

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2694 OF 2006

Aurangabad Electricals (P) Ltd.

.....Appellant

Versus

The Commissioner of Central Excise and Customs,
Aurangabad

.....Respondent

WITH

**CIVIL APPEAL NOS.2420 OF 2006, 2693 OF 2006
AND 2691 OF 2006**

JUDGMENT

H.L. Dattu, J.

- 1) In this batch of civil appeals, the appellants have challenged the common order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai in Appeal No.A/2287-2290/WZB/MUM/2005/C-III/EB dated 20.12.2005.

- 2) By consent of the learned counsel, we have taken Civil Appeal No.2694 of 2006 as the lead case.
- 3) M/s. Aurangabad Electricals Ltd. (for short 'M/s. Aurangabad EL') are appellants in this civil appeal. They are engaged in the manufacture of Motor Vehicle Parts namely 'Magneto Assembly' in their factory at Aurangabad. For manufacture of their final product, viz. Magneto Assembly, they purchase some of the inputs, namely, 'Pick-up Coil', com bush, charging coil etc. from M/s. Bajaj Auto Ltd. (for short 'M/s. Bajaj') on which appropriate duty is paid by M/s. Bajaj. The appellants had submitted price declarations applicable to Magneto Assembly, which were accepted by the department.
- 4) The main issue involved in these appeals is the valuation of Magneto Assemblies cleared by the appellants – M/s. Aurangabad EL to M/s. Bajaj and consequent short payment of duty thereon on account of not taking into account the total landed cost of the inputs supplied by M/s. Bajaj.
- 5) The Commissioner, Central Excise and Customs, Aurangabad (for short 'the Commissioner'), issued a show cause notice dated 27.04.2001, inter-alia alleging that the appellants have

undervalued the Magneto Assemblies supplied to M/s. Bajaj during the period from April 1996 to December 2000. Accordingly, the appellant, M/s. Bajaj, Mr. Anil Mali, CEO of M/s. Aurangabad EL and Mr. Ranjit Gupta, Vice-President (Materials) of M/s. Bajaj were called upon to show cause as to why the differential duty specified in the notice should not be demanded and recovered under Section 11A of the Central Excise Act, 1944 (for short 'the Act') and why interest and penalty should not be imposed under Sections 11AB and 11AC of the Act. The show cause notice was also issued to Mr. Anil Mali, Chief Executive Officer of the appellant, M/s. Bajaj and Mr. Ranjit Gupta of M/s Bajaj were asked to show cause as to why penalty should not be imposed under Rule 209 A of the Central Excise Rules, 1944 (for short 'the Rules').

- 6) The appellants had replied the show cause notice, inter-alia, contending that they have not undervalued their final products namely, Magneto Assembly, since the same are cleared in wholesale trade in accordance with proviso (i) to Section 4(1)(a) of the Act. They had also contended that they had cleared the Magneto Assemblies in accordance with approved

price declarations and finalization of RT 12 return assessment. Therefore, show cause notice and the demands raised were barred by limitation under Section 11A(1) of the Act. The co-noticee, more or less on the same lines as the appellants, had objected to the show cause notice and had further submitted that the department has not produced any proof that the co-noticee was anyway connected with the alleged under-valuation of inputs which were cleared by M/s. Bajaj on payment of appropriate duty and it was also contended that the entire notice was based on assumption and presumption and, therefore, it could not be established that the co-noticee was concerned with the excisable goods which he knew or had reason to believe were liable for confiscation. It was further contended that since there was no undervaluation of excisable goods, no penalty could be imposed by invoking Rule 209A of the Rules.

- 7) After adjudication, the Adjudicating Commissioner passed an Order-in-Original No.04/CEX/2002 dated 25.01.2002, inter-alia holding that the inputs supplied to appellants by M/s. Bajaj were under-valued, and consequently, Magneto Assemblies supplied to M/s. Bajaj have been under-valued leading to

evasion of duty. It was also held that M/s. Bajaj was incurring expenditure on account of freight/insurance, loading/unloading and handling charges etc. which, along with profit margins, had not been included in the landed cost of the inputs supplied to appellants. Further, M/s. Bajaj were supplying drawings/designs/specifications free of cost to appellants and upto 20% of the production cost of goods manufactured which were sold back to M/s. Bajaj, was being incurred by M/s. Bajaj. The Adjudicating Commissioner, accordingly, confirmed the differential duty demand of `84,27,889/- under Section 11A(2) of the Act read with Rule 9(2) of the Rules, and penalty of `69,72,104/- under Section 11AC of the Act. The Adjudicating Commissioner also imposed a penalty of `5,00,000/- on M/s. Bajaj, as well as personal penalty of `50,000/- on Mr. Ranjit Gupta, Vice-President of M/s. Bajaj and `25,000/- on Mr. A.R. Mali, Chief Executive Officer of M/s. Aurangabad EL, under Rule 209A of the Rules. The Adjudicating Commissioner also directed the Deputy Commissioner, Central Excise, Aurangabad II division to quantify the interest payable under Section 11AB of the Act and issue appropriate demand notice.

8) The appellants and other co-noticees, being aggrieved by the aforesaid order, preferred appeals before the Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal') under Section 35B of the Act. The Tribunal, by its order dated 20.12.2005 has remanded the matter to the Adjudicating Commissioner for re-computation of excise duty to be levied in the light of the decision of this Court in the case of *CCE, Pune v. Dai Ichi Karkaria Ltd.*, 1999 (84) ECR 4 (SC). In so far as the penalties imposed on the appellants, the Tribunal being of the view that the same is excessive, has reduced the penalty from `69,72,104/- to `10 lakhs, and in so far as the penalties imposed on M/s. Bajaj and the other two appellants, the Tribunal has confirmed the same.

9) We have heard Mr. Joseph Vellapally, learned senior counsel for the appellants and Mr. V. Shekhar, learned senior counsel for the Revenue. We do not propose to notice the submissions made by the learned senior counsel in view of the final order that we intend to pass in these appeals.

- 10) The main allegation against the appellants in the show cause notice issued was that the appellants are the manufacturers of Magneto Assemblies and are receiving inputs from M/s. Bajaj, which is the primary consumer of their goods at under-valued landed cost by not including the element of landed cost of inputs incurred on account of Sales Tax, Octroi, Freight, Insurance, loading, unloading and handling charges. The appellants are further undervaluing the clearances effected by them to M/s. Bajaj since the appellants are already receiving the price compensation in terms of inputs at reduced landed cost and thereby they are aiding each other for mutual business interest so that the production cost by both of them kept at minimum and central excise duty is discharged at a lower value.
- 11) The learned senior counsel for the assessee would submit that the adjudicating commissioner and the Tribunal has non-suited the appellants mainly on the ground that the appellants and M/s. Bajaj have neither supplied the details of final product and the landed cost of the material supplied during investigation nor in their reply to the show cause notice. It is also observed that the appellants did not produce any material/data as to actual

expenses incurred on account of freight, loading, unloading charges, profit margin etc. The learned senior counsel would submit that the appellants could have supported their defence pleaded in their objections filed to the show cause notice by producing relevant documents including the certificate issued by its chartered accountant but due to unavoidable and unforeseen circumstances, they could not produce the same. It is submitted that this lapse should not be put against the appellants and non-suit them only on this ground. In support of his submission, he would draw our attention to the Certificate issued by the Chartered Accountant in respect of valuation of normal price of Magneto Assemblies manufactured and sold by M/s. Aurangabad EL to M/s Bajaj in wholesale, which was in support of costing. The said Certificate issued by Mukund Mankar and Co., Chartered Accountant, points out freight charges incurred by M/s. Aurangabad EL for getting material from Bajaj to M/s. Aurangabad EL, as well as loading and unloading charges, consumables overheads and profit. If such payment was made, then the whole premises on which show cause notice issued pales into insignificance. The appellant had

produced the Certificate along with the other papers filed before the Tribunal, may be after the appeals were heard and reserved for judgment. In the normal course, we would not have accepted either the submission of the learned senior counsel or we would have taken note of the Certificate. Keeping in view the well settled principles laid down by this Court that technicalities should not defeat rendering of complete justice to a litigant, we think it appropriate to remand the matter to the Tribunal to verify and consider whether the Certificate which is already placed on record by the appellant, would assist them in support of their defence.

- 12) In view of the above, we allow these appeals and set aside the order passed by the Tribunal and remand the matter back to the Tribunal to look into the certificate issued by Mukund Mankar and Co., Chartered Accountant and to determine if M/s. Aurangabad EL had actually incurred the freight charges, loading and unloading charges, consumable overheads profit etc. and whether in the light of this, any of the orders made by the Adjudicating Authority would stand. Since we are remanding the matter for fresh disposal, we also permit both the

parties to urge such contentions which are available to them, including the submissions made before us. In the facts and circumstances of the case, parties are directed to bear their own costs.

.....J.
[D.K. JAIN]

.....J. [H.L. DATTU]

**New Delhi,
November 12, 2010.**

