2026 INSC 858

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.10504-10506 of 2017

Audi Automobiles & Ors.
... Appellants

Versus

Commissioner of Central Excise and Service Tax, Indore
... Respondents

J U D G M E N T

K. VINOD CHANDRAN, J.

The issue raised in the above cases is in a narrow compass as to whether the extended period of limitation under the proviso to Section 11A is available to the Central Excise and Service Tax Department (for short, 'the Department').

2. We heard Ms. Charanya Lakshmikumaran, learned AoR appearing for the appellants and Ms. Nisha Bagchi, learned Senior Counsel appearing for the respondent-Department.

3. A preliminary objection was raised by Ms. Bagchi that the appeal would not come within the contours of Section 35L of the Central Excise Act, 1944, the issue agitated having no relation to any question involving the rate of duty of excise or to the valuation of goods for purposes of assessment. The learned Senior Counsel relied on ***SAIL v. Directorate General of Anti-Dumping & Allied Duties***[1] and ***Commissioner of Customs v. Motorola (India) Ltd.***[2].

4. In our opinion, the issue raised has an inextricable link with the value of goods for purposes of assessment, despite the same being held against the assessee and the controversy is also with respect to the extended period of limitation. The issue raised herein, of limitation under the proviso to Section 11A, is on the ground of the assessee having not wilfully misrepresented or wilfully suppressed the valuation of the '*body-built vehicle*', by reason of inclusion of only the cost of manufacture of chassis and not the assessable value declared by the manufacturer. True, the assessee could also have agitated the issue before the jurisdictional High Court, but we are not inclined to relegate the matter after almost a decade of the case pending before this Court, especially when value of goods for purposes of

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[1] (2017) 13 SCC 1
[2] (2019) 9 SCC 563

assessment is the core issue dealt with in the Show Cause Notice (SCN).

5. The appellants are engaged in body building of motor vehicles as a job work. The manufacturers entrust them with the chassis on which the body is built by the appellant. At the time of clearance of the chassis for the purpose of body building, excise duty is paid by the manufacturer on the valuation of the chassis, worked out in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which is 110 % of the cost of its manufacture. After completion of the body building, the completed motor vehicle, with the body built, is returned to the manufacturer and at the time of clearance by the job worker; the appellants herein, excise duty is computed after availing CENVAT credit of duty paid on the chassis, on the sum total of the cost of the manufacturer, the directly received raw materials, the job work charges and the profit of the job worker. The excise duty of the body built, is worked out on the basis of the actual cost of manufacture of chassis without adding 10% additional cost, which according to the assessee represents the profit margin of the manufacturer. The question arose as to whether 10% profit of the manufacturer, included first in terms of Rule 8 of the Valuation Rules; which is part of the value of the intermediate product i.e. chassis, can be deducted or not.

6. The submissions of the learned Counsel for the assessee is that the matter had been in a flux after the decision in ***M/s Ujagar Prints and Others (II) v. Union of India and Others***[3], as clarified in ***M/s Ujagar Prints and Others (III) v. Union of India and Others***[4]***.*** The matter was settled only by the decision of a Larger Bench of the Central Excise Tribunal (CESTAT) in ***Eicher Motors Ltd. v. Commissioner of Central Excise, Indore***[5]***.***

7. We are not convinced that the matter was settled by the larger bench of the CESTAT, since it followed ***M/s Ujagar Prints and Others (II)***[3] ***& M/s Ujagar Prints and Others (III)***[4]***,*** wherein a Constitution Bench answered a reference from ***Empire Industries v. Union of India***[6]***.*** The Tribunal held so in paragraph 10 and 11 as under: -

> ***10.*** *On a close reading of the above order in Ujagar Prints III it would appear that the clarification squarely covers the dispute involved in the instant case as to the assessable*

[3] (1989) 3 SCC 488
[4] (1989) 3 SCC 531
[5] 2008 (228) E.L.T. 43
[6] 1985 (20) ELT 179 (SC)

value of the chassis at the hands of Bhagirath as a job worker and the final goods i.e. a complete motor vehicle. If in the illustration given by the Supreme Court the value of grey cloth in the hands of processor is Rs.20/- and the value of the final product is Rs.30/- - comprising of the value of the grey cloth plus value of the job work plus the manufacturing profit and expenses, it would follow that the value of complete motor vehicle would be the value of chassis i.e.110% of the cost of manufacture, say, Rs.3,30,000/- plus value of the job work done by Bhagirath, say, Rs.1,00,000/- plus the manufacturing profit and expenses of Bhagirath, say, Rs.70,000/- again, that is, in all, Rs.5,00,000/- which would be the correct assessable value of the complete vehicle. The value of the complete motor vehicle cannot be arrived at de hors the additional 10% of the cost of manufacture which is part of the value of the intermediate product i.e. chassis. In other words, the assessable value of complete motor vehicle cannot be determined on the basis of the cost of chassis without including the additional 10% of the manufacturing cost of chassis, which is part of the statutorily fixed value of the chassis (in case of non-sale) in terms of Rule 8 of the Excise Valuation Rules.

***11.** Ujagar Prints II and Ujjagar Prings III came to be considered in CCE, Indore Vs. S. Kumars Ltd.-2005 (190) ELT 145 (SC). Referring to the former the Supreme Court observed that Ujagar Prints II was an unconditional* *approval of the ratio in Empire Industries and so far as processors are concerned, the assessable value of the processed goods would have to be the same whether they manufactured the goods and then processed it or process the goods given to them for job-work before returning the same to the manufacturer/owner. The common norm was the wholesale price. However, Ujagar Prints III introduced the concept of deemed price in place of wholesale price and to this extent Ujagar Prints III was a deviation from the formula approved earlier. Referring to the clarificatory order, it was observed: -*

> *This clarification, in fact, was a deviation from the formula approved in Empire Industries. <u>In other words, it was not the wholesale price at the merchant manufacturing stage which would be the assessable value of the processed goods, but the value of the processed fabrics on the basis of a deemed sale of the factory gate of the processor. The actual wholesale price was jettisoned in favour of a deemed sale price by the processor to the merchant manufacturer</u>.*
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> *[Underlining by us for emphasis]*

8. Before the CESTAT, it was argued that ***M/s Ujagar Prints and Others (II)***[3] **&** ***M/s Ujagar Prints and Others (III)***[4] only declared that the value of the raw materials, the processing charges and profits of the job workers were to be added to the cost of the chassis and specifically clarified that the profits of the manufacturers (traders' profits therein); who gets the body built (who gets the fabrics processed), need not be added because those would be post manufacturing profits. Reliance was also placed on ***Pawan Biscuits Co. Pvt. Ltd. v. CCE***[7] and ***General Engineering Works v. CCE***[8]. Both these decisions were distinguished on facts by the larger Bench of the CESTAT.

9. ***Pawan Biscuits Co. Pvt. Ltd.***[7] manufactured biscuits on job work basis for Britania, using the raw materials supplied by Britania. The relationship between the parties, as per the agreement, was that of principal and principal and not principal and agent. Especially since ***Pawan Biscuits***[7] was at liberty to manufacture and sell biscuits under other brands. However, it was held that assessable value of biscuits manufactured by the assessee would include the cost of the raw material supplied by Britania in addition to Pawan Biscuits manufacturing cost and profit. However, the profit of Britania and expenses incurred by Britania after the manufacture of the biscuits would not be includable.

[7] (2000) 6 SCC 489
[8] 2007 (212) E.L.T. 295 (S.C)

10. In ***General Engineering Works***[8], the question raised was with respect to waste/scrap being generated to the extent of 5%, when manufacturing '*points*' and '*crossings*' on behalf of the Railways, on job work basis, using the raw material supplied by the Railways. The issue was whether in computing the value of '*points*' and '*crossings*', the value of scrap had to be added.

11. The facts in both the cited decisions are quite distinct and not comparable to the present case, where the chassis manufactured is cleared on the assessable value of the chassis, being 110% of the cost of manufacture, in which event the 10% value definitely has to be included, when the job worker supplies the completed motor vehicle, with '*body built*' to the manufacturer, along with the value of the raw materials and expenses incurred by the job worker and profits generated in the job work. What was not includable, even as per ***M/s Ujagar Prints and Others (II)***[3] ***& M/s Ujagar Prints and Others (III)***[4] was the anticipated profit in sale of the completed motor vehicle by the manufacturer and the expenses incurred by the manufacturer after receipt of the competed vehicle from the job worker.

12. Hence, it is based on ***M/s Ujagar Prints and Others (III)***[2] that the finding was rendered. The assessee was liable to include 10% included in the valuation under Rule 8, on which the manufacturer pays duty at the time of supply to the job worker. When the job worker computes excise duty on the deemed sale, at its gate, that 10% has to be included since it has gone into the cost of the vehicle on which excise duty is already paid and credit utilised. Hence, we are not inclined to find that the matter was in a flux, since the Constitution Bench decision applied squarely. The Larger Bench of the CESTAT, meeting the submissions of the assessee regarding the various Tribunal decisions cited in their support, observed that it does not cut any ice; rightly so.

13. However, the issue also is with respect to the penalty that can be levied based on the extended limitation period under the proviso to Section 11A of the Act. Reliance can be usefully placed on the decisions in ***Larsen & Toubro Ltd. v. CCE***[9], ***Continental Foundation Joint Venture Holding v. CCE***[10], ***CCE v. Kolety Gum Industries***[11].

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[9] (2007) 9 SCC 617
[10] (2007) 10 SCC 337
[11] (2018) 12 SCC 245

14. ***Larsen & Toubro Ltd.***[9]***,*** was a case in which a SCN was issued proposing recovery of duty and levy of penalty without any allegation of suppression, which was later withdrawn and a second SCN on the same premise, for the same period, was issued with an allegation of suppression of facts, merely to invoke the extended limitation period. It was held that extension of the period of limitation entails both civil and criminal consequences and therefore reasons thereof must be specifically stated in the SCN, in the absence of which, the Court would be entitled to raise an inference that the case was not one where the extended period of limitation could be invoked. Isn the first SCN, there was no such allegation raised.

15. ***Continental Foundation Joint Venture Holding***[10] explained the words employed in the proviso to Section 11-A. It was held that as far as '*fraud'* and '*collusion'* are concerned, the intent to evade duty is built into these words and '*misstatement'* or '*suppression'* of facts are clearly qualified by the word '*wilful'*, which also means with an intent to evade duty. Even '*contravention of any of the provisions of this Act or Rules'* is also qualified by the immediately following words *'with intent to evade payment of duty'*. Therefore, there cannot be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for invocation of proviso to Section 11-A. Therein, on facts, it was found that there were circulars issued by the department, which were in favour of the assessee and the view expressed by the CEGAT in a case, was later held to be incorrect in a Larger Bench decision.

16. More importantly, for our purpose, it was held that *'when the facts are known to both the parties, omission by one party to do what he might have done would not render its suppression'*. In the instant case, we already noticed that the manufacturer cleared the chassis at 110% of its cost of manufacture, which was known to the Department. Hence, if 10% was not added when computing the duty at the time of clearance by the job worker, the department ought to have taken immediate action under sub-section (1). The proviso cannot be invoked to extend the period of limitation.

17. The order of the Tribunal which affirmed the order of the original authority and the appellate authority are set aside. We make it clear that the assessee's liability to include the entire cost price on which excise duty is paid by the manufacturer on supply of chassis for body building, at the time of its supply of the built motor vehicle is unassailable, which for the subject year is not leviable for reason of limitation having run to the peril of the revenue. The demand raised was for the period 01.11.2004 to 31.03.2007. The SCN dated 30.04.2008 was beyond the one-year period provided under Section 11-A (1).

18. The appeals are allowed.

19. Pending application(s), if any, shall stand disposed of.

.... J.
(J. B. PARDIWALA)

.... J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 13, 2026.