amending Section 2 (f) or Section 4 of the Act, if Valuation Rules alone are amended providing for levy of duty on the sale price of the principal manufacturer, it would be excessive delegation and ultra vires. However, the said recommendation was not accepted by the Central Government.

13. It is the contention that Rule 10A is in contravention of Entry No.84

of the Union List and Section 2(f), Section 3(1) and Section 4 of the Central Excise Act. The ld. Advocate submitted that Rule 10A treats the raw materials supplier as the manufacturer, which is clearly in contravention of Section 2(f) of the Central Excise Act, 1944. Under Section 3, levy of duty is on the goods manufactured and produced in India, and Section 4 provides that the price charged by the manufacturer forms the measure of levy prior to 01.07.2000 and also post 01.07.2000. The ld. Advocate referred to various judgments namely, Attic Industries Ltd. vs. H.H.Dave, Assistant Commissioner of Central Excise and Others, 1978(2)ELT (J) 444(SC), holding that the relevant price for the purpose of excise, is the price when the goods first enter the stream of trade, the decision of the Apex Court in case of Bombay Tyre International, 1984(1)SCC 467, holding that assessable value under Section 4 which is exigible to excise duty, is the price which the manufacturer has charged from his buyer, and the Apex Courts judgment in case of Ujagar Prints & Others vs UOI & Oths.(1988(38ELT 53(ST), holding that the measure of levy in case of job work, must be job charges alone. Since Rule 10A seeks to levy duty on the price of the principal manufacturer presuming them (i.e.buyer of the goods), therefore, Rule 10A contravenes the provisions of Section 3 and Section 4 of the Central Excise Act, 1944.

14. He submitted that the Apex Court in the case of Prestige Engineering (I) Ltd. Vs. CCEx reported in 1994 (73) ELT 497 (SC), held that while a job worker contributes his own raw materials to the raw materials supplied by customer and the manufactured goods, it does not amount to a job work. However, while deciding the case of M/s. Hyva India Pvt. Ltd. reported in 2013-TIOL-166-CESTAT-Mum., the Tribunal overlooked this decision. He submitted that as in the present case, the Appellants used their own materials and machineries for manufacture of body on chassis, the work down by them cannot be characterized as job work, in light of the Apex Court's judgment of Prestige Engineering (supra). Therefore, it is the contention that determination of the value under Rule 10A of the Central Excise Valuation Rules, cannot be made applicable to facts and circumstances of this case and the value is to be determined under Rule 6 read with Section 4(1)(a) of Central Excise Act, 1944.

15. The ld. Sr. Advocate further pointed out that there were quantification errors in quantifying the demand in all the present Appeals, as the Adjudicating Commissioner had not deducted the sale tax amount from the value, while demanding duty from the Appellants. He further submitted that since the issue relates to interpretation of Valuation Rules, there cannot be any penalty in the present case. The ld. Advocate also submitted that in some of the cases, the extended

period has been invoked for demanding the duty, although the facts were known to the Department. He has referred to a letter dated 26.04.2007 addressed to the Department by M/s. Hyva India, in this regard.

16. The ld. Advocate has submitted that the differential excise duty has been determined by taking into consideration the price at which the vehicles were sold by M/s. Tata Motors Ltd. from respective RSOs, considering the same as assessable value, instead of cum-duty price, as prescribed under the Explanation to Section 4(1) of the Central Excise Act, 1944. The ld. Advocate drew attention to Affidavits filed by the respective Appellants in support of this fact. According to the ld. Advocate, if the value at which the goods were sold by M/s. Tata Motors Ltd., is taken as cum-duty price, the demand would be substantially reduced.

17. Per contra, the ld. Spl. Counsel appearing for the Revenue elaborated the nature of transaction between HIPL and TML, which comprises of transfer of chassis, free of cost, to the present Appellants for manufacturing the fully body-built vehicles, "Trust Receipts" quoted by the Commissioner showing that the chassis were supplied in trust to the Appellants who had no rights on the said chassis, inspection, supervision and approval by TML at every stage of manufacturing by HIPL, right from the stage of drawing, design, specification etc., the unutilized credit at the hands of the Appellants, belonged to TML, and after dispatch of the final goods by the Appellants to the Depots of TML, those were sold for the first time to the customers etc. In this context, Revenue was of the view that HIPL was a job worker on behalf of TML, who were the principal manufacturer in terms of Rule 10A ibid; hence Central Excise duty was payable on the RSO sale price of the principal manufacturer and not on the invoice price of HIPL, who are the job-workers. The ld. Special Counsel submitted that the facts of the present case are identical to the facts of the cases in Appeals of HIPL i.e. M/s Hyva themselves decided by CESTAT, WZB, Mumbai reported in 2013-TIOL-166-CESTAT-Mum, wherein it has been held that the value of the goods supplied by the Appellants (HIPL) to TML has to be determined under Rule 10A of Central Excise Valuation Rules, 2000. He submitted that the facts are also the same as in the case of Audi Automobiles Vs. CCE, Indore reported in 2010 (249) ELT 124 (Tri.-Del) in which the Principal Bench at New Delhi also held that Rule 10A is the applicable valuation Rule and not any other Rule.

18. The ld. Spl. Counsel further submitted that CESTAT, Mumbai in the case of HIPL Vs, CCE, Belapur (cited supra), had considered the Board's Circular and quoted extensively from the Co-ordinate

Bench Order in the case of Audi Automobiles Vs. CCE, Indore vide 2010 (249) ELT 124 (Tri.-Del.), and after quoting Paragraphs 16, 17, 18, 19, 20 & 21 of the Co-ordinate Bench Order, explaining inter-alia, the expression, "on behalf of" as distinct from the expression, "for" and held that, neither the case laws cited by the Appellants nor Board's Circular (in the context of Service Tax Statute) was of any assistance to the Appellants. In both the cases, it was held that the value was to be determined under Rule 10A. It is their contention that this Rule nowhere refers to any third person as such, nor the expression in the manner it has been used, discloses any intention of the Legislature to the representation of any third party on behalf of the principal manufacturer.

19. To the objection of the ld. Senior Advocate that the copy of the "Trust Receipts" were not supplied to the Appellants and therefore, the principle of natural justice was not followed, the Spl. Counsel contended that the 'Trust Receipts' were not fake documents. He submitted that the Appellants cannot claim that they were not aware of the 'Trust Receipts' and the "Terms and Conditions", which had already been given to them in other proceedings.

20. The ld. Spl. Counsel further submitted that that no competent Court has declared Rule 10A as ultra vires. He submitted that Rule 10A is not an Order passed by the ld. Commissioner nor even by CBEC, but made by the Central Govt., and CESTAT cannot declare Rule 10A as ultra vires the Act.

21. After hearing both sides, we find that the issue involved in these Appeals is regarding determination of assessable value of the goods namely, motor vehicles cleared by the Appellants to the Depot of TML pursuant to the chassis supplied to them free of cost, by TML. It is the contention of the Revenue that the assessable value is to be determined under Rule 10A of the Central Excise Valuation Rules, 2000, whereas the appellants contention is that the value is to be determined under Rule 6 of the Valuation Rules read with Section 4(1)(a) of the Central Excise Act, 1944.

22. We find that Rule 10A of the Central Excise Valuation Rules, was inserted in the said Valuation Rules with effect from 01.04.2007, which 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, -
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> (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.]"

23. On going through Rule 10A, we find that this Rule provides the method of Valuation for determination of excise duty in respect of the goods manufactured on job work basis. For the purpose of Valuation Rules, job worker has been defined in the Explanation to Rule 10A. It is pointed out by the Revenue that the issue involved in the present Appeals, is identical to the cases decided by the Tribunal in the case of Audi Automobiles vs. CCE, Indore, 2010(249) ELT 1242(Del.) and the decision of the Tribunal in case of Hyva India Pvt. Ltd. decided by the C.E.S.T.A.T. Mumbai, vide its Order 478-486/2009-EX(PB), dated 21.05.2009. On going through the said decisions, we find that the Tribunal, after considering the submissions with regard to the applicability of the Supreme Court's judgment in the case of Prestige Engineering (I) Ltd. vs. CC (supra)

and the Board's clarification in respect of service tax matter, held that the activity of the assessee is squarely covered by Rule 10A and not under Rule 6 of the Valuation Rules.

24. The relevant paragraph of the decision in case of Audi Automobiles (supra) has been reproduced by the Tribunal, Mumbai in case of Hyva India (supra), which is reproduced below:-

> "16. Considering the facts of the said case and the context in which the expression 'job work', had been understood and explained by the Apex Court in Prestige Engineering (India) Ltd., it cannot be said that the Apex Court has ruled that the expression 'job work', in every provision of law is to be understood irrespective of the context in which the same is used therein. Learned DR is right in contending that the decision of the Apex Court was in the facts of that case and particularly with reference to the context in which the said expression was used in the said notification.
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> 17. Rule 10A undoubtedly speaks of work on behalf of the principal manufacturer. It does not use the expression "for" the manufacturer. In that connection as said earlier, attention was drawn to the provisions relating to the service tax and the circular issued by the Board. The circular dated 18th July, 2007 issued by the Board refers to service tax liability in respect of common biomedical water treatment facility when such activity falls under the category of business auxiliary service. It was clarified by the Board that the incineration/shredding of bio-medical waste can by no stretch of imagination, be called as "processing of goods", even if in certain cases the shredded materials may be used as fillers etc. Further, the activity also does not qualify to be called as 'provision of service on behalf of the client. It was in a case of taxable activity falling within the category of 'business auxiliary service' while the 'client' is obliged to provide some service to a 3rd person but instead of the client providing such service, the service provider provides such service to the 3rd person, on behalf of the client: i.e. "acting as an agent of the client". With this observation it was opined that it would not fall under business auxiliary service or any other existing taxable services.
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> 18. Apparently, the Board's opinion was in relation to the service tax matter. It was in relation to the activity which was in question and to ascertain whether it would fall under the category of 'business auxiliary service' or not. In that regard, the expression 'provision of service on behalf of the client' and more particularly the term, "on behalf of" was sought to

be explained by the Board. The explanation in relation to such expression used in a provision in a particular taxing statute cannot be straightway applied to understand the meaning of the similar expression used in a different statute, more particularly ignoring the context in which it is used. If we read Rule 10A, the expression "on behalf of" used therein, it is obvious that it clearly refers to the principal manufacturer and not to any third person. The said expression has nothing to do with the representation to any third party on behalf of the principal manufacturer. The said expression has been used to refer to the job work and vis-a-vis the principal manufacturer in respect of such job work. In this context, it would also be worthwhile to take note of the definition of the term "manufacture" and 'manufacturer' found in Section 2(f) of the said Act. Considering the same, it is evident that the expression 'on behalf of' used in Rule 10A denotes the manufacturer of the excisable goods. The said expression cannot be understood in a manner sought to be argued on behalf of the appellants that it would refer to representation to the third party on behalf of the principal manufacturer in relation to the product manufactured. This is further clear from the explanation to Rule 10A. The explanation clearly states that the person engaged in the manufacture of 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 authorized by him would be a job worker. In other words, the person who manufactures or produces the goods for or on behalf of the principal manufacturer is a job worker. Being so, it is difficult to agree with the contention canvassed on behalf of the appellants that the use of the expression "on behalf of" would reveal that in order to be a job worker he has to be a representative of or on behalf of the principal manufacturer to the third party in relation to the manufacture of excisable goods. The rule nowhere refers to any third person as such nor the expression in the manner it has been used discloses any intention of the Legislature to the representation to any third party on behalf of the principal manufacturer.

19. In the circumstances, therefore, neither the decision of the Apex Court nor the circular of the Board is of any assistance to the appellants to drive home their contention with reference to either the expression 'job worker' or the expression 'on behalf of' in Rule 10A.

20. It is also pertinent to note that the contention on behalf of

the said firms is that they are the sub-contractors in relation to the body building activity of the motor vehicle. The purchase order to which our attention was drawn, also refers to the expression sub-contracting. With reference to the same it was sought to be contended that there was a contract between the manufacturer of chassis and the said firms in relation to the manufacture of body building for the purpose of fabricating and mounting on the chassis manufactured by the chassis manufacturer. However, no copy of any such agreement has been placed on record nor it appears to have been made available to the Commissioner before passing the impugned order. The purchase order also refers to terms and conditions but it states that the same are printed overleaf. However, the copies of the purchase order placed on record do not disclose any of the terms and conditions having been printed on those purchase orders either on the front page or overleaf. Though we need not draw adverse inference for failure on the part of the appellants in this regard, yet it is not possible to ignore the same totally while dealing with the matter, as the issue involved clearly required the appellants to establish therein contention that they are the sub-contractors as claimed by them. If the document in the form of invoice was merely to disclose sale of fabrication and mounting of the body on the chassis and that the motor vehicle is ultimately to be the product saleable by the manufacturer of chassis, it was required for them to establish the same with cogent materials. The records nowhere disclose any justification for non-production of the said documents i.e. the contract and terms and conditions in relation to the purchase order. It is however clarified by the learned Counsel for the appellants that the appellants had not specifically raised before the original authority the point about the said firms being sub-contractors and therefore had no occasion to produce the said documents and the arguments by the appellants in relation to this point are in an answer to what has been submitted on behalf of the department and in that context it is contended that the work by the said firms was in the nature of sub-contract. Therefore, the appellants cannot be accused of any suppression of documents. As already observed, we are not drawing any adverse inference for non-production of the documents. We have only observed that once it is sought to be contended that Rule 10A will have no application in the facts of the case, it was for the appellants to produce relevant documents like the invoice and agreement which would support the case putforth by the appellants. In that context in our considered opinion it was necessary for

the appellants to disclose the nature of the understanding between the manufacturer of chassis and the said firms, and in case, such understanding was in the form of writing, to place on record the document in that respect.

21. In the facts and circumstances of the case, it is difficult to accept the contention that the work entrusted to the said firms was not to a job work within the meaning of expression under Rule 10A or that it was not the work on behalf of the principal manufacturer. In the facts and circumstances of the case, it is apparent that the said firms had cleared the goods in relation to the body fabricating and mounting on the chassis which were supplied to the said firms free of cost by the manufacturer of chassis. Being so, the activity for the purpose of valuation would squarely fall under Rule 10A and not under Rule 6. We, therefore, do not find any illegality in the impugned order as far as the demand of duty and interest payable thereon from the appellants."

25. It is evident from the above quotation, that the reliance on the Circular issued by the CBEC in respect of the service tax matters and the reliance on the decision in Prestige Engineering India Ltd. (supra) were considered by the Tribunal in the case of Audi Automobiles (supra) and followed by the Tribunal in case of Hyva India Pvt. Ltd.(supra) and these submissions were not accepted by the Tribunal.

26. Ld. Senior Advocate for the Appellants also relied on the following decisions to prove his case that the body is sold, its sale as per Sale of Goods Act

Patnaik & Company Vs. State of Orissa 1965 (16) STC 364 (SC) ;

Machenzies Ltd. Vs. State of Maharastra :1965 (16) STC 518 (SC) ;

Commr. of Commercial Taxes Vs. M.G. Brothers :1975 (35) STC 24 (SC) ;

Pothula Subba Rao Vs. State of A. P. : 1972 (30) STC 69 (AP) ;

Jiwan Singh & Songs Vs. State of Punjab :1963 (14) STC 957 (P & H) ;

Commissioner of Sales Tax Vs. Haji Abdul Majid & Songs : 11963 (4) STC 435.

All these decisions were in respect of the dispute with regard to the levy of sales tax in respect of the body-built chassis. As against this in the present case, the issue involved is determination of the value of the body-built vehicles and not the chassis. According to Chapter Note: V of Chapter 87 of the Central Excise Tariff, building of body or fitting of a structure or equipment on the chassis falling under Heading 8706, amounts to manufacture of motor vehicles. We find that there is no sale of

motor vehicles by the appellants either to TML or to any other customers. These vehicles were for the first time sold by TML from their depots and therefore, the clarification that the appellants sold the body, is of no help to them. We find that the chassis were supplied to the appellants free of cost. On fabrication of components of the body, it results into emerging a final product namely, motor vehicle which is distinct from the chassis. Since the said motor vehicles were not sold by the appellants and sold for the first time by TML, the value was to be determined in this case under Rule 10A of the Central Excise Valuation Rules, which provided for determination of value of the final products manufactured on behalf of the principal manufacturer.

27. The Appellants contended that Rule 10A is attracted only when goods are manufactured "on behalf of", as the transaction between TML and the Appellants was on principal-to-principal basis, and hence, Rule 10A is not applicable. They have relied on the following decisions in cases of Basant Industries, Mahavir Metal Industries, Poona Bottling Co. Ltd. & Anrs., Spencer and Co. Ltd., Steel City Beverages Pvt. Ltd. We find that the issue involved in these decisions, was regarding applicability of exemption Notifications viz.85/72, 176/77, 211/77 etc. Thus, we find that the interpretation of words, "on behalf of", was not in respect of interpretation of Rule 10A, which was not in fact, in existence at that time. Therefore, these decisions are distinguishable from the facts of the present Appeals.

28. The ld. Senior Advocate for the Appellants also relied on the Patna High Courts decision in case of Tata Engineering and Locomotive Co. Ltd., which was in respect of body builders. It is noticed that in the said case, show cause notices were issued demanding duty on the Principal, M/s. Tata Engineering and Locomotive Co. Ltd. and not from the body builders, while in the present case, the duty has been demanded from the Appellants and not from TML. Moreover, when the decision was passed, Rule 10A was not in existence. Therefore, we are of the view that the ratio of the said decision is not applicable to the present case.

29. The Appellants have further relied on the decision of the Tribunal in the case of CCE vs. Innocorp Ltd. (supra), which is in respect of interpretation of Rule 10A. It is the contention of the Appellants that according to the Tribunal, for applicability of Rule 10A, three requirements should be satisfied. Assessee should manufacture or produce goods; he should do it on behalf of the principal manufacturer and he should do it from any inputs or goods supplied by the principal manufacturer or by any other person. After going through the said judgment, we find that in case of Innocorp (supra), they were manufacturing goods for M/s. Tupperware and selling goods to them for a price at arm's length on principal-to-principal

basis. The Tribunal held that the second requirement i.e. "on behalf of", was not satisfied in this case. It is further held that the third requirement of manufacture by the Appellants from any inputs or goods supplied by the principal manufacturer was also not satisfied. We, however, find that the facts involved in case of Innocorp (supra), are not the same to the fact of the present case, inasmuch as in case of Innocorp (supra), they were purchasing/procuring all the materials and M/s. Tupperware were giving only the moulds. The assessee had paid the excise duty on sale price of the final products i.e. kitchenwares, plus amortized cost of moulds, under Section 4 read with Rule 6. As against this, in the present case, the present Appellants had not purchased/procured all the materials. In fact, the chassis whose value comprises of about 80% of the cost of the vehicles, were supplied to them free of cost. Besides, in the present case, the Appellants had not sold their final goods to TML, but merely transferred them to the Depots of TML. Therefore, no sale of final goods is involved in the present case. In view of these facts, the present case is not squarely covered by the decision in case of Innocorp (supra).

30. The ld. Sr. Advocate for the Appellants had also submitted that the use of the expression, "from any inputs", means – "out of the inputs supplied by the principal manufacturer". He referred to the Black's Law Dictionary (Vol.III page 49-50), wherein the meaning, "from" is "out of". He further submitted that the expression "any" refers to "all" as per Venkataramaiya's Law Lexicon (Vol.III, Pages 54-56). It is the contention that as in the present case, all the materials are not supplied to the appellants by TML and that the appellants used their own materials to manufacture body. In view of the Explanation given below Rule 10A, their case is not covered by Rule 10A. In this regard, we find that the Apex Court in case of Shri Balaganesan Metals vs. M. N. Shanmugham Chetty and Others, (1987) 2 Supreme Court Cases 707, held that the word, "any" has a diversity of meaning and may be employed to indicate "all" or "other" as well as "some" or "one". We, therefore, find that it is not necessary that all the materials should be supplied and even if some of the materials are supplied, then in that case, it will satisfy the meaning of the expression, "any" used in the Explanation to Rule 10A.

31. As regards the Appellants' contention that they were not given a copy of the "Trust Receipt" and in cases where the copy of the "Trust Receipt" was provided, the said Receipt did not relate to the said case, we find that from this "Trust Receipts" , the ld. Commissioner in his Order observed that the Appellants held chassis in trust, supplied by entruster for the sole purpose of

constructing body, to mount the same thereon and strictly returned the same (to RSO of TML) after mounting the body. The trust receipt denied the assessee the liberty to place or sells the same. We find that these Trust Receipts do not disclose any new evidence. Moreover, the Appellants do not dispute that as per Purchase Order placed to them by TML, the same Appellants were to fabricate and the body on the chassis supplied to them free of cost and returned the same after building the body to RSO of TML. However, as the copies of the Trust Receipts were not supplied to the Appellants, while issuing the show cause notice, we are restricting our observations on the basis of the facts, which have not been disputed by the Appellants.

32. The Appellants have quoted the Board's Circular in the matter of service tax to explain that in their case, all the ingredients of Rule 10A particularly, relating to manufacture "on behalf of", were not fulfilled. However, we find that after introduction of Rule 10A, the Board, vide Circular No.902/22/2009-CX dated 20.10.2009, specifically clarified that where manufacturers of motor vehicles are getting building materials for the vehicles manufactured by sending the chassis of the motor vehicles to independent body builders for completing the body, as per the design/specification of the manufacture, the assessable value for the purpose of charging Central Excise duty, where the job workers are transferring the excisable goods to the depots/sales office/distributors for any other sale by the principal manufacturer, shall be the transaction value, on which the goods are sold by the principal manufacturer from such place.

33. Ld. Advocate has submitted that Rule 10A is in contravention of the provisions of Section 2(f), Section 3 and Section 4 of the Central Excise Act, 1944. In this regard, we find that as per Chapter Note V in Chapter 87 of the Central Excise Tariff, building or fitting of a structure or equipment on the chassis falling under Chapter Sub-Heading 8706 amounts to manufacture of motor vehicles. Therefore, the Appellants being manufacturers of vehicles, there is no contravention of Section 2(f) and Section 3 of the Central Excise Act, 1944 in demanding the duty from them. We find that according to Section 4(1)(a), the transaction price at which the goods are sold, is to be taken as the assessable value on which duty is payable. However, in the present case, the Assessees/Appellants have not sold the goods namely, motor vehicles, as provided in Section 4(1)(b) of the Act, the value is to be determined in such manner, as may be prescribed. For this purpose, Valuation Rules have been framed and Rule 10A has been inserted in the said Rules with effect from 01.04.2007, to determine the value in such cases, in our opinion, there is no contravention of the provisions of Section 4. We further

find that the identical issue has been decided by the two Co-ordinate Benches of the Tribunal in case of Audi Automobiles and Hyva India Pvt. Ltd.(supra).

34. We find that in support of his arguments that duty is payable only on the job charges in these cases, the ld. Advocate has cited various case law in case of Atic Industries Ltd., Bombay Tyre International Ltd. and Ujagar Prints (supra), we find that these judgments relate to a period when Rule 10A was not existence and therefore, they are distinguishable from the facts of the present case.

35. We are, therefore, of the view that in the light of the decision of the Tribunal in Audi Automobiles & Others and M/s. Hyva (India) Pvt. Ltd. (cited supra) and the facts of the case discussed as above, the value of the goods supplied by the appellants, is to be determined under Rule 10A of the Central Excise Valuation, 2000 and not under Rule 6. We, therefore, do not find any infirmity in the impugned Orders-in-Original with regard to the valuation of the goods under Rule 10A of the Valuation Rules.

36. Ld. Advocate has referred to the Affidavits filed by the respective Appellants wherein they have challenged the computation of demand. In the said Affidavits, it has been stated that while computing the demand, the sale price of RSO had been considered as assessable value, and the duty was accordingly calculated. It is their submission that if the sale price from RSO is considered as cum-duty price, then the demand would be reduced drastically. We find force in the argument of the ld. Advocate for the Appellants. Needless to mention, in view of the Explanation to Section 4(1) of Central Excise Act, 1944, the selling price from RSO ought to be considered as cum-duty price and the element of excise duty, sale tax etc. in-built in the sale price, ought to be considered in arriving at the assessable value. Accordingly, the ld. Commissioner is directed to consider the RSO price as cum-duty price, if not considered earlier in computing the demand, and the demand be arrived at, accordingly.

37. Ld. Advocate in relation to the Appeal No.179/10 (M/s. Hyva India Pvt. Ltd.) referred to a letter dated 26.04.2007, wherein the said Appellant has informed the Department about the determination of value of body-built vehicles on the supplied chassis post 01.04.2007. We find from the observation of the ld. Commissioner that no finding has been recorded on the said letter in recording suppression of facts. In relation to the other Appeals which are taken up together, it is not clear as to whether, in all such Appeals, similar letters were addressed to the Department indicating the method of assessment to be followed on body-built vehicles after 01.04.2007 by the

respective Appellants. In absence of scrutiny of the relevant records, it would be difficult to arrive at a conclusion that the Department has been communicated by the respective Appellants about the method of assessment of body-built vehicles on supplied chassis after 01.04.2007 and hence, there is no suppression of facts involved. In our opinion, therefore, it is prudent to remand the Appeals to the ld. Commissioner for examining the aspect of suppression of facts in the light of said communication and other evidences, if any, and applicability of extended period of limitation, wherever the demand has been confirmed invoking extended period of limitation. Consequently, the penalty be determined in such cases, keeping in view the principle relating to imposition of penalty, as observed in the case of Audi Automobiles vs. CCE, Indore [(2010(249)ELT 124). However, wherever the demand is for the normal period, we are of the view that there cannot be any question of imposition of penalty, in view of the judgment in Audi Automobiles' case.

38. In these circumstances, we remand the case to the Adjudicating Authority to the extent, as discussed above. Needless to mention that an opportunity of hearing should be granted to the appellants before deciding the aforesaid issues, afresh.

39. Appeals are accordingly disposed of on above terms.

(pronounced on 22.05.2014)