सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(85)06/EA-2/Ahd-South/2018-19 / 10883 to 10887

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-013-2019-20**
दिनाँक Date : **23-05-2019** जारी करने की तारीख Date of Issue 03/06/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

ग Arising out of Order-in-Original No. **2 to 4/ADC/2008** दिनाँक: **10.01.2008** issued by Addl. Commissioner, Ahmedabad -I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Electronics Instrumentation & Control
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील'** दाखिल करने **के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

This Order-in-Appeal is being issued based on the below mentioned directions of the Hon'ble CESTAT, West Zonal Bench, Ahmedabad, vide Order No. A/10303/2018 dtd 8.2.2018 in the case of M/s. Electronics Instrumentation and Control, Plot No. 436, Phase-II, GIDC, Vatwa, Ahmedabad against OIA No. 124/2008(Ahd/CE/ID/Comr(A) dated 15.7.2008

> *4. We find that the Commissioner (Appeals) has confirmed the demand by observing as follows: -*
> *"I have noticed that from the above Board's Circular No. 619/10/2002-CX dated 19.02.2002, Rule 6 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000, Section 4(1)(a) and Section 11A of the Central Excise Act, 1944 is very clear that the cost of materials, components, parts and similar items relatable to such goods are includible in the price of manufactured goods which are sold to the buyer. It appears that the respondent has mis-interpreted the above Rules, Sections and Board's Circular."*
>
> *It is seen that the Commissioner (Appeals) has solely relied on the Board's Circular and totally ignored all other submissions made by the appellant. In these circumstances, we find that the order of the Commissioner (Appeals) is not a speaking order. Consequently, we set aside the impugned order and allow the appeal by way of remand for passing a speaking order after following the principles of natural justice.*

2. Briefly, the facts of the case is that M/s. Electronics Instrumentation and Control, [for short – 'respondent'] engaged in manufacturing and selling electronic control panel to M/s. Ingersoll Rand, was issued show cause notices dated 13.2.2007, 30.3.2007 and 13.9.2007, covering the period from June 2002 to March 2007, *inter alia* alleging that M/s. Electronics Instrumentation and Control, was clearing electronic control panel by not including the price of parts, received from M/s. Ingersoll Rand, in the assessable value/Transaction value. The show cause notices therefore demanded Rs. 30,38,555/- along with interest and proposed penalty on the respondent. These notices were adjudicated vide OIO No. 2 to 4/ADC/2008 dated 10.1.2008 wherein the Additional Commissioner, Central Excise, Ahmedabad-I Commissionerate [for short – 'adjudicating authority'] set aside the demand by relying on the case of International Auto Limited [2005(183) ELT 239].

2.1. Feeling aggrieved, the Commissioner, Central Excise, Ahmedabad-I, authorized the Assistant Commissioner, Division III, Ahmedabad-I to file an appeal before the Commissioner(Appeals). Consequently an appeal was filed raising the following grounds:

- that the findings of the adjudicating authority was not correct;
- that valuation is to be done in terms of Section 4(b) of Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of the price of excisable goods), Rules, 2000;
- that the buyer of respondent viz. M/s. Ingersoll Rand had supplied process instrument and other electrical and electronic parts to be fitted in the control panel board manufactured by the Electronics Instrumentation and Control under job work challan; that in terms of Rule 6 *ibid*, the money value of the parts, supplied under job work is to be included in the Transaction Value;
- that they wish to rely on the case of Ujagar Prints [1988(38) ELT 535 (SC)] and Pawan Biscuits P Ltd [2000(120) ELT 24(SC);
- that the matter is also clarified by the Board vide its circular no. 619/10/2002-Cx datd 13.2.2002.

2.2. This departmental appeal was decided vide OIA No. 124/2008(Ahd/CE/ID/Comr(A) dated 15.7.2008, by the then Commissioner(Appeals), wherein he allowed the departmental appeal. The Hon'ble Tribunal's order dated 8.2.2018, is against this OIA wherein as is already mentioned in para 1, *supra*, the matter has been remanded back to the Commissioner(Appeals).

3. Personal hearing in the matter was held on 21.5.2019, wherein Shri Kirtikumar Buch, Partner of the respondent appeared before me and explained the case. He further pleaded that the impugned OIO dated 10.1.2008, should be upheld.

4. I have gone through the facts, the grounds raised by the department, the written submissions, raised by the respondent and the directions of the Hon'ble Tribunal vide its order dated 8.2.2018. I find that the issue to be decided in this matter is the valuation of job work goods and consequently whether the adjudicating authority was wrong in setting aside the demand.

5. The departmental appeal while relying on the circular dated 13.2.2002 and two judgements contends that the respondent was supposed to add the money value of the parts supplied by M/s. Ingersoll Rand, the buyer of the respondent, in the Transaction value in terms of Section 4(b) of Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of the price of excisable goods), Rules, 2000.

6. Circular no. 619/10/2002-Cx dated 13.2.2002, clarified as follows: [relevant extracts]

Subject : Valuation of goods manufactured on job-work

I am directed to say that a number of representations have been received from the trade as well as the Commissioners on the method of valuation of goods manufactured on job-work basis after the introduction of the new valuation provisions w.e.f. 1-7-2000.

2. The matter has been examined by the Board. It is observed that the system of getting goods manufactured on job-work basis is not new. Under the provisions of the earlier section 4 and the Rules made there under the matter has been finally decided by the Apex Court in the case of Ujagar Prints Ltd. [1989 (39) ELT 493 (SC)] and the case of Pawan Biscuits Co. Pvt. Ltd. [2000 (120) ELT 24 (S.C.)]. It was clearly held that in respect of goods manufactured on job-work basis, assessable value would be the job charges (including the profit of the job-worker if not already included in the job-charges) plus the cost of the materials used in the manufacture of the item (including the cost of the materials supplied free of cost to the job-worker). The assessable value in such cases will not include the profit or the expenses (like advertisement and publicity, overheads etc.) incurred by the buyer (or the supplier of the raw materials), where the dealing between the two are on principal to principal basis. The mere fact that the buyer is supplying some raw materials free of cost to the job-worker, will not be sufficient ground to contend that the dealings between the two are not at arms length. Goods manufactured on job-work were earlier assessed under the residuary Rule 7 of the erstwhile valuation Rules of 1975 read with rule 6(b) read with the Apex Court decisions referred to above.

3. Under the new valuation provisions, introduced with effect from 1-7-2000, there is no departure from the principles laid down by the Apex Court in the above two decisions, in respect of goods manufactured on job-work basis. In other words goods manufactured on job-work basis after 1-7-2000 will continue to be valued in the same manner as they were being valued before 1-7-2000. In other words, after 1-7-2000, in respect of goods manufactured on job-work basis, valuation would be governed by Rule 11 of the new valuation Rules of 2000 read with rule 6 read with the above two decisions of the Apex Court.

[emphasis added]

7. In the case of Ujagar Prints [1988(38) ELT 535 (SC)] it was held as follows:

30. In the case of processing-houses, they become liable to pay excise duty not because they are the owners of the goods but because they cause the 'manufacture' of the goods. The dimensions of the Section 4(1) (a) and (b) are fully explored in a number of decisions of this Court. Reference may be made to the case of Bombay Tyres International.

Consistent with the provisions of Section 4 and the Central Excise (Valuation) Rules, 1975, framed under Section 37 of the Act, it cannot be said that the assessable-value of the processed fabric should comprise only of the processing-charges. This extreme contention if accepted, would lead to and create more problems than it is supposed to solve; and produce situations which could only be characterised as anomolous. The incidence of the levy should be uniform, uniformed by fortuitous considerations. The method of determination of the assessable value suggested by the processors would lead as to the untenable position that while in one class of Grey-fabric processed by the same processor on bailment, the assessable-value would have to be determined differently dependent upon the consideration that the processing-house had carried out the processing operations on job-work basis, in the other class of cases, as it not unoften happens, the goods would have to be valued differently only for the reason the same processing-house has itself purchased the Grey-fabric and carried out the processing operations on its own.

It is to solve the problem arising out of the circumstance that goods owned by one person are "manufactured" by another that at a certain stage under Rule 174A, a notification was issued by the Central Government exempting from the operation of the Rule 174A

"..... every manufacturer who gets his goods manufactured on his account from any other person, subject to the conditions that the said manufacturer authorises the person, who actually manufactures or fabricates the said goods to comply with all procedural formalities under the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made there under, in respect of the goods manufactured on behalf of the said manufacturer and, in order to enable the determination of value of the said goods under Section 4 of the said Act, to furnish information relating to the price at which the said manufacturer is selling the said goods and the person so authorised agrees to discharge all liabilities under the said Act and the rules made there under."

31. On a consideration of the matter, the view taken in the matter in the Empire Industries case does not call for reconsideration. Contention (e) is also held and answered against the petitioner.

In the case of Empire Industries [1985 (20) ELT 179 (SC)], it was held as follows:

47. It was contended on behalf of the petitioners that they are carrying on only the processing activity and the wholesale cash price is not theirs on the entire product. Section 4 of the Act is the section which deals with the valuation of excise goods for the purpose of charging duty of the same would be applicable. Where for the purpose of calculating assessable profits, a notional and conventional sum is laid down by the legislature to be arrived at on a certain basis, it is not permissible for the courts to engraft into it any other deduction or allowance or addition or read it down on the score that the said deduction or allowance or addition was authorised elsewhere in the Act or in the Rules. A conventional charge should be measured by its own computation and not by facts relating to other method of computation. The circumstances that thereby the benefit of any exemption granted by the legislature may be lost and that in some cases hardship might result are not matters which would influence courts on the construction of the statute. A tax payer subject is entitled only to such benefit as is granted by the legislature. Taxation under the Act is the rule and benefit and exemption, the exception. And in this case there is no hardship. When the textile fabrics are subjected to the processes like bleaching, dyeing and printing etc. by independent processors, whether on their own account or on job charges basis, the value of the purposes of assessment under Section 4 of the Central Excise Act will not be the processing charges alone but the intrinsic value of the processed fabrics which is the price at which such fabrics are sold for the first time in the wholesale market. That is the effect of Section 4 of the Act. The value would naturally include the value of grey fabrics supplied to the independent processors for the processing. However, excise duty, if any, paid on the grey fabrics will be given proforma credit to the independent processors to be utilised for the payment on the processed fabrics in accordance with the Rule 56A or 96D of the Central Excise Rules, as the case may be.

48. Read in that context and in the context of the prevalent practice followed so long until the decision of the Gujarat High Court in Real Honest case, there is no hardship and no injustice to the petitioners or the manufacturers of grey fabrics. The fact that the petitioners are not the owners of the end product is irrelevant. Taxable event is manufacture - not ownership. See In re The Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944 = (1964) 3 SCR 787 at 822.

49. The conclusion that inevitably follows that in view of the amendment made in Section 2(f) of the Central Excises and Salt Act as well as the substitution of new Item 19 I and Item 22(1) in Excise Tariff in place of the original Items, the contentions of the petitioners cannot be accepted. Section 3 of the Central Excises and Salt Act clearly indicates that the object of the entries in the First Schedule is firstly to specify excisable goods and secondly to specify rates at which excise duty will be levied. Reference has already been made to Rule 56A. Under sub-rule (2) of the Rule 56A, it is expressly provided that a manufacturer will be given credit of the duty which is already paid on the articles used in the manufacture subject to certain conditions. It is stated before us that excise duty will be charged on processed printed material.

Processors will be given credit for the duty already paid on the grey cloth by the manufacturer of the grey cloth. In this view of the matter we are of the opinion that the views expressed by the Bombay High Court in the case of New Shakti Dye Works Pvt. Ltd. and Mahalakshmi Dyeing and Printing Works v. Union of India and Anr. (Writ Petition Nos. 622 and 623 of 1979) = 1983 E.L.T. 1736 (Bom.) are correct. The views expressed by the Gujarat High Court in Vijay Textiles v. Union of India in so far as it held that the processed fabrics could only be taxed under residuary entry and not under Item, 19 I or Item 22 of the First Schedule of the Central Excise Tariff cannot be sustained.

***50.** We are also unable to accept the view of the Gujarat High Court in the case*

7.1 In the case of Pawan Biscuits P Ltd [2000(120) ELT 24(SC), it was held as follows:

16. The present case is similar to Ujagar Print's case. In Ujagar Prints' case, it was the grey cloth which was given to the processor whereas in the present case it was the raw material for the manufacture of biscuits given to the appellant. After the biscuits are made, they are given back to or are delivered under the instructions of Britannia. The appellant was entitled to receive processing charges which include its expenses plus profits for the purpose of determining the excise value. However, the cost of the raw material supplied by Britannia will have to be included in addition to the appellant's manufacturing costs and profit. What cannot be included on the ratio of Ujagar Prints' case is any profit of Britannia or expenses which are incurred after the manufacture of the biscuits by the appellant. Despite repeated attempts made by the learned counsel for the respondent, we are unable to distinguish this case from the ratio laid down by this Court in the aforesaid two decisions of Ujagar Prints' case.

8. Hence, it is amply clear that the valuation in respect of goods manufactured on job-work basis, the assessable value would be the job charges (including the profit of the job-worker if not already included in the job-charges) plus the cost of the materials used in the manufacture of the item (including the cost of the materials supplied free of cost to the job-worker). Further, as is mentioned in the Circular, in respect of goods manufactured on job-work basis, valuation would be governed by Rule 11 of the new valuation Rules of 2000 read with rule 6 read with the above two decisions of the Apex Court.

9. The respondent in his written submission dated 8.7.2008, submitted before the then Commissioner(Appeals) has contended that the control panel has been manufactured and sold by them to the buyer on payment of excise duty; that it is therefore not manufacture on job work but manufacturing *per se*; that certain instruments which are a part of the control panel were sent free by the buyer purely as job work simpliciter i.e. merely for fitment to the manufactured control panel; that non process were carried out on the instruments forwarded free by virtue of which a new product distinguishable and separately identifiable product emerges; that the activity of fitment is job work simpliciter and not manufacture - as job work. The appellant has also relied upon two decisions viz. Empire Dyeing and Manufacturing Company Ltd [1977(1) ELT J 34(Bom)] and Parle Products ltd [1994(74) ELT 492(SC)]. The appellants contention clears the fact that the buyer M/s Ingersoll Rand had supplied them certain instruments/goods free of cost which was fitted in the control panel supplied to M/s. Ingersol. The dispute is that the value of the instrument supplied free of cost was not a part of the Transaction Value while discharging duty. The respondent's contention, I find lacks merit. The situation/present dispute is squarely covered in the circular dated 13.2.2002. Let me examine the reliance of the respondent to the case law Empire Dyeing and Manufacturing Company Ltd [1977(1) ELT J 34 (Bom)]. These case law deals with manufacture. I do not think that the dispute herein is relating to manufacture. The present dispute at the cost of repetition is whether the cost

of free supply by the buyer, would form a part of the assessable value. I do not find these case laws to be applicable to the present dispute, the facts not being same.

10. The respondent has in the written submissions stated that the case law of Ujagar Prints, *ibid*, is not applicable to the present dispute since they did not cause the manufacture of the control panel out of instruments supplied by the customer; that the control panel was made from the materials purchased by them; that it is out of their own materials that control panel has emerged as a distinct product; that they have taken their own material cost, manufacturing cost and profit margin within the value of control panel. With regards to the departmental appeal relying on the case of Pawan Biscuit, *ibid*, the respondent states that the case law is not applicable to the present dispute since the biscuits were manufactured from raw materials supplied by the customer. The appellant's argument on both counts is not tenable. As far as applicability of Ujagar Prints and Pawan Biscuit are concerned, both specify the manner for valuation in case of goods received for manufacture in case of job work. There is no dispute to the fact that the appellant was also receiving some goods on job work and was also purchasing some goods both of which were used in the making of control panel. The dispute is how to arrive at the valuation of such control panel, which *inter alia* uses goods received on job work along with goods purchased by the respondent. The valuation aspect is very aptly explained by the judgements and the Circular reproduced supra. Following the rationale of the circular and the judgements, I allow the departmental appeal. Further, the reliance of the adjudicating authority on International Auto Limited, ibid, while setting aside the demand is also not legally correct in view of the fact that the dispute in International Auto was in respect of the period when the present valuation rules were not in vogue.

11. In view of the foregoing, I pass the following order:

[a] I hereby confirm the central excise duty of Rs. 30,38,555/- [including education cess] and order to recover the same from the respondent under the provisions of Section 11A of the Central Excise Act, 1944;
[b] I order to recover the interest at the appropriate rate on Rs. 30,38,555/- under the provisions of section 11AB of the Central Excise Act, 1944;
[c] I impose penalty of Rs. 30,38,555/- on the respondent under the provisions of section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
प्रधान आयुक्त (अपील्स)

Date :23.5.2019
Attested

(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,
M/s. Electronics Instrumentation and Control,
Plot No. 436, Phase-II,
GIDC, Vatwa,
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division- III, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.