IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4427 OF 2013

Hyva (India) Private Limited, a company]
incorporated within the meaning of Companies]
Act, 1956 and having its office at EL-215, MIDC]
Mahape, Navi Mumbai – 400 701.] ... Petitioners

Versus

1. Union of India, through the Secretary,]
Ministry of Finance, Department of Revenue,]
North Block, New Delhi – 110 001.]

2. The Commissioner of Central Excise,]
Having his office at 1st Floor, CGO Complex,]
CBD Belapur, Navi Mumbai – 400 614.] ... Respondents

WITH
WRIT PETITION NO. 9627 OF 2013

Hyva (India) Private Limited, a company]
incorporated within the meaning of Companies]
Act, 1956 and having its office at EL-215, MIDC]
Mahape, Navi Mumbai – 400 701.] ... Petitioners

Versus

1. Union of India, through the Secretary,]
Ministry of Finance, Department of Revenue,]
North Block, New Delhi – 110 001.]

2. The Commissioner of Central Excise,]
Having his office at 1st Floor, CGO Complex,]
CBD Belapur, Navi Mumbai – 400 614.] ... Respondents

WITH
WRIT PETITION NO. 2399 OF 2014

M/s. Chaphekar Engineering Private Limited,]
a company incorporated within the meaning of]
Companies Act, 1956 and having its office at]
Yashwant Nagar, S.No.239/240,]
Hinjewadi, Pune – 411 507.] ... Petitioners

Versus

1. Union of India, through the Secretary,]
Ministry of Finance, Department of Revenue,]
North Block, New Delhi – 110 001.]

2. The Commissioner of Central Excise,]
Having his office at 1st Floor, CGO Complex,]
CBD Belapur, Navi Mumbai – 400 614.]

3. The Additional Commissioner, Central Excise]
Pune -1, 41-A, ICE House, Sassoon Road,]
Opp. Wadia College, Pune 411 001.] ... Respondents

WITH
WRIT PETITION NO. 1811 OF 2015

Kailash Vahan Udyog Limited, a company]
incorporated within the meaning of Companies]
Act, 1956 and having its office at Alandi Markal]
Road, Vil. Dhanore, Tal. Khed, Pune 412 105.] ... Petitioners

Versus

1. Union of India, through the Secretary,]
Ministry of Finance, Department of Revenue,]
North Block, New Delhi – 110 001.]

2. The Commissioner of Central Excise,]
Pune – III, having his office at ICE House,]
41A, Sassoon Road, Opposite Wadia College,]
Pune – 411 001.]

3. The Customs, Excise & Service Tax Appellate]
Appellate Tribunal (CESTAT) through the]
Registrar, Jai Centre, 34, P.D'Mello Road,]
Masjid Bunder (East), Mumbai – 400 009.] ... Respondents

Mr. V. Sridharan, senior counsel with Mr. Prakash Shah, Ms. Anjali Herawat and Shri Jas Sanghavi i/b PDS Legal for the Petitioners in all the Writ Petitions.

Mr. Y.R. Mishra, senior counsel with Ms. Annie Fernandes for the Respondents in WP No.9627 of 2013.

Mr. Y.R. Bhate, senior counsel with Ms. Anamika Malhotra for the Respondents in WP No.2399 of 2014.

Mr. A.S. Rao with Mr. N.V. Kalantri for the Respondents in WP No.1811 of 2015.

CORAM : S.C. DHARMADHIKARI &
S.P. DESHMUKH, JJ.

RESERVED ON : 25TH FEBRUARY, 2015

PRONOUNCED ON: THURSDAY, 5TH MARCH, 2015

ORAL JUDGMENT. : [Per S.C.Dharmadhikari, J.]

1. These petitions involve common questions of law and fact. They have been heard together and are disposed of by this common

judgment.

2. Rule. Respondents waive service. By consent of parties, Rule made returnable forthwith.

3. The writ petitions raise a common question of legality and validity of Rule 10A of The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (for short "Valuation Rules, 2000"). The challenge is that this Rule is *ultra vires* being beyond the legislative competence of the Parliament. It is not subject matter of the Union List and given its sweep, it cannot be saved by taking recourse to the residual entry viz. List-I Entry 97 read with Article 248 of the Constitution of India.

4. The other challenge is that this Rule travels beyond sections 3 and 4 read with section 37 of the Central Excise Act, 1944. The same also violates the mandate of Article 14 and 19 (1)(g) of the Constitution of India. As a consequence of the above, the petitioners are seeking to quash and set aside a Circular dated 20th October, 2009

of the Central Board of Excise and Customs and the final order dated 30th November, 2012 of the Customs, Excise and Service Tax Appellate Tribunal.

5. The facts necessary to appreciate the above challenge are that the petitioners engage themselves, *inter-alia*, in the activity of building body on the motor vehicle chassis supplied by various chassis manufacturers such as M/s. Tata Motors Limited, M/s. Ashok Leyland Limited etc. at their various factories located across the country. The present case concerns these activities undertaken at the Mahape factory of the petitioners on the motor vehicle chassis supplied by M/s. Tata Motors Limited. The case of the petitioners is that M/s. Tata Motors Limited manufacture the chassis, fit it with the engines for motor vehicles and supply them to the petitioners for building body on the same. M/s. Tata Motors Limited clears this chassis on payment of excise duty under heading 87.06 of the Schedule to the Central Excise Tariff Act, 1985. <u>The petitioners avail of input or cenvat credit of duty paid on such chassis. For the purpose of building body, the petitioners purchase various raw materials on their own account and undertake</u>

<u>this body building work</u>. Thereafter, the said body is fitted on to the chassis and it is either used as vehicle for transportation of goods or passengers. In other words, the body built by the petitioners on the chassis makes the vehicle either a bus or a truck. The factory, plant and machinery and labour for carrying out this activity belongs to the petitioners and neither M/s. Tata Motors Limited are a shareholder of the petitioner-company nor vice-versa. The claim is that these transactions between them are on principal to principal basis. The petitioners are not agents of M/s. Tata Motors Limited.

6. The petitioners charge consolidated sales customers price for building the body on the chassis. This consideration / price includes the cost of raw materials procured by the petitioners, the cost of body building and their profit.

7. The respondents have treated the petitioner alone as manufacturer of complete motor vehicles. They hold the registration certificate from the respondents as a manufacturer of motor vehicles under Rule 7 of the Central Excise (No.2) Rules, 2001. The excise

duty on all these vehicles is being collected by the respondents from the petitioners. They also file returns for this purpose. The petitioners, therefore, state that their activity falls under section 2 clause (f) of the Central Excise Act, 1944, which is a definition of the term "manufacture".

8. The petitioners contend that since chassis is supplied free of cost by M/s. Tata Motors Limited to them, they add the cost of chassis to the sale consideration to arrive at assessable value for the purpose of payment of duty of complete vehicle. There is no dispute raised by the Central Excise Department as far as this method of valuation adopted by the petitioners for the period prior to 1st April, 2007.

9. Post 1st April, 2007, the respondents started computing the assessable value of the complete vehicle for the purpose of payment of excise duty but that was not on the footing or basis indicated above. In other words, according to the respondents, the assessable value of the complete vehicle cleared by the petitioners on which they were liable to pay excise duty should be based on the price at which M/s. Tata

Motors Limited sold the vehicle to their buyers. This insistence of the respondents came in the light of introduction of Rule 10A in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, with effect from 1st April, 2007.

10. The petitioners state that they have made the correct computation or calculation for the purpose of assessment of central excise duty, relied on the excise invoices and copies of purchase orders. The petitioners also relied upon the term “transaction value” as defined in section 4(1) clause (a) of the Central Excise Act, 1944. Thus, for the position prior to 1st April, 2007, the petitioners rely on the averments in paragraph 5.1 to paragraph 9.2 of the writ petition. For the period consequent to the amendment to the rules and introduction of Rule 10A, our attention is invited to paragraph 9.3 onwards of the Memo of the writ petition. Our attention is also invited to a circular which has been issued on 20th October, 2009 by the Central Board of Excise and Customs clarifying that Rule 10A of the Valuation Rules, 2000, is applicable in cases of job-workers undertaking activity of building body on the chassis supplied by the

customers. The petitioners also rely upon the correspondence with the Department, the visits of the Superintendent of Central Excise Headquarters (Preventive) to their factory. They also rely upon the fact that the vehicles were seized, but they came to be released on account of an order passed by this Court in Writ Petition No.1354 of 2008. Later on, the petitioners filed their responses and demonstrated as to how Rule 10A cannot be invoked and applied to them. However, their contentions were rejected by the respondent No.2 who passed the order-in-original dated 17th April,. 2008, holding that petitioners are job-workers and goods manufactured by them viz. the body is laid on the chassis supplied by M/s. Tata Motors Limited and this activity has to be brought within the purview of Rule 10A of the Rules noted above. He, therefore, confirmed a demand of Rs.84,82,154/-. The petitioners being aggrieved by this order preferred an appeal along with stay application before the Customs, Excise and Service Tax Appellate Tribunal and an interim stay was granted on deposit of Rs.25,00,000/-.

11. Then, petitioners rely upon paragraph 22.1 of the petition and

the proceedings referred therein and in subsequent paragraphs to urge that there were series of show cause-cum-demand notices, adjudication orders and resultant appeals.

12. They rely upon all these orders to eventually urge that the authorities, including the Appellate Tribunal, would not be in a position to consider the legality and validity of the rule in question. They are, therefore, constrained to approach this Court challenging the validity of Rule 10A and the final order of the Tribunal in about four appeals which are more particularly referred to in paragraphs 25, 26 and 27 of the Memo of the writ petition.

13. Thus, it is in the above background, this writ petition has been filed. The other writ petitions may be referring to factual details giving rise to the adjudication and the appellate orders but it is common ground that the said writ petitions also put in issue the legality and validity of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

14. Mr. Sridharan, learned senior counsel appearing on behalf of the petitioners submits that when a person adds/contributes his own material to the material supplied by the customers and manufactures goods, it is not job-work. It could be job-work only if the worker adds from his end only minor items or minor or incidental items. In that regard, he relies upon the judgment of the Hon'ble Supreme Court rendered in the case of *Preventive Engineering (India) Limited vs. Commissioner of Central Excise, 1994 (73) Excise Law Times, Pg. 497*.

15. Mr. Sridharan has also invited our attention to the explanation to Rule 10A which defines the term "*job-work*". Mr. Sridharan submits that for the purpose of manufacture of the body, all the raw materials are purchased by the petitioners. They are not supplied by M/s. Tata Motors Limited who, according to Mr. Sridharan, as a misnomer, are referred to as the principal manufacturer. Further, the body is not an incidental or ancillary or minor item in a complete motor vehicle. Hence, Rule 10A does not apply to the petitioners and they are not covered by the same.

16. Mr. Sridharan then submits that assuming without admitting that Rule 10A governs the case of the petitioners, that Rule will have to be interpreted in the light of the settled legal position. The settled position being when the excisable goods are manufactured from any inputs / goods supplied by the principal manufacturer, then alone Rule 10A can be invoked. He relied upon the Blacks' Law Dictionary for the meaning of the term "*value*". He also relies upon P. Ramanatha Iyer's Advanced Law Lexicon. Thus, this is another facet of the argument on applicability of Rule 10A. If the act of manufacture or production is out of the inputs supplied by the principal, then Rule 10A applies for that is job-work within the meaning of that rule. If the principal manufacturer has not supplied any inputs and the person undertaking the activity like the petitioners, does it of its own material, then, he is not a job-worker and which rules out applicability of Rule 10A. The word 'any' appearing in the explanation should be treated as 'all'. He relies upon Law Lexicon with Legal Maxims and the judgments of the Hon'ble Supreme Court to support this meaning of the word 'any'. Mr. Sridharan reiterates that the principal

manufacturer M/s. Tata Motors Limited in this case has only supplied chassis and, therefore, the body which is manufactured by the petitioners cannot be said to be with the aid and assistance of any inputs or raw material from M/s. Tata Motors Limited.

17. The third limb of the argument is that the petitioners have not manufactured the goods on behalf of another person. Meaning thereby, the relationship between M/s. Tata Motors Limited and the petitioners is not that of principal and agent, but principal to principal. To such a relationship, Rule 10A has no application for it applies only to cases where the relationship is of principal and agent. Mr. Sridharan also was at pains to make a distinction between a manufacturer selling goods to a brand name holder. In the present case, there is no such deal because petitioners are manufacturing the body which is then fitted on the chassis so as to make it a bus or a truck and this activity is undertaken for various persons. Therefore, it is not the price, which the brand name holders affix on the vehicle, command in the market on which the value should be determined. The Hon'ble Supreme Court, according to Mr. Sridharan, has held that

excise duty is payable on the market value fetched by manufacturers and such goods cannot be assessed on the basis of the market value obtained by the brand name holders who also add to the value of the manufactured goods, the value of their own property in the goodwill of the brand name. Hence, it is alleged that the expression "*on behalf of*" has to be interpreted in the light of the judicial pronouncements and the meaning assigned to these words by the courts. Thus, the petitioners cannot be considered as manufacturers on behalf of the principal manufacturer. Mr. Sridharan also made an attempt to distinguish the expression "*on behalf of*" "*for, and on behalf of*". According to Mr. Sridharan "*on behalf of*" is a narrow expression and different from "*for, and or behalf of*". In that regard, he invites our attention to sections 65(19)(v) of the Finance Act, 1994.

18. Mr. Sridharan submits that Rule 10A came to be introduced after the report of the Committee called Dutt-Majumder Committee. The report makes several suggestions. However, the suggestion of the Committee to employ a wider expression has not been accepted and Rule 10A employed the words "*on behalf of*". In these circumstances,

the departure from the suggestions and recommendations must be borne in mind by us according to Mr. Sridharan. The attempt of Mr. Sridharan is to demonstrate that Rule 10A covers transactions where excisable goods are manufactured by a job worker on behalf of the principal manufacturer. It is in that situation a tripartite arrangement emerges or is contemplated. For application of Rule 10A, there should be the principal manufacturer, the job-worker and an outsider. In the circumstances where only two parties are involved, Rule 10A has no application. Mr. Sridharan submits that the interpretation by the respondents on Rule 10A renders the phrase *"on behalf of"* redundant. If that interpretation is admitted, then, both situations viz. a job-worker manufacturing goods on behalf of the principal and a job-worker manufacturing goods not on behalf of the principal, get covered. The Revenue's interpretation ignores the fact that there could be a situation of a manufacturing activity by the job-worker from the goods / inputs supplied by the manufacturer but such manufacture is not on behalf of the principal manufacturer. The respondent / Revenue looks at Rule 10A to cover the situation where from goods / inputs supplied by the principal manufacturer, the production or manufacture by job-worker is carried out. That interpretation ignores the expression "*on behalf of*" and makes it redundant. The respondent / Revenue cannot rewrite or redraft the rule by such an interpretation is the submission.

19. The final submission on interpretation of Rule 10A is that it should be strictly construed. Mr. Sridharan submits that Rule 10A forms part of a taxing statute. It is a provision relating to levy of tax. It is a provision directly affecting the burden or quantum of tax payable by an assessee. It is not a provision relating to exemption from tax. It is also not a provision relating to assesssment, filing returns or other procedural matters. If this rule is not strictly construed, it would take the levy well beyond the stage of manufacture and manufacturer. Thus, even interpreted this way, the rule may be ultra vires the parent Act viz. The Central Excise Act, 1944, particularly sections 3 and 4 thereof.

20. Mr. Sridharan develops the argument on ultra vires by urging that the price charged by the manufacturer forms the measure of tax.

He relies upon the judgments of the Hon'ble Supreme Court to urge that the assessable value of goods exigible to excise duty in terms of section 4 is the price which the manufacturer has charged to his buyer. As far as the measure of levy in the case of job work transaction is concerned, Mr. Sridharan submits that several judgments of the Hon'ble Supreme Court clarify the position that a provision enacting measure of tax or how tax is to be measured should be consistent with the levy or impost. It cannot be contrary thereto or inconsistent therewith. The interpretation which the respondents suggest would go contrary to this legal position according to Mr. Sridharan. He submits that section 4 is only a machinery provision. With effect from 1st July, 2000 also, the measure is the price charged by the manufacturer. He invites our attention to section 4(1) clause (a) of the Central Excise Act, 1944 and the amendment thereto to urge that the various items included in the definition of the term "transaction value" in section 4(3)(d) as forming part of the value of excisable goods are in fact the expenses incurred by the manufacturer. They came to be disallowed by the Hon'ble Supreme Court and, therefore, he submits that it is the price actually paid or payable by the buyers by reason of or in connection with sale which could be deemed as the transaction value as per this definition. In the written submissions, Mr. Sridharan submits that various measures (i.e. Rules 4 to Rule 10) prescribed under Valuation Rules, 2000 are in conformity with the legislative mandate of having nexus with the essential character of the levy under Section 3 and Section 4 of the Central Excise Act. Rule 4 to Rule 8 provides measures which has a nexus with the levy of duty. Further, in case where the buyer and seller are related parties then Rule 9 provides for the price at which such related buyer sells the goods. Rule 9 is provided to prevent evasion of tax since it is presumed that relationship may influence the measure i.e., price. The measure has been enhanced by Rule 9 on the theory that power to tax includes power to avoid evasion of tax. Even here, there are case laws holding that where the related person is able to show that price has not been influenced by the relationship, then adopting related person's sale price would be incorrect.

21. Mr. Sridharan submits that the excise duty is leviable on the value of the manufactured goods. However, for administrative convenience, the sale price of the manufactured goods has been

adopted as the value of the manufactured goods for the purpose of levy of excise duty though this value would include marketing and administrative cost of the manufacturer. It is settled law that this measure cannot be stretched to adopt sale price of customer of the manufacturer on the ground of administrative convenience. Rule 10A provides the value at which the customer of the job worker sells the goods to its customer (of customer). Hence, Rule 10A is in contravention of Entry 84 of Union List, Section 3(1) and Section 4 of Central Excise Act, 1944.

22. Mr. Sridharan further submitted that the excise duty is leviable on the value of the manufactured goods. However, for administrative convenience, the sale price of the manufactured goods has been adopted as the value of the manufactured goods for the purpose of levy of excise duty though this value would include marketing and administrative cost of the manufacturer. It is settled law that this measure cannot be stretched to adopt sale price of customer of the manufacturer on the ground of administrative convenience. Rule 10A provides the value at which the customer of the job worker sells the

goods to its customer (of customer). Hence, Rule 10A is in contravention of Entry 84 of Union List, Section 3(1) and Section 4 of Central Excise Act, 1944. It is submitted that the measure provided by Rule 10A is beyond the subject of the levy, since it ceases to have nexus with the essential character of the levy.

23. The sale price of the finished goods charged by the principal manufacturer would naturally include the selling expenses and profits of the principal manufacturer. A measure which demands duty on the selling expenses and profits of the principal manufacturer would be divorced from the fundamental concept of the subject of the levy.

24. He, therefore, submits that the machinery provisions relating to the computation and collection of levy cannot go beyond the subject of levy. Rule 10A has gone beyond the subject of levy. Mr Sridharan submits that the interpretation which is placed by the respondents as also the Tribunal takes within its fold several aspects including the expenses incurred or profits earned by the parties like M/s. Tata Motors Limited. Mr. Sridharan submits that eventually it is understanding of the rule by keeping aside the term or words

“*principal manufacturer*” which would be decisive. The nomenclature “*principal manufacturer*” is misleading. The correct nomenclature should be “*customer*” or the “*job-worker*”. The raw material supplier cannot be termed as the manufacturer for the purpose of measuring the excise duty. An excise duty is not concerned with the transaction between the raw material supplier and his customer. The subject matter of levy is concerned with the transaction between the job-worker and the raw material supplier. Mr. Sridharan, therefore, reiterates his earlier submissions and urges that if they are not accepted, then, Rule 10A cannot be saved. It also cannot be saved from being ultra vires section 2(f) read with section 3(i) of the Central Excise Act, 1944, by relying on the misconceived notion of Revenue language. He submits that the Revenue / Executive entertains a belief that in job work transaction there is leakage of tax since the expenses and profit margin of the raw material supplier is escaping the levy. Such a notion cannot be entertained nor can the interpretation of Rule 10A be founded on this because the measure of tax cannot be extended to include expenses and profit margin of the raw material supplier. Further, manufacture on job work basis is not an artificial or contrived device. It is the prevalent practice in the world of commerce and industry. A job-worker may have expertise of manufacture but does not possess the financial strength to source the raw material nor has marketing ability to sell the finished goods. Therefore, he undertakes the job work as a normal and legitimate business transaction and completes the job. The finished goods are dealt with not by this job-worker. Therefore, the Revenue cannot levy anything higher than what is contemplated by law to prevent alleged Revenue leakage.

25. Mr. Sridharan would also submit that once there is nothing in Rule 10A which enables the job-worker to keep a track of the so-called principal manufacturer and the price at which the principal manufacturer is selling the goods then Rule 10A is difficult and impossible to implement. It is impractical and imperfect. He, therefore, submits that the Ministry of Law, Government of India, has rightly opined that Rule 10A cannot be sustained and may be vulnerable. It can be ultra vires the Act itself.

26. Mr. Sridharan submits and alternatively that Rule 10A can be

saved only if it is applied in the case of agency and not where the transaction is on principal to principal basis.

27. Mr. Sridharan, therefore, would submit that the petition deserves to be allowed. Mr. Sridharan has relied upon the following judgments in support of his above contentions.

(1) Preventive Engineering (India) Limited vs. Commissioner of Central Excise, 1994 (73) Excise Law Times, Pg. 497.

(2) A.K. Roy vs. Voltas Limited 1977 (1) Excise Law Times (J 177) (SC).

(3) Atic Industries Ltd. vs. H.H. Dave, Assistant Collector of Central Excise & Ors. 1978 (2) Excise Law Times (J 444) (SC).

(4) Union of India vs. Bombay Tyre International Limited, 1984 (1) SCC Pg. 467 (SC).

(5) Pawan Biscuits Co. Ltd. vs. Commissioner of Central Excise, Patna, 2000 (120) Excise Law Times 24 (SC).

(6) Ujagar Prints vs. Union of India 1988 (38) Excise Law Times, 535 (SC).

(7) Rajasthan Chemists Association vs. State of Rajasthan, (2006)

147 Sales Tax Cases, Pg. 476 (Raj.).

28. On the other hand, Mr. Bhate and Mr. Mishra appearing on behalf of the respondents submit that there is no merit in the writ petition. The writ petition deserves to be dismissed. Apart from the fact that the challenge is belated what the petitioners are not pointing out to this Court is that they are registered manufacturing unit and manufacturing the goods viz. dumpers, body built motor vehicles and its accessories falling under chapter 87 of the Central Excise Tariff Act, 1985. They are also engaged in building body on chassis supplied by M/s. Tata Motors Limited and to the suppliers of chassis on job-work basis. As per Note 5 of Chapter 87 of the Central Excise Tariff, building a body or fabrication or mounting or fitting of structures or equipment on the chassis falling under heading 8706 shall amount to manufacture of motor vehicles. The petitioners have received chassis with accessories supplied by M/s. Tata Motors Limited and other suppliers for the manufacture of dumpers / body built motor vehicles. Thus, the petitioners availed cenvat credit on the chassis supplied and received by them. After manufacturing, the

finished goods were cleared to depots / regional sales office of M/s. Tata Motors Limited or to M/s. Tata Motors Limited on payment of duty. It was noticed by the Central Excise Department that the depot sales invoices of M/s. Tata Motors Limited were showing higher value than that shown in the invoice issued by the petitioners. That is how Rule 10A was invoked and duty demanded. Both counsel justify the issuance of the show cause-cum-demand notice and application of Rule 10A. They rely on the fact that the petitioners contested the show cause notice and upto the Tribunal. Having lost in appeals they ought to have paid up the difference duty that is now recoverable. However, the writ petitions have been filed in this Court and for the first time, the above questions and issues have been raised. However, there is nothing illegal or invalid in application of Rule 10A because the petitioners are receiving the chassis from parties like M/s. Tata Motors Limited and building body on it. They are also collecting labour charges and cost of material used by them in the body building. These are transactions undertaken on behalf of M/s. Tata Motors Limited and others. The interpretation that is placed by the petitioners on Rule 10A would mean that clearance of the chassis to M/s. Tata

Motors Limited after body building on it would be a sale. Every job-work would then be deemed as a sale. This is not a levy on any such transaction but on manufacture. If job-work is manufacture and that is what is done by the petitioners for parties like M/s. Tata Motors Limited, then, they cannot claim that they are only selling the body. It is when the body is mounted on the chassis that it becomes a complete motor vehicle. It is that activity which is carried out and which is deemed as manufacture. The petitioners are not contending that they are supplying the body to M/s. Tata Motors Limited and others and these parties, in turn, get this body fitted on the chassis by a third person. In this case the petitioners are fabricating the body, bit by bit, on the chassis for producing an integrated complete motor vehicle. Therefore, they cannot urge that they only supply body to M/s. Tata Motors Limited and not a complete motor vehicle. In the circumstances, when all the documents were looked into, the petitioners were proceeded against. They are proceeded against because they also availed cenvat credit on inputs. In such circumstances, all the contentions and particularly raised in the Memo of the writ petition and orally are untenable. The rule does not contravene either the parent Act nor does it go beyond the levy contemplated thereunder. It is also not ultra vires Articles 14 and 19(1)(g) of the Constitution of India. The petitioners cannot urge that Rule 10A is not applicable to them and at the same time challenge its validity. Eventually Rule 10A is the regulating rule for purpose of valuation of goods when manufactured by job-workers on behalf of the principal manufacturer. The rule has been enacted in terms of the power conferred vide section 37 of the Central Excise Act, 1944. It cannot be held to be beyond the competence of the Parliament nor can it be termed as going beyond the Act itself. In the circumstances, the writ petition has no merit and it must be dismissed. Mr. Bhate relied upon the following decisions in support of his above arguments.

(1) 2012 (286) Excise Law Times, Pg.161 (Bom.) Tata Motors Ltd. vs. Union of India.

(2) 2014 (310) E.L.T. Pg.833 (Guj.) Indsur Global Ltd. vs. Union of India.

29. For properly appreciating the rival contentions it would be advantageous to refer to The Central Excise Act, 1944.

30. The Act was introduced during British times and it consolidates all the laws relating to central duties of excise and to the tax on salt in a single enactment. The earlier legislation is of pre-independence era. It is not necessary to burden this judgment with the statement of objects and reasons but what is apparent from a reading thereof is that the Act was enacted so as to make a comprehensive code and which would enable recovery of excise duty. There are several amendments made to this Act and from time to time. Suffice it to state that it is an act to consolidate and amend the law relating to central duties of excise. The term "excisable goods" has been defined in section 2 clause (d) to mean the goods specified in the first and second schedule to the Central Excise Tariff Act, 1985, as being subject to a duty of excise and includes salt. The term 'manufacture' is defined in clause (f) of section 2 and it reads as under:

> *"(f) "manufacture" includes any process -*
>
> *(i) incidental or ancillary to the completion of a manufactured product;*
>
> *(ii) which is specified in relation to any goods in the section or Chapter notes of [The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to*

manufacture; or

(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alternation of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"

31. A bare perusal of this definition would indicate as to how the term or word is defined in an inclusive manner so as to include any process incidental or ancillary to the completion of a manufactured product. Sub-clause (iii) to clause (f) of section 2 came to be substituted by Act 32 of 2003 so as to include in relation to the goods specified in the third schedule, packing or re-packing of such goods in a unit container or labelling or re-labelling of containers, including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. The Legislature has taken care to specify that the word "manufacture" shall be construed accordingly and shall include not

only a person who employs hired labour in the production or manufacture of excisable goods, but also any other person who engages in their production or manufacture on his own account.

32. The term "sale" is defined in clause (h) of section 2. In such circumstances, we must refer to Chapter II which is entitled Levy And Collection of Duty. Section 3 sub-section (1) says that there shall be levied and collected in such manner as may be prescribed, a duty of excise to be called the central value added tax on all excisable duty goods which are produced or manufactured. We need not advert to the rest of the sub-sections or clauses of this section. We have to only then refer to section 4. Section 4 reads as under :

> *"**4. Valuation of excisable goods for purposes of charging of duty of excise.-** (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*
>
> *(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
>
> *(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.*

***Explanation**. - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.*

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section,-

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) persons shall be deemed to be "related" if -

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

***Explanation**. — In this clause -*

(i) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely:-

(A) if one owns or controls the other;

(B) where the undertakings are owned by firms, if such firms have one or more common partners;

(C) where the undertakings are owned by bodies corporate,-

> *(I) if one body corporate manages the other body*
>
> *(II) if one body corporate is a subsidiary of the other body corporate; or*
>
> *(III) if the bodies corporate are under the same management; or*
>
> *(IV) if one body corporate exercises control over the other body corporate in any other manner;*

(D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm, -

> *(I) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate; or*
>
> *(II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;*

(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;

(F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or

more of the foregoing sub-clauses.

Explanation I.- For the purposes of this clause, two bodies corporate shall be deemed to be under the same management,-

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same age group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one fourth of the total membership of the Board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or employees of the first mentioned body corporate) one-fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether

independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.- If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

Explanation III.- If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV.- In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

Explanation V.- For the purposes of this clause, "group" means a group of -

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(ii) associated persons.

Explanation VI.- For the purposes of this clause,-

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) "associated persons"-

(a) in relation to a director of a body corporate, means-

(i) a relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) any trust of which any such director or his relative is a trustee;

(iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;]

(ii) "relative" shall have the meaning assigned to it in clause (41) of section (2) of the Companies Act, 1956 (1 of 1956);

(c) "place of removal" means –

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed;

(cc) "time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time

> *at which such goods are cleared from the factory;*
>
> *(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."*

33. As its heading and title would indicate, it provides for valuation of excisable goods for purpose of charging of duty of excise. If, under the Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall in case where the goods are sold by the assessee for delivery at the place of removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value. Clause (b) of sub-section (1) of section 4 deals with a case falling in clause (a) thereof. In such cases and if the goods are not sold the value shall be determined in such manner as may be prescribed. By sub-section (2) it has been clarified that the

provisions of section 4 shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3. Mr. Sridharan would submit that for our purpose the definition of the term "related" as appearing in sub-section (3) clause (b) would also be relevant. However, we do not think that any other clause or sub-section of this provision needs to be referred, save and except the definition appearing in clause (c) of sub-section (3) of section 4 wherein the "*place of removal*" is defined to mean a factory or any other place or premises of production or manufacture of the excisable goods, a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty and a depot, premises of a consignment agent or any other place or premises where the excisable goods are to be sold after their clearance from the factory. Thus, place of removal means a place from where goods are removed. The "*transaction value*" is defined in clause (d) to mean the price actually paid or payable for the goods when sold and includes the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing etc., but excludes the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods. Thus, valuation of excisable goods for purposes of charging any duty of excise on each removal thereof shall be the value in cases covered by clause (b) of sub-section (1) of section 4, the manner of determination whereof as maybe prescribed.

34. It is in pursuance of this provision that The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, have been framed.

35. It has not been disputed before us that there is a power to frame such rules. If any reference is required to be made, it would be sufficient if one has a look at section 37 falling under Chapter VII of the Act which confers a power on the Central Government to make rules. This power enables the Central Government in particular and without prejudice to the generality of the power, to make such rules

which may provide for determining under section 4, the nearest ascertainable equivalent of the normal price and having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded. It is in terms of this power that the Valuation Rules, 2000, have been framed. Sub-clause (b) of Rule 2 of the Valuation Rules, 2000 defines the term "*Normal transaction value*" to mean the transaction value at which the greatest aggregate quantity of goods are sold. The term "*value*" is defined in Rule 2(c) to mean the value referred to in section 4 of The Central Excise Act, 1944.

36. Chapter II of these Rules provides for determination of value. Rule 3 thereof states that the value of any excisable goods shall, for the purpose of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with the Valuation Rules. Rule 4 states that the value of excisable goods shall be based on the value of such goods sold by the assessee and delivered at any other time nearest to the time

of removal of the goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable. Rule 5 which has been substituted by the Ministry of Finance Notification No.11/2003 dated 1st March, 2003, deals with the situation where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act, except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods. Rule 6 deals with the situation where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4, except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. There are explanations to Rule 6, but which only indicate as to how the transaction value by a deeming fiction is determined in the circumstances referred by Rule 6. Rule 7 deals with a situation where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value 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 goods under assessment. Thus, we find a situation where valuation of excisable goods for purpose of charging a duty of excise is to be determined on each removal of the goods. In cases covered by clause (a) where the goods are sold by the assessee for delivery at the time and place of removal and the assessee and the buyer are not related and the price is the sole consideration for the sale, be the transaction value. The cases which are covered by Rules 5, 6 and 7 of the Valuation Rules are thus referable to clause (b) of sub-section (1) of section 4. Rules 8, 9 and 10, which were initially introduced and substituted later on, deal with situations where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the product or manufacture of other articles, the value of such goods that are consumed shall be 110% of the cost of production or manufacture of such goods. In rule 9, a somewhat distinct situation where whole or part of excisable goods are sold by the assessee to or through a person who is related in the manner specified in either of sub-clause (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, then, the value of such goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers who may not be related person or where such goods are not sold to such buyers but to buyers being related person, who sell such goods in retail. The case of sale of goods by the assessee in whole or in part to or through an interconnected undertaking is dealt with by Rule 10. Then comes Rule 10A, 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,*

(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 sold 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 or 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.*

37. A very careful perusal of this Rule which has been inserted with effect from 1st April, 2007, by Notification No.9 of 2007 dated 1st March,2007, reveals that the said Rule deals with cases of excisable goods produced or manufactured by a job-worker. The second requirement for applicability of Rule 10A is the job-worker manufacturing or producing excisable goods on behalf of a person (referred to as the principal manufacturer). We do not deem it necessary to enter into the debate and which has been initiated by Mr. Sridharan by relying on the ordinary and normal connotation of the words "*on behalf of*" and the difference between these words and the words "*for, and on behalf of*". Suffice it to state that we do not think that when the Legislature employs the words "*principal manufacturer*" they are either surplusage or a misnomer. The very position of a job-worker as highlighted by Mr. Sridharan would enable us to hold that it is a job-work undertaken for somebody else. If the distinction as brought in by Mr. Sridharan is noted, then, it is evident that in the trade or business there is a practice prevalent where goods are produced or manufactured by somebody other than who actually sells them in the market. This party / entity manufactures or produces

the goods for the one who eventually sells them in the market. The job is undertaken or the work is completed and thereafter the product or finished product is taken over by such entity who sells it in the market. Apart from division of labour, this arrangement sub-serves the commercial interests of both. A work or a job undertaken by somebody other than who sells it saves time, cost and energy. It also means that the one who manufactures or produces the excisable goods on job-work basis does not have to bother about their sale in the market. That is a function undertaken by either a known entity in the market or the one who does not have any manufacturing or production arrangement. It is in this sense that the Legislature employs these words and we do not think that they are either useless or redundant or a misnomer.

38. The Legislature clarifies that the valuation has to be done by taking into consideration the value of excisable goods and that would be the transaction value of the goods sold by the principal manufacturer. Rule 10A (i), therefore, comes into play when the excisable goods are sold by the principal manufacturer for delivery at

the time of removal of the goods from the factory of the 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. Since the goods are sold by the principal manufacturer for delivery at the time of removal of the goods from the factory of the job-worker and the other condition being fulfilled the value of the excisable goods is taken to be the transaction value of the said goods sold by the principal manufacturer. Clause (ii) deals with a situation where the goods are not sold by the principal manufacturer at the time of removal of the 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 the job-worker. Then and where the principal manufacturer and buyer of goods are not related and the price is the sole consideration for the sale, the value of excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and where the goods are not sold at or about the same time, at the time nearest to the time of removal of the said goods from the factory of the job-worker. If the goods are not sold by the manufacturer at the time of removal of the goods from the factory of the job-worker then this clause (ii) applies. That also applies when the goods are transferred to some other place from where they were to be sold after their clearance from the factory of the job-worker. Therefore, we do not think that a combined reading of these three clauses of Rule 10 together with the proviso and explanation thereto would denote that the Legislature has travelled much beyond the charging section. Even if the explanation is perused, it would denote as to how this rule is enacted to deal with cases of job-workers who are engaged in the manufacture or production of the goods on behalf of a principal manufacturer from the inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

39. We at once clarify that we do not wish to conclude the issue as to in which cases Rule 10A would apply and what could be termed as a job-work. That would depend upon the facts and circumstances of each case. The applicability of the rule would depend upon the position of the person manufacturing or producing excisable goods on behalf of somebody and with the inputs or goods supplied by the said

person or by any other person authorised by him. It would depend upon the dealings and transactions which are undertaken and which are subject matter of each case. The applicability of Rule 10A will have to be judged by looking at the facts and circumstances of each case and as a whole. There cannot be a formula which can be evolved and applied and by taking the cases and circumstances in isolation. We, therefore, do not wish to foreclose this issue in the event the petitioners wish to raise this at an appropriate stage in future and before an appropriate forum.

40. However, Mr. Sridharan was fair to point out before us during the course of his detailed and lengthy arguments that the factual averments in the writ petition could be taken as the basis for determining the larger or broader question of legality and validity of Rule 10A. In other words, he submits that the fact that petitioners are challenging the vires of Rule 10A is enough to indicate that their case would fall within Rule 10A. They are undertaking the work of fitting a body on to the chassis supplied to them free of cost by M/s. Tata Motors Limited and other entities. After that body is fitted, the chassis

together with the body is handed over to entities like M/s. Tata Motors Limited. The petitioners pay the excise duty at the time of removal of such chassis together with the body fitted thereon. It is only the liability to pay excisable duty at such removal which is in issue and, therefore, Mr. Sridharan submits that we should proceed for the present petition and the dealings and transactions referred therein on the footing that the petitioners are covered by Rule 10A of the Valuation Rules. It is on these premises and foundation that we have proceeded.

41. Before we analyse the rule further, it would be advantageous to refer to the settled principles which have to be applied for determining the larger issue. In the case of *Gujarat Ambuja Cements Limited & Anr. vs. Union of India and Anr*., reported in *AIR 2005 SC 3020*, the Hon'ble Supreme Court held as under :

> *"**35**. The point at which the collection of the tax is to be made is a question of legislative convenience and part of the machinery for realization and recovery of the tax. The manner of the collection has been described as "an accident of administration; it is not of the essence of the duty". It will not change and does not affect the essential nature of the tax. Subject to the legislative competence of the Taxing Authority a duty can be imposed at the stage which the authority finds to be*

> *convenient and the most effective whatever stage it may be. The Central Government is therefore legally competent to evolve a suitable machinery for collection of the service tax subject to the maintenance of a rational connection between the tax and the person on whom it is imposed. By Sections 116 and 117 of the Finance Act, 2000, the tax is sought to be levied from the recipients of the services. They cannot claim that they are not connected with the service since the service is rendered to them.*
>
> *36. In a similar fact situation under an Ordinance the Central Government was authorized to levy and collect a duty of excise on all coal and coke dispatched from collieries. Rules framed under the Ordinance provided for collection of the excise duty by the railway administration by means of a surcharge on freight recoverable either from the consignor or the consignee. The imposition of excise duty on the consignee was challenged on the ground that the consignee had nothing to do with the manufacture or production of the coal. Negativing this submission this Court in R.C. Jall v. Union of India, AIR 1962 SC 1281, 1286 said :-*
>
> *"The argument confuses the incidence of taxation with the machinery provided for the collection thereof".*
>
> *37. In Rai Ramakrishna (supra) the tax under Entry 56 of List II was held to be competently levied on the bus operators or bus owners even though the object of levy was passengers (which they were not) because there was a direct connection between the object of the tax viz., goods and passengers and the owners of the transport carrying the goods or passengers. There is thus nothing inherently illegal or unconstitutional to provide for service tax to be paid by the availer or user."*

42. In another decision delivered in the case of *National Minerals Development Corporation Ltd. vs. State of M.P. and Anr., AIR 2004*

SC 2456, the Hon'ble Supreme Court reiterated the principles which govern the interpretation of a charging section or provision and the machinery provision. A measure of tax cannot be equated and confused with the charge or levy of tax. The Hon'ble Supreme Court has emphasised that in matters of computation and calculation of tax, there is more flexibility and latitude in the Legislature. In this regard, the following paragraph of this judgment is extremely relevant :

> *"23. Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only the charge has to be authorized by law, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman's art of drafting and methodology employed. In the latter case, the charging provision and the computation provision, though placed in two parts of the enactment, shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively. In case of conflict, the computation provision shall give way to the charging provision. In case of doubt or ambiguity the computing provision shall be so interpreted as to act in aid of charging provision. If the two can be read together homogeneously then both shall be given effect to, more so, when it is clear from the computation provision that it is meant to supplement the charging provision and is, on its own, a substantive provision in the sense that but for the computation provision the charging provision alone would not work. The computing provision cannot be treated as mere surplusage or of no significance;*

> *what necessarily flows therefrom shall also have to be given effect to.”*

43. We will have to apply these principles while interpreting Rule 10A. When we consider the nature of the tax and its character, we cannot forget that excise duty is a duty on manufacture and production of goods. That the comprehensive definition of the term “manufacture” so as to include all processes resulting in production or manufacture of excisable goods would demonstrate as to how even the job-work had to be termed as production or manufacture of goods. Eventually, the petitioners do not dispute that the job or wok carried out by them of placing or fitting the body on the chassis supplied to them by M/s. Tata Motors Limited and other entities is manufacture or production of goods. They do not dispute in this case that this work is carried out on the chassis supplied to them. In the circumstances, the Legislature had to evolve some measure so as to compute or calculate the duty. In this regard, section 4 of the Central Excise Act and which is entitled valuation of excisable goods for purpose of charging of duty of excise indicates as to how the duty of excise is charged on any excisable goods with reference to their value. The value on each

removal of the goods shall, in cases covered by clause (a) of sub-section (1) of section 4 shall be the transaction value. In such case, the goods are sold by the assessee for delivery and at the time and place of the removal. If they are not so sold, then, the cases falling in that category are covered by clause (b) of sub-section (1) of section 4. That category also includes cases where goods are not sold. In the circumstances, we can safely presume that the rules have been framed for dealing with such cases. The explanation to section 4 sub-section (1) clauses (a) and (b) would indicate as to how the price cum duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods. Therefore, the transaction value denotes the value of the goods for purpose of charging of duty of excise and where the goods are not sold and other cases, the value would have to be determined in terms of the rules. We have referred to each rule falling in Chapter II of the Valuation Rules, 2000, together with the definition of the term "*normal transaction value*" and "*value*" for the purpose of emphasizing that in all cases, it is the price and that is apparent from Rules 4, 5, 6 and 7. It is further clear from a reading of Rules 8, 9 and 10 as to how everywhere the words "*normal transaction value*" have been appearing. In the circumstances, Rule 10A and the insertion thereof by Notification No.9 of 2007 is relevant. It is clear that all cases which were, therefore, covered in the preceding rules did not apparently cover the job-worker. That is why Rule 10A has been introduced / inserted. Therefore, when the goods are sold by the principal manufacturer for delivery at the time of removal of the goods from the factory of the job-worker and the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration then it is the transaction value which should be the value of excisable goods. In cases where the goods are not sold by the principal manufacturer at the time of removal of the goods from the factory of the job-worker, but are transferred to some other place and within the meaning of clause (ii) of Rule 10A and the principal manufacturer sells them from some 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 removal of the said goods from the factory of the job worker. In such cases, the price is the determinative factor. That is when the principal manufacturer and the buyer of the goods are not related. The Legislature had to evolve some measure or mode of computation and calculation and, therefore, inserted Rule 10A. The object and purpose of introducing or inserting it is apparent if one peruses the proviso and explanation to Rule 10A. The proviso clarifies that the cost of transport, if any, from the premises wherefrom the goods are sold to the place of delivery shall not be included in the value of the excisable goods. The explanation denotes as to how the term "*job-worker*" has to be understood and throughout this rule by the Legislature. If the job-worker means a person engaged in the manufacture or production of goods on behalf of the principal manufacturer from any inputs or goods supplied by the said principal manufacturer or by any person authorised by him, then, it is clear that the job-work or the effort which has been taken by the job-worker for and on behalf of the principal manufacturer enables the principal manufacturer to sell the completed product or finished goods. It cannot be, therefore, that the Legislature must only take the price which parties like the petitioners charge for the job-work to M/s. Tata

Motors Limited. For the purpose of computation or calculation of the duty liability of the parties like the petitioners there is nothing erroneous if the Legislature takes into consideration and account the price at which the principal manufacturer sells the product or goods to the buyer. That is nothing but a measure of the tax. In other words, that is how the tax has to be computed and measured. Such a provision does not alter or change the character or nature of the duty or tax. The tax or duty remains a tax or duty on production or manufacture of goods. Insofar as its measure is concerned, the Legislature thought it fit and in its wisdom to quantify the duty liability of parties like the petitioners on the price which the finished product or goods command in the market. That would be the true measure of the tax according to the Legislature.

44. In this context it would be useful to refer to a judgment of the Hon'ble Supreme Court in the case of *Dugar Electronics vs. Collector of Central Excise, Calcutta* reported in *AIR 2003 SC 716*. In that case, in absence of a Rule like 10A, the transaction value as disclosed and declared by a party like the petitioners does not represent “full

commercial value”. In this behalf, following paragraphs of this judgment are relevant for they indicate why Rule 10A was introduced :

> *“2. The assessee is the manufacturer of tape recorders in the brand name of 'Philips'. Moulds and some other parts of the tape recorders were got prepared by Pieco (Philips) at its costs from third parties and supplied free of costs to the assessee. The assessee declared the price of tape recorders which was not accepted as correct assessable value of goods by the Excise authorities as well as the Tribunal. The Tribunal found that the price declared by the assessee was not full commercial value because the moulds etc. which were got produced by Pieco and were supplied free to the assessee resulted in an element of consideration passing from Pieco to the assessee. The Tribunal noticed that the assessee was entitled to certain deductions which were not allowed to it, and, for that purpose, it remanded the case to the adjudicating authority. Having so done, the Tribunal fixed the price of the goods at the rate at which Pieco (Philips) sold it to its dealers. Aggrieved by these two findings of the Tribunal, the assessee has come up in appeal to this Court.*
>
> *3. Mr. Vikram Nankani, the learned Counsel appearing for the appellant, contends that the rejection of the price declared by the appellant is illegal and unsustainable. We are afraid we cannot accept the contention of the learned Counsel for the simple reason that it is not disputed that for the development of moulds, Pieco played a dominant role. The assessee did not invest for the development of the moulds. The cost was incurred by Pieco. The assessee got them free from Pieco. These facts do support the findings of the Tribunal that the transaction does not represent 'full commercial value'.*

4. Learned Counsel further contends that fixation of assessable value by the Tribunal at the rate at which Pieco sold the goods to its dealers, is not justified. Having heard Mr. Ganguli, learned Senior Counsel for the respondent, we are of the view that the complaint made by the appellant is justified. No provision is brought to our notice under which the price charged by the buyer to its dealer can be taken, ipso facto, as assessable value under Section 4 of the Central Excises and Salt Act, 1944 and/or the Rules made thereunder. The assessable value has to be fixed under Section 4 of the Act and the Rules, which may be more or less or the same as fixed by the Tribunal. Section 4, insofar as it is relevant for the purposes, reads as follows :

"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale :

Provided that

(i) where, in accordance with the normal practice of the wholesale trade in such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the

time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons), who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason, that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) to (4) xxx xxx xxx"

5. In view of the submissions of learned Counsel for the respondent that the appellant itself has stated that clause (a) of sub-section (1) of Section 4 does not apply, the only provision under which the price can be fixed is clause (b) of sub-section (1) of Section 4 of the Act. That could be done in accordance with the Central Excise (Valuation) Rules, 1975. From a perusal of the order under challenge, it does not appear that the Tribunal proceeded to fix the price under any of the Rules. In the circumstances, we are of the view that the price of goods fixed by the Tribunal cannot be sustained. As the case was remanded taking note of the complaint that permissible deductions were not allowed to the assessee and the determination of the price by the Tribunal is found by us to be without any legal basis, we

> *leave it to the assessing authority to determine the price in accordance with the aforementioned provisions of law."*

45. We do not see how and merely because the Legislature devises a mode which reflects full commercial value that Rule 10A falls foul of the mandate of Articles 14 and 19(1)(g) of the Constitution of India or travels beyond sections 3 and 4 of the parent Act. There is no restriction on the fundamental right to carry on the business of manufacture of goods. Once we understand the nature of the levy and then read all the relevant provisions of the Act together and harmoniously with the rules, we do not think that there is anything unconstitutional, invalid or illegal about Rule 10A. It would be also clear from a reading of Rule 11 and the preceding rules that a combined or conjoint reading of these rules would enable us to conclude that it is only in cases covered by Rule 10A clauses (i) and (ii) that the value of the excisable goods is measured or computed at the transaction value of the goods sold by the principal manufacturer. In cases which are not covered by clause (i) or clause (ii) of Rule 10A, all the provisions of the foregoing rules viz. rules earlier to Rule 10A wherever applicable shall *mutatis mutandis* apply for determination of

the value of excisable goods. Therefore, Rule 10A is a rule enabling determination of the value of excisable goods and hence cannot be read as a stand-alone or isolated provision. It would have to be read together and harmoniously with other rules so also sections 3 and 4 of the Central Excise Act, 1944. So read, there is neither any merit in the challenge to the validity and legality nor is it necessary to read the Rule down or restrict its application as prayed for by the petitioners before us. It is a reading of the rule which assists and enables us to conclude as above.

46. There are several cases in which the Parliamentary measures of this nature have been held as being in tune with the constitutional mandate. In the case of *Gujarat Ambuja Cements* (supra) itself such instances and cases have been referred by this Hon'ble Supreme Court. In paragraphs 24 to 29 and in the context of a challenge to the constitutional validity of section 116 and 117 of the Finance Act, 2000, section 158 of the Finance Act, 2003, by which the decision of the Hon'ble Supreme Court in the case of *Laghu Udyog Bharati & Anr. vs. Union of India & Ors. (1999) 6 SCC 418*, striking down Rule

2(d)(1)(xii) and (xvii) of the Service Tax Rules, 1994 (as amended in 1997) was sought to be overcome, and in dealing with such a challenge that these paragraphs are relevant. They read as under :

> *“**24**. The next question is whether the levy of service tax on carriage of goods by transport operators was legislatively competent. Laghu Udhyog Bharati did not consider the question of legislative competency. Before we consider the scope of the impugned Act, it is necessary to determine the scope of the two Legislative Entries namely Entry 97 of List I and Entry 56 of List II. It has been recognized in Godfrey Phillips (supra) that there is a complete and careful demarcation of taxes in the Constitution and there is no overlapping as far as the fields of taxation are concerned. This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject-matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field.*
>
> ***25**. Undisputedly, Chapter V of the Finance Tax Act, 1994 was enacted with reference to the residuary power defined in Entry 97 of List I. But as has been held in International Tourist Corporation v. State of Haryana (1981) 2 SCC 319; "before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislature must be clearly established. Entry 97 itself is specific in that a matter can be brought under that Entry only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in either of those Lists".*
>
> ***26**. In that case Section 3(3) of the Punjab*

Passengers and Goods Taxation Act, 1952 was challenged by transport operators. The Act provided for the levy of the tax on passengers and goods plying in the State of Haryana. According to the transport operators, the State could not levy tax on passengers and goods carried by vehicles plying entirely along the national highways. According to them this was solely within the power of the Centre under Entry 23 read with 97 of List I. The submission was held to be patently fallacious by this Court. It was held that Entry 56 of List II did not exclude national highways so that the passengers and goods carried on national highways would fall directly and squarely within Entry 56 of List II. It was said that the State played a role in the maintenance of the national highway and there was sufficient nexus between the tax and passengers goods carried on the national highway to justify the imposition.

***27**. The writ petitioners in this case have, relying on this judgment, argued that the Act falls squarely within Entry 56 of List II and, therefore, could not be referred to Entry 97 of List I. We do not agree.*

***28**. There is a distinction between the object of tax, the incidence of tax and the machinery for the collection of the tax. The distinction is important but is apt to be confused. Legislative competence is to be determined with reference to the object of the levy and not with reference to its incidence or machinery. There is a further distinction between the objects of taxation in our constitutional scheme. The object of tax may be an article or substance such as a tax on land and buildings under Entry 49 of List II, or a tax on animals and boats under Entry 58 List II or on a taxable event such as manufacture of goods under Entry 84 of List-I, import or export of goods under Entry 83 of List-I, entry of goods under Entry 52 of List II or sale of goods under Entry 54 List II to name a few. Theoretically, of course, as we have held in Godfrey Phillips India Ltd. v. State of U.P. and others, 2005 SCALE Page 367, ultimately even a tax on goods will be on the taxable event of ownership or possession. We need not go into this question except to emphasise that, broadly* *speaking the subject-matter of taxation under Entry 56 of List II are goods and passengers. The phrase 'carried by roads or natural waterways' carves out the kind of goods or passengers which or who can be subjected to tax under the Entry. The ambit and purport of the entry has been dealt with in Rai Ramakrishna and others v. State of Bihar 1963 (1) SCR 897) where it was said in language which we cannot better:- "Entry 56 of the Second List refers to taxes on goods and passengers carried by road or on inland waterways. It is clear that the State Legislatures are authorized to levy taxes on goods and passengers by this entry. It is not on all goods and passengers that taxes can be imposed under this entry; it is on goods and passengers carried by road or on inland waterways that taxes can be imposed. The expression "carried by road or on inland waterways" is an adjectival clause qualifying goods and passengers, that is to say, it is goods and passengers of the said description that have to be taxed under this entry. Nevertheless, it is obvious that the goods as such cannot pay taxes, and so taxes levied on goods have to be recovered from some persons, and these persons must have an intimate or direct connection or nexus with the goods before they can be called upon to pay the taxes in respect of the carried goods. Similarly, passengers who are carried are taxed under the entry. But, usually, it would be inexpedient, if not impossible, to recover the tax directly from the passengers and so, it would be expedient and convenient to provide for the recovery of the said tax from the owners of the vehicles themselves." (p.908) (See also: Sainik Motor Jodhpur v. The State of Rajasthan 1962 (1) SCR 517).*

***29**. Having determined the parameters of the two legislative entries the principles for determining the constitutionality of a Statute come into play. These principles may briefly be summarized thus:*

> *a) The substance of the impugned Act must be looked at to determine whether it is in pith and substance within a particular entry whatever its ancillary effect may be. (Prafulla Kumar*

Mukherjee v. Bank of Commerce Ltd. And others (AIR 1947 PC 60, 65; A.S. Krishna v. State of Madras, 1957 SCR 399; State of Rajasthan v. G. Chawla (1959 Supp. (1) SCR 904; Katra Education Society v. State of U.P., 1996 (3) SCR 328; D.C. Johar and Sons (P) Ltd. v. STO Ernakulam, 1971 (27) STC 120; Kanan Devan Hills Produce v. State of Kerala (1972) 2 SCC 218).

b) Where the encroachment is ostensibly ancillary but in truth beyond the competence of the enacting authority, the statute will be a colourable piece of legislation and constitutionally invalid (A.S. Krishna v. State of Madras (supra); A.B. Abdul Kadir v. State of Kerala (1976) 3 SCC 219, 232; Federation of Hotel and Restaurant v. Union of India (supra at p.651). If the statute is legislatively competent the enquiry into the motive which persuaded Parliament or the State legislature into passing the Act is irrelevant. (Dharam Dutt and others v. Union of India and others 2004(1) SCALE 425).

c) Apart from passing the test of legislative competency, the Act must be otherwise legally valid and would also have to pass the test of constitutionality in the sense that it cannot be in violation of the provisions of the Constitution nor can it operate extraterritorially. (See: Poppat Lal Shah v. State of Madras 1953 SCR 677).

30. The provisions relating to service tax in the Finance Act, 1994 make it clear under Section 64(3) that the Act applies only to taxable services. Taxable services has been defined, as we have already noted, in Section 65(41). Each of the clauses of that sub section refers to the different kinds of services provided. Most of the taxable services cannot be said to be in any way related to goods or passengers carried by road or *waterways. For example, Section 65(41)(g) provides for service rendered to a client by a consulting engineer, Section 65(41)(k) refers to service to a client by a manpower recruitment agency, Section 65(41)(o) refers to service by pandal or shamiana contractors and so on. The rate of service tax has been fixed under Section 66. Section 67 provides for valuation of taxable service for the purposes of charging tax. The provision for valuation of service rendered by collecting and forwarding agents has been dealt with under sub-clause (j) and service provided by goods transport operators has been provided under clause (j). (subsequently renumbered as clause (ma). These clauses read respectively as under :-*

"(j) in relation to service provided by a clearing and forwarding agent to a client, shall be the gross amount charged by such agent from the client for services of clearing and forwarding operations in any manner."

"(ma) in relation to service provided by goods transport operator to a customer, shall be the gross amount charged by such operator for services in relation to carrying goods by road in a goods carriage and includes the freight charges but does not include any insurance charges."

31. As far as clause (j) is concerned it does not speak of goods or passengers, nor to carriage of goods nor is it limited to service by road or inland waterways. Clause (ma) shows that the valuation of the service tax includes the freight charges, but is not limited to it.

32. It is clear therefore that Section 66 read with Section 65(41)(j) and (ma) Chapter V of the Finance Act, 1994 do not seek to levy tax on goods or passengers. The subject matter of tax under those provisions of the Finance Act, 1994 is not goods and passengers, but the service of transportation itself. It is a levy distinct from the levy envisaged under Entry 56. It

> *may be that both the levies are to be measured on the same basis, but that does not make the levy the same. As was held in Federation of Hotel and Restaurant Association of India etc. v. Union of India and others (1989) 3 SCC 634 :*
>
> > *"... subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power.... Indeed, the law 'with respect to' a subject might incidentally 'affect' another subject in some way, but that is not the same thing as the law being on the latter subject. There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is an overlapping does not detract from the distinctiveness of the aspects." (pg. 652-653)*
>
> *33. Since service Tax is not a levy on passengers and goods but on the event of service in connection with the carriage of goods, it is not therefore possible to hold that the Act in pith and substance is within the States exclusive power under Entry 56 of List II. What the Act ostensibly seeks to tax is what it, in substance, taxes. In the circumstances, the Act could not be termed to be a colourable piece of legislation. It is not the case of the petitioners that the Act is referable to any other entry apart from Entry 56 of List II. Therefore the negation of the petitioners submission perforce leads to the conclusion that the Act falls within the residuary power of Parliament under Entry 97 of List I."*

47. In Principles of Statutory Interpretation by Justice G.P. Singh, former Chief Justice of Madhya Pradesh High Court, 13th Edition, 2012, the principle governing interpretation of a charging provision

and a machinery provision has been explained and with reference to several decisions of the Supreme Court. At page 855, the learned author states the principles as under :

> *" It must also be borne in mind that the rule of strict construction in the sense explained above applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection, and such machinery provisions have to be construed by the ordinary rule of construction. One important consideration in construing a machinery section is that it should be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable-* ***ut res magis valeat quam pereat****." [See also CIT vs. M/s. Sun Engineering Works (P) Ltd., reported in AIR 1993 SC 43 AT Pg. 59 Para 40]*

48. It is not disputed before us that the rule which is termed as invalid and ultra vires the parent Act is incorporated and inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Amendment Rules, 2007. These rules, therefore, would not receive an interpretation and as strict as required to be placed on the charging sections. The learned author has also pointed out that the nature of the tax imposed by a statute has to be determined by examining the pith and substance of the statute and by paying more attention to the charging section than to the basis or machinery adopted for assessment and collection of tax for the nature of tax is

different from the measure of tax. Thus, there are three components of a taxing statute viz. subject of tax, person liable to pay the tax and the rate at which the tax is levied. The Constitution Bench of the Hon'ble Supreme Court in the case of *State of West Bengal & Anr. vs. Kesoram Industries Limited & Ors., AIR 2005 SC 1646* had an occasion to consider the constitutional validity of the statutes levying cess on coal bearing land. The majority opinion and the minority views are to be found in a lengthy judgment but what is material for us is only the principles which have been summarized in paragraphs 33 and 135 of this judgment.

> "***33***. *We now proceed to enter a deeper dimension in the field of tax legislation by considering the problem of devising the measure of taxation. This aspect has been dealt with in detail in Union of India and others v. Bombay Tyre International Ltd., (1983) 4 SCC 210. Tracing the principles from the leading authority of Re.: a reference under the Government of Ireland Act 1920 and Section 3 of the Finance Act (Northern Ireland) 1934, (1936) A.C. 352, passing through Rella Ram v. Province of East Punjab, 1948 FCR 207, and treading through the law as it has developed through judicial pronouncements one after the other, this Court has made subtle observations therein. It has been long recognized that the measure employed for assessing a tax must not be confused with the nature of the tax. A tax has two elements; first, the person, thing or activity on which the tax is imposed, and secondly, the amount of tax. The amount may be measured in many ways; but a distinction between the subject-matter of a tax and the standard by which the amount of tax is measured*

must not be lost sight of. These are described respectively as the subject of a tax and the measure of a tax. It is true that the standard adopted as a measure of the levy may be indicative of the nature of the tax, but it does not necessarily determine it. The nature of the mechanism by which the tax is to be assessed is not decisive of the essential characteristic of the particular tax charged, though it may throw light on the general character of the tax.

……………

***135**. The relevant principles culled out from the preceding discussion are summarized as under:-*

(1) In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

(2) Power of 'regulation and control' is separate the distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject matter of two taxes by reference to the two Lists is different. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. This is the distinction between the subject of a tax and the measure of a tax.

(3) The nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined, the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a

far more complex exercise and therefore the legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by Legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax.

(4) Entries 52, 53 and 54 in List I are not heads of taxation. They are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures in spite of Union having enacted laws by reference to Entries 52, 53, 54 in List I. It is for the Union to legislate and impose limitations on State's otherwise plenary power to levy taxes on mineral rights or taxes on lands (including mineral bearing lands) by reference to Entry 50 and 49 in List II and lay down the limitations on State's power, if it chooses to do so, and also to define the extent and sweep of such limitations.

(5) The Entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non-obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:

One - Is still possible to effect reconciliation between two Entries so as to avoid conflict and overlapping?

Two - In which Entry the impugned legislation falls by finding out the pith and substance of the legislation?
and

Three - Having determined the field of legislation wherein the impugned legislation falls by applying doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?

(6) 'Land', the term as occurring in Entry 49 of List II, has a wide connotation. Land remains land though it may be subjected to different user. The nature of user of the land

would not enable a piece of land being taken out of the meaning of land itself. Different uses to which the land is subjected or is capable of being subjected provide basis for classifying land into different identifiable groups for the purpose of taxation. The nature of user of one piece of land would enable that piece of land being classified separately from another piece of land which is being subjected to another kind of user, though the two pieces of land are identically situated except for the difference in nature of user. The tax would remain a tax on land and would not become a tax on the nature of its user.

(7) To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt any one of the well known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land.

(8) The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of State Legislature cannot be annulled as unconstitutional merely because it may have an effect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of 'regulation and control' belonging to the Central Government by reason of the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Entry 23 in List II speaks of regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of

the Union. Entries 52 and 54 of List I are both qualified by the expression "declared by Parliament by law to be expedient in the public interest". A reading in juxtaposition shows that the declaration by Parliament must be for the 'control of industries' in Entry 52 and 'for regulation of mines or for mineral development' in Entry 54. Such control, regulation or development must be 'expedient in the public interest'. Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming subject matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament. In spite of declaration made by reference to Entry 52 or 54,the State would be free to act in the field left out from the declaration. The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field 'subject to' any other entry or abstracts the field by any limitations imposable and permissible. A tax or fee levied by State with the object of augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied by State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental. (9) The heads of taxation are clearly enumerated in Entries 83 to 92B in List I and Entries 45 to 63 in List II. List III, the Concurrent List, does not provide for any head of taxation. Entry 96 in List I, Entry 66 in List II and Entry 47 in List III deal with fees. The residuary power of legislation in the field of taxation spelled out by Article 248 (2) and Entry 97 in List I can be applied only to such subjects as are not included in Entries 45 to 63 of List II. It follows that taxes on lands and buildings in Entry 49 of List II cannot be levied by the Union. Taxes on mineral rights, a subject in Entry 50 of List II can also not be levied by the union though as stated in Entry 50 itself the union may impose limitations on the power of the State and such limitations, if any, imposed by the Parliament by law relating to mineral development and to that extent shall circumscribe the States' power to

> *legislate. Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the Union. This is the result achieved by homogeneous reading of Entry 50 in List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional."*

49. We have applied these very tests and we do not find that while valuing excisable goods for purposes of charging the duty of excise in the case of job-worker by taking into consideration the transaction value of the goods sold by the principal manufacturer, the rule in any way travels beyond the Act or alters the character or nature of the tax or duty.

50. Once we deal with this principal contention of the petitioners and do not find any merit in it, then, the petitioners cannot be permitted to argue anything contrary to the factual foundation or basis on which we have proceeded. This foundation or basis is laid in the writ petition itself. None of the factual aspects that we have noted have been taken by us from anywhere else, save and except the Memo

of the writ petition and the written submissions.

51. We do not find that any assistance can be derived by Mr. Sridharan from the judgments of the Hon'ble Supreme Court in the case of *A.K.Roy vs. Voltas Limited 1977 (1) Excise Law Times (J 177)* or *Atic Industries Limited vs. H.H. Dave, Assistant Collector of Central Excise & Ors. 1978 (2) Excise Law Times (J 444).* Both these decisions have been considered in the Supreme Court judgment rendered in *Union of India vs. Bombay Tyre International Limited, 1984 (1) SCC Pg. 467*.

52. In all these decisions we must not forget that the essential controversy was whether the value of an article for the purpose of excise levy must be determined by a reference exclusively to the manufacturing cost and the manufacturing profit of the manufacturer or should be represented by the entire wholesale price charged by the manufacturer. The wholesale price actually charged by the manufacturer consists of not merely his manufacturing costs and his manufacturing profits, but includes, in addition, a whole range of expenses and an element of profit arising between the completion of

the manufacturing process and the point of sale by the manufacturer. We do not think that this central issue dealt with by the Hon'ble Supreme Court can be lost sight of. While all other principles which have been noted in this decision with regard to the concept of duty of excise have been referred by us when we placed reliance on the later decisions of the Hon'ble Supreme Court. All the decisions that Mr. Sridharan would rely upon and which have been referred extensively from paragraphs 8 to 14 of the decision in *Union of India v. Bombay Tyre* (supra) do not lay down any principle contrary to what we have followed and applied. We have always to bear in mind the principle that the measure adopted could not be identified with the nature of the tax. It is this very principle which we have applied and throughout. We follow and apply equally the principle that any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. In the circumstances, we do not think that the further paragraphs of this judgment and which refer to the method of calculation of tax at the point of first sale effected by the manufacturer would assist the petitioners. That is essentially to determine as to how the cost or the wholesale price must be decided. What could be the components or elements and particularly of the expenses which have to be borne in mind. In the circumstances, we find that if the goods manufactured have to be sold then the wholesale cash price is to be taken into consideration. How that wholesale cash price is to be determined is discussed in details and ultimately decided by the Hon'ble Supreme Court. We are, therefore, not referring to the further paragraphs which Mr. Sridharan relied upon, particularly those discussing as to what could be the meaning of the expression "*related person*".

53. We need not refer to the judgment in the case of *M/s. Ujagar Prints vs. Union of India & Ors. 1988 (38) Excise Law Times, 535* and the subsequent clarificatory order for the simple reason that we find that there is no merit in the contention of Mr. Sridharan that Rule 10A and insertion thereof was beyond the legislative competence and by that process of reasoning, the rule cannot be sustained. Mr. Sridharan was fair to point out that in this regard the powers of the Parliament are very wide. So long as the Parliament can take the aid of Article 248(2) and Entry 97 of List I of the VII Schedule to the Constitution

of India, then, the principle laid down is whether the Union Parliament can legislate in cases where the topic of legislation is not falling in List II. If it is not falling then it is not necessary to go further or search for the field in List I. The above Articles and the Entry would enable the Court to arrive at the conclusion that the tax was within the legislative competence of the Legislature.

54. Then, Mr. Sridharan relied upon the judgment of the Hon'ble Supreme Court in the case of *Rajasthan Chemists Association vs. State of Rajasthan & Ors. (2006) 147 Sales Tax Cases, Pg. 476*. We have applied the very principle laid down in this decision viz. the measure of tax must retain nexus with the levy. Mr. Sridharan relies upon this judgment to urge that if the price is to be the basis for measuring the tax, it must relate to the actual transaction of sale that becomes the subject of tax and not to a different transaction that may take place in future at a price. It is this conclusion of the Supreme Court which is heavily relied upon and which is to be found in earlier cases as well. However, what the Hon'ble Supreme Court was concerned with is the correctness of the view taken by the Division

Bench of the Rajasthan High Court, Jodhpur, holding that section 4A of the Rajasthan Sales Tax Act,1994, as introduced by the State Finance Act, 2004, was not legally sustainable to the extent that tax on first point sale of drugs, medicines or any formulation or for that matter any other commodity by a manufacturer / wholesaler / distributor to retailer where minimum retail price published on package is measure to which rate of tax is to be applied cannot be with reference to such published MRP which is neither charged or chargeable by the wholesaler from the retailer. Whether the tax is charged on sales or purchase by the parties to sale under section 4A and the concerned Notification in this regard. The writ application was allowed. The Hon'ble Supreme Court concluded that the view taken by the Rajasthan High Court is correct. That was because though the determination of real income was held to be the statutory mandate, that is not fulfilled by taking into consideration the MRP or the method followed. Such is not the position before us inasmuch as the present case concerns the legality and validity of Rule 10A of the Valuation Rules, 2000, which prescribes a mode for determining the valuation of excisable goods for the purpose of levy of excise duty when such goods are manufactured or produced by a job-worker. Therefore, this decision has no application.

55. The clarificatory judgment in the case of *M/s. Ujagar Prints & Ors. vs. Union of India reported in 1989 (39) Excise Law Times, 493* must be read together with the Constitution Bench main judgment of the Hon'ble Supreme Court in the same case reported in *1988 (38) Excise Law Times, Pg. 535*. That being the case of a processor of grey cloth and he being the job worker, the clarification as sought has been given. This clarification has come in the backdrop of the applicability of the Central Excise Rules. The Civil Miscellaneous Petition for clarification was filed to seek a clarification as noted in the order. The Supreme Court clarified that the assessable value of the processed fabric would be the value of grey-cloth in the hands of the processor plus the value of job-work done plus manufacturing profit and manufacturing expenses whatever these may be, which will either be included in the price at the factory gate or deemed to be the price at the factory gate for the processed fabric. The factory gate there meant the deemed factory gate as if the processed fabric was sold by the processor. The Hon'ble Supreme Court, therefore, gave an illustration

and arrived at the correct assessable value. Then, it also dealt with the case where the trader who entrusts cotton or man-made fabric to the processor for processing on job-work basis, if he gives a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market then that would be taken by the Excise authorities as the assessable value of the processed fabric and excise duty would be charged to the processor on that basis provided that the declaration as to the price at which the trader would be selling the processed goods in the market only includes the price or deemed price at which the processed fabric would leave the processor's factory plus his profit. Since Rule 174 of the Central Excise Rules, 1944 was referred, the Hon'ble Supreme Court clarified that the price at which the trader is selling the goods must be value of the grey-cloth or fabric plus the value of the deemed job-work done plus the manufacturing profit and manufacturing expenses but not any other subsequent profit or expenses. Thus, the trader's profits, who gets the fabric processed, need not be included. We do not find how this clarification can assist the petitioners. This clarification rather supports our conclusion that the price at which the manufacturer sells the product could be the basis on which the excise duty can be computed. The valuation of excisable goods for purpose of computation of the excise duty, therefore, does not rule out this element.

56. In the above backdrop and in the light of our conclusion we do not think how other judgments which have been relied upon, particularly *Pawan Biscuits Co. (Pvt.) Ltd. vs. Collector of Central Excise, Patna 2000 (120) Excise Law Times, 24 (S.C.)* can carry the case of the petitioners further.

57. It may be that section 4 is a machinery provision but we have applied the very principle that anything said therein must be so read so as to carry out the basic concept of excise duty. The circular dated 12th May, 2000, referred by Mr. Sridharan during the course of his arguments cannot be of any assistance to him simply because what is dealt with by section 4(1)(a) is a case not covered by section 4(1)(b). We are really concerned with section 4(1)(b) and the Valuation Rules.

58. We have, therefore, no hesitation in rejecting Mr. Sridharan's

argument that measure provided by Rule 10A is beyond the subject since it ceases to have nexus with the essential character of levy. We have established sufficiently in the foregoing paragraphs the nexus that Rule 10A has with the essential character of levy. In these circumstances, we do not think that the arguments based on this essential submission and elaborated in writing can be accepted by us.

59. We are also not in agreement with Mr. Sridharan's submission that Rule 10A contravenes section 2(f) read with section 3(1) of the Central Excise Act, 1944. It may be that the transactions between the principal manufacturer and the buyer of goods is taken as the measure but that, as clarified above, does not in any manner contravene section 2(f). The term “manufacture” is defined in section 2(f) and we have already noted as to how that definition is worded and has been interpreted. Once the levy is on production or manufacture in India on all excisable goods, then, we do not see how this conclusion can be inferred. Similarly, we find that after section 4, section 4A has also been introduced and it is not as if valuation of excisable goods with reference to retail sale price is alien and completely to the nature or

character of the levy. Eventually, all this is for valuation of excisable goods for the purpose of charging of duty of excise. In such circumstances, even this submission has no merit.

60. We are not as much on the concept of revenue leakage or the other aspects or the contents of the Dutt-Majumder Committee report. It is not the understanding of the Revenue officials which will be decisive and conclusive. It is the interpretation of the statutory provisions and that is the duty and function of the court. The court has to discharge this obligation and fulfill this duty irrespective of any understanding of the provision by the Government or Revenue officials. As held by the Hon'ble Supreme Court in *B.K. Garad vs. Nashik Merchants Co-op. Bank Ltd.*, reported in *AIR 1984 SC 192*, that a view of law or a legal provision expressed by a Government Officer cannot afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate its function in favour of such opinion (See

para 15 at Pg. 198). Therefore, we need not make any detailed reference to the recommendation in the Dutt-Majmudar Committee Report.

61. We are also not sustaining the legality and validity of Rule 10A on any notion of Revenue leakage. However, we are mindful of the fact that every arrangement devised by the parties like the petitioners and M/s. Tata Motors Limited could not be presumed to be genuine. It could be, in a given case, a device to avoid payment of excise duty in terms of the rate set out in the schedule. Therefore, to plug the loopholes and to discourage such arrangements as would be not conducive to the recovery of the duty that a comprehensive and complete mode has been prescribed by the Rules. We cannot find any fault with the Rule if this is also one of the object sought to be achieved.

62. We are also not impressed by Mr. Sridharan's arguments about alleged lack of machinery so as to probe the transaction between the principal manufacturer and the buyer. If that price is taken as the basis

or the measure, then depending on the facts and circumstances in each case, it would be open for the Revenue and if called upon to make proper enquiry and seek details of the transactions with the buyers and the price at which the goods have been sold by the principal manufacturer. Eventually all investigations and enquiries incidental to the valuation, assessment and recovery of taxes can be made and there need not be a specific provision in that behalf. It is only in specific instances and wherein there are clear allegations that such enquiries and investigations would be held. That would not be necessitated on some vague complaint or a general grievance. In such circumstances, we do not see any merit in this grievance as well.

63. Finally, and in the light of the view that we have taken we need not go into all the contentions and with regard to applicability of Rule 10A. We do not think that the petitioners and in the given facts and circumstances can urge that they have not manufactured the goods on behalf of another person or that their relationship with M/s. Tata Motors Limited is on principal to principal basis. The argument on relationship can be advanced in future cases by the petitioners

irrespective of the conclusions that we have reached on the legality and validity of Rule 10A. Insofar as order dated 30th November, 2012 passed by the Tribunal is concerned, that clearly proceeds on the applicability of Rule 10A to the transactions and dealings noted therein. Therefore, it would be open for the petitioner to urge in other and future cases that the relationship being not covered by Rule 10A it has no applicability. In other words, they can urge that Rule 10A cannot be invoked or has been erroneously and incorrectly invoked and applied to a given transaction and case. All such contentions and based on the judgments which have been relied upon by Mr. Sridharan can be canvassed. We, therefore, need not express any opinion as to when Rule 10A could be said to be applicable.

64. Similarly, we do not wish to render a conclusive opinion as to what could be the situation in which it would be concluded that the excise goods are produced or manufactured by a job-worker. If they are excisable goods produced or manufactured by a job-worker but they are not on behalf of a person referred to as a principal manufacturer nor could the activity carried out be deemed as job-work

also because a person engaged in the manufacture or production of goods has not obtained any inputs or goods from the principal manufacturer or by any person authorised by him. In other words, no inputs or goods being supplied by the said principal manufacturer or any other person authorised by him the activity cannot be termed as job-work within the meaning of the explanation. In that event it would be possible to urge that Rule 10A has no application at all. The case, therefore, should be then processed and dealt with by the rules other than Rule 10A. Even that contention and plea is open and, therefore, we need not express any opinion as to whether the expression "*on behalf of*" is distinct from the expression "*for, or on behalf of*". We also, therefore, do not deem it necessary to express any opinion on the fourth and fifth submission set out in the written submissions. We are of the view that the Revenue's interpretation and which we have accepted does not render the phrase "*on behalf of*" redundant. If the Rule is read in its entirety with the proviso and the explanation, then we are sure that the applicability of Rule 10A is a matter which can be independently dealt with and depending on the facts and circumstances in each case. Therefore, it is not possible to lay down a general rule as to when can the process be said to be a job-work and undertaken on behalf of a person named as principal manufacturer from any inputs or goods supplied by him or by any other person authorised by him. The contentions on the applicability of Rule 10A thus can be canvassed irrespective of Rule 10A being upheld by us.

65. Therefore, all the judgments in the compilation Vol. 2 need not be referred in further details.

66. As a result of the above discussion, we do not find any merit in each of these writ petitions. Rule is discharged in each of them. Each of the writ petition is, accordingly, dismissed. In the circumstances, there will be no order as to costs.

67. We have discharged Rule in each of these Writ Petitions. However, we find that there was a pure legal challenge and which ultimately was not sustained by this Court. However, the foundation or basis being a provision of law, there is no justification to sustain the

penalties on either the Company or any of its Directors or Officers. In the circumstances, we set aside the order passed by the Commissioner in Writ Petition No.9627 of 2013 and Writ Petition No.2399 of 2014 to the extent it proceeds to impose penalties on the Petitioners in these Writ Petitions or any of its Directors and Officers. Ordered accordingly. Save and except this modification, the Commissioner's orders are maintained.

S.P. DESHMUKH, J. ***S.C. DHARMADHIKARI , J.***