

**In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

**Appeal No. E/1799-1800/2010-DB  
Appeal No. E/10046-10047/2013-DB**

[Arising out of OIA-290-291/2010-AHD-I-CE/MM/COMMR-A-/AHD Dated 25/08/2010 passed by Commissioner of Central Excise-AHMEDABAD-I]

[Arising out of OIA-82&83/2012-AHD-I-CE/AK/COMMR-A-/AHD Dated 28/09/2012 passed by Commissioner of Central Excise-AHMEDABAD-I]

M/s. Niraj Polymers Pvt. Ltd

Appellant

Vs

C.C.E., Ahmedabad-i

Respondent

**Represented by:**

For Appellant: Shri S.J. Vyas (Advocate)

For Respondent: Shri. T.K. Sikdar (AR)

**CORAM:**

**HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**

**HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

Date of Hearing/Decision: 03.12.2018

**Final Order No. A / 12838-12841 /2018**

***Per: Ramesh Nair***

The issue involved in the present case is that in respect of sale of excisable goods through trading firms namely M/s Chetan Plastics and M/s Sanjay Packaging wherein the partners are also Director to the appellant Company whether they can be considered as a related person and valuation under Rule 9 will apply.

2. Shri. S.J. Vyas, Ld. Counsel appearing on behalf of the appellant at the outset submits that the same issue in the appellant own case for the past period has already been decided by this Tribunal vide order No. A/12575/2018 dated 13.11.2018.

3. Shri. Govind Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides, and perusal of the records, we find that identical issue in the appellant's own case for the past period has already been decided in the appellant's favour vide order No. A/12575/2018 dated 13.11.2018 which is reproduced below:-

"This appeal has been filed by M/s Neeraj Polymers Ltd. against confirmation of demand of duty, interest and imposition of penalty.

2. Ld. Counsel for the appellant pointed out that they are manufacturers of plastics bags classifiable under chapter 39 of the Schedule to the Central Excise Tariff Act, 1985. He pointed out that they were clearing 80 percent of the final product through two trading firms namely M/s Chetan Plastics and M/s Sanjay Packaging owned by Smt. Manjulaben Shah and Shri Sanjay Shah. He pointed out that the said persons were also Directors in the appellant's company. In this background, Revenue alleged that the assessable value in respect of clearance made by the two firms should be treated as clearance made by related persons and assert likewise. He pointed out that the appellant company came into existence in October 1999 and started manufacturing activity in January 2003. He admitted that they are closely held companies but he argued that simply because of that fact, they cannot be treated as related persons. He pointed out that there is above 10 percent difference between purchase price and their selling price of M/s Chetan Plastics and M/s Sanjay Packaging. Ld. Counsel pointed out that they also have independent sale. He argued that Central Excise Valuations Rules, 2000 prescribe under Rule 9 that only if the goods are not sold to assessee except to or through related persons, can Rule 9 be invoked. He argued that in the instant case, the part of the sale is made to independent buyers and therefore Rule 9 could not have been invoked by Revenue. He pointed out that Rule 9 was amended in the year 2013 and the earlier rule 9 was replaced by the following:

RULE 9.[Where whole or part of the excisable goods are? sold by the assessee to or through a person who is related in the manner specified in any of the sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, 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 (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail :

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

He pointed out that only after the introduction of new Rule 9 in 2013 can Rule 9 be invoked in cases where there are sales to persons other than related persons.

3. Ld. AR relies on the impugned order. He pointed out that manufacturing margin of appellant company is merely 2 % whereas the trading margin of M/s Chetan Plastics and M/s Sanjay Packaging is 8-12 %. He argued that this has been done entirely to shift the profit to avoid payment of Central Excise Duty. He argued that trading unit and appellant's company appear to be close family and therefore, it can be treated as related persons. He pointed out the trading unit sells the product in numbers to their customers whereas the product is purchased by M/s Chetan Plastics and M/s Sanjay Packaging, on Kilograms basis. He pointed out that the clearances to the buyers of the trading unit are made directly from the appellant's factory. He further pointed out that the Directors of the company get their remuneration from the trading units.

4. We have gone through rival submissions. We find that to invoke Rule 9 of the Central Excise Valuation Rules, it has to be first established that the two entities are related to each other. It is seen that the appellant is a company whereas the trading units are proprietorships. In these circumstances the two cannot be held to be related, in terms of section 2, clause 41 of the Companies Act, 1956, the definition relates only in terms of natural persons. The appellant being a company cannot be said to be related in that manner just because of the Directors of the appellant company are themselves proprietors of the trading firms in the instant case. In these circumstances, it cannot be said that they are related parties.

4.1 Revenue has pointed out that the manufacturing margin of the appellant firm is 1-2 percent whereas the trading margin of the two trading firm is to the extent of 8-10 percent. They have also pointed that goods sold are directly supplied from the appellant's premises. In this background it would appear that the trading firms have been created to avoid payment of Central Excise Duty payment. These facts point` to an arrangement but are by itself not sufficient to hold them as related persons. Since, the foundation of the charge i.e, relationship, itself is not established, the other charges automatically fail. The appeal is consequently allowed."

From the above order, it can be seen that the issue involved in the present case is no longer res-integra. Accordingly, following the ratio of the above decision we allow the appeals by setting aside the impugned order.

*(Dictated and pronounced in the open court)*

**(Raju)**  
**Member (Technical)**

**(Ramesh Nair)**  
**Member (Judicial)**

Prachi