Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 2

Excise Appeal No. 13948 of 2013- DB

(Arising out of OIO-98/COMMR/2013 dated 16.09.2013 passed by the Commissioner, Central Excise and Customs-RAJKOT)

NAYARA ENERGY LIMITED **........Appellant**
(Earlier known as M/s. Essar Oil Ltd.)
Moti Khavdi,
Jamnagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-RAJKOT **......Respondent**
Central Excise Bhavan,
Race Course Ring Road,
Rajkot, Gujarat-360001

With

Excise Appeal No. 11859 of 2013- DB

(Arising out of OIO-41-42-COMMISSIONER-2013 dated 22.03.2013 passed by the Commissioner, Central Excise-Ahmedabad-I Commissionerate)

NAYARA ENERGY LIMITED **........Appellant**
P.O. Box No. 24,
Jamnagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-RAJKOT **......Respondent**
Central Excise Bhavan,
Race Course Ring Road,
Rajkot, Gujarat-360001

APPEARANCE:
Shri Vishal Agarwal, Mrs. Dimple Gohil and Shri Ambarish Pandey, Advocates appeared for the appellant
Shri Rajesh K Agarwal, Superintendent (AR) appeared for the department

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10032-10033/2026

DATE OF HEARING: 18.09.2025
DATE OF DECISION: 22.01.2026

SATENDRA VIKRAM SINGH

1. M/s. Nayara Energy Limited (Appellant) are manufacturing Bitumen in their refinery. They have two depots in Dhinchda, Jamnagar, one at Plot No.27, 28 & 45-48 and other at Plot No.15-20 Dhinchda, duly registered with Central Excise Department. Vide letter dated 20.05.2010, appellant informed that they are clearing bulk Bitumen to M/s. KMC Constructions, M/s. Agarwal

Petrochem Pvt Ltd, DSC Ltd. etc. by paying duty on transaction value and also transferring the required quantity of bulk Bitumen on payment of excise duty, to above depots for barreling for onward sale therefrom as well as stock transfer to other depots located outside Jamnagar for further sale. They purchase barrels on payment of duty for packing of Bitumen at the depots.

1.1 Till May 2010, they were paying excise duty on transfer of bulk Bitumen from refinery to depots by adopting the price of barreled Bitumen prevailing at the depots at the time of removal. They changed the practice of assessment thereafter by intimating the department on the ground that the process of barreling the Bitumen does not take place at the refinery and does not amount to manufacture. The Range Superintendent wrote to the appellant for determining assessable value by adding cost of barrel or any other expenditure but they did not agree and started assessing goods by deducting cost of barrels on the ground that process of barreling was not essential for sale of bulk Bitumen at their refinery. After obtaining the cost of barrels and other expenditure, revenue issued them three show cause notice, one dated 29.06.2011 (for the period June 2010 to December 2010), the second dated 01.03.2012 (for the period Jan 2011 to March 2011) and the third dated 02.05.2012 (for the period from April 2011 to December 2011) proposing to assess value of such Bitumen under Rule 7 of the Central Excise Valuation Rules, 2000 read with Section 4(1)(b) of the Central Excise Act, 1944 and demanding the Central Excise duty of Rs.2,29,61,342/- under Section 11A of the Central Excise Act, 1944 along with interest under Section 11AA and penalty under Section 11AC of the said Act as well as Rule 25 of the Central Excise Rules 2002.

1.2 The adjudication proceedings in respect of above three show cause notices culminated in confirmation of above central excise duty under Section 11A of the Central Excise Act,1944 along with interest and equal penalty under Section 11AC read with Rule 25 of the Central Excise Rules, 2002. It was also held that the goods are liable for confiscation under Rule 25 of the Central Excise Rules,2002. Against the above order, the appellant filed appeals before this Tribunal.

2. In their appeals, the appellant took the following grounds: -

- The impugned orders are a replica of the show cause notices. The Adjudicating Authority has traversed beyond the scope of show cause notices as it was proposed to determine assessable value under Rule 7 of the Central Excise Valuation Rules, 2000 whereas in the impugned orders, assessable value has been determined under Section 4(1)(a) of the Central Excise Act, 1944 without any recourse to Central Excise Valuation Rules. Hon'ble Supreme Court in the case of Toyo Engineering and in the case of Ballarpur Industries held that the Adjudicating Authority has to confine himself within the four corners of the allegations levelled in the show cause notice. If the Adjudicating Authority was not agreeing to the allegations made in the notices, he ought to have dropped the charge in limine instead of confirming Central Excise duty.
- Section 4(3)(cc) defines the expression, "time of removal" to mean that in respect of excisable goods removed from the place of removal referred to in sub Clause (iii) of Clause (c) of Section 4 (3) to be the time at which such goods are cleared from the factory. Therefore, time of removal in respect of goods removed to the depot could be the time of removal when goods are cleared from the factory. As the goods transferred to the depot are neither sold nor delivered at the time of removal, assessable value cannot be determined under Section 4(1)(a).
- The decision in the case of Clariant (I) Ltd. Vs. CCE reported in 2006 (196) ELT 353 as relied upon by the Adjudicating Authority is not binding precedent as it has overlooked the definition of "time of removal" in Section 4(3)(cc) of the Central Excise Act, 1944.

- They sell bulk bitumen from the refinery to independent buyers by paying excise duty on the transaction value. The assessable value in respect of goods transferred to depot, was determinable under Rule 4 by adjusting value of the goods sold to independent parties at the factory gate to take into account difference in date on which sale was made vis-à-vis the date on which assessment of the goods being cleared to the depot was being made. If Rule 4 is applied, there was no short levy of duty as alleged against them and in fact, excess duty has been paid by them. They rely on the decision of Larger Bench in the case of Ispat Industries Ltd. Vs. CCE reported in 2007 (209) ELT 185 wherein, Rule 4 has been applied in somewhat similar situations.
- Rule 7 of the Valuation Rules applies in case where excisable goods are not sold by the assessee at the time and place of removal but are transferred to 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". W.e.f. 13.05.2003, place of removal has been amended to include "a depot……". Consequently, Rule 7 will not apply in their case.
- For Rule 7 to apply, normal transaction value of such goods sold from such other place at or about the same time is required to be adopted. The expression "such goods" would refer to the goods under assessment. Here, the goods cleared from the factory was bitumen in bulk while barreled Bitumen were sold from the depots. They place reliance on the decision in the case of Savita Chemicals Vs. CCE reported in 2000 (119) ELT 394 which was also upheld by Hon'ble Supreme Court as reported in 2001 (130) ELT A262 and also on the case of Procter & Gamble Vs. CCE reported at 2006 (206) ELT 913. Expression, 'such goods' in Rule 7 refers to similar commodity and that the goods which are placed in containers of different sizes sold from depot cannot be

considered similar to the goods cleared in bulk from the factory. Thus, the impugned order has erred in applying Rule 7 of the Valuation Rules.

- Their alternate submission is that if cost of barrel was to be included in the assessable value of bulk Bitumen transferred from refinery to depots, Cenvat Credit of duty paid on barrels should be allowed which has simply been disallowed on the ground that such barrels were received at the depots and not in the factory. Even in respect of job work, credit is allowed on the raw materials received directly by the job worker instead of first reaching at the place of the principal manufacturer. They rely on the decision of Hon'ble Supreme Court in the case of Vikram Cement Vs. Commissioner, Central Excise, reported in 2006 (194) ELT 3 (SC) and Jaypee Reva Cement Vs. Commissioner reported in 2001 (133) ELT (3). These decisions have also been followed in the case of Indian Oil Corporation Vs. Commr. reported in 2013 (292) ELT 210 (T) and Alembic Ltd. Vs. Commr. reported in 2013 (293) ELT 119 (T).
- The grounds taken by the department for alleging suppression in this case are not legally correct as they themselves had intimated the department in May, 2010 that they would be deducting the cost of barrel from the value of barreled Bitumen cleared from the depot, for payment of duty. For imposition of penalty under Section 11AC, there should be deliberate suppression of fact with intent to evade payment of duty which is absent in this case. They followed the decision in the case of Savita Chemicals (cited supra) which held that value addition on account of packing material outside the factory premises, cannot be subjected to levy of excise duty. They requested to set aside the impugned orders and allow their appeals.

3. During hearing, learned Counsel highlighted the decisions mentioned in their appeal and impressed that the Adjudicating Authority cannot travel

beyond the foundation laid down by the show cause notices as held by Hon'ble Apex Court in a series of decisions. The revenue's reliance on the decision in the case of Clariant (I) Ltd is misplaced as facts are different. He argued that Rule 4 of the Central Excise Valuation Rules is applicable in their case as held by the Tribunal in the case of Ispat Industries Ltd and therefore, there no additional duty liability on them. In respect of his alternate submission, he relied on decision of Allahabad Tribunal in the case of M/s Simbhaoli Sugar Ltd. vs. CCE, Noida reported in 2023 (10) TMI 525(T) and decision of Hon'ble Supreme Court in the case of Vikram Cement Vs. CCE reported in 2006 (194) ELT 3 (SC) wherein, it was held that inputs need not be utilized only within the factory premises and can also be used out side the factory. Learned Advocate also argued that the department has no case to invoke extended period in this case and consequently, penalty under Section 11AC is not imposable on them.

4. Countering the arguments, learned AR relied on the decision of Mumbai Tribunal in the case of Clariant (I) Ltd. (cited supra), wherein, it was held that extra amount recovered towards cost of packing is to be added to the value of such packed goods. The relevant para 4 & 5 are reproduced as under:-

> ***"4.*** *After hearing both sides, we find that the valuation law has undergone a change with effect from 1-7-2000 requiring excise valuation to be done according to transaction value of the goods under assessment. Section 4(1) of the Central Excise Act, 1944 (CEA) stipulates transaction value to be adopted in a case where goods are sold for delivery at the time and place of removal. In this case, the goods are not sold when removed from the factory, but are merely transferred to the depot. We are concerned here with those goods which are sold from the depot after repacking into smaller packages. Under Section 4(3)(c)(iii) "place of removal" is defined to mean a depot from where excisable goods are sold after clearance from the factory. Since depot is a place of removal under the law and smaller packages are sold from there only and not from the factory, applying Section 4(1)(a) of CEA, the transaction value of such packages including cost of packing has to be adopted as the assessable value. In our view, since the value can be thus determined under Section 4(1)(a) of CEA, there is no need to take recourse to the Valuation Rules. Interpretation of Rule 7 is also, therefore, not necessary in this case.*
>
> ***5.*** *Accordingly, we order that the extra amount recovered towards cost of packing is to be added to the assessable value but we agree with the lower appellate authority that the value needs to be recalculated by the adjudicating authority treating the amount as*

'cum-duty-price'. Hence, we uphold the remand order and reject the appeal."

4.1 He also took support from para 2.5 of part of Chapter 3 of CBEC's Excise Manual of Supplementary Instructions, 2005 and Board Circular No.693/14/2002-Cx. dated 01.07.2002 and prayed for dismissing the party's appeals and upholding the impugned orders passed by the Commissioner.

5. We have heard the rival submissions. The issue to be decided here is whether the cost of barrels is to be deducted from the price of barreled Bitumen sold from the depot(s) to arrive at assessable value for payment of duty. The appellant is clearing bitumen in bulk from the refinery for sale to independent buyers and also transferring some quantity to their Jamnagar depots for packing in barrels for sale as well as transfer to other depots located outside. The dispute revolves around valuation of barreled Bitumen which the appellant was initially determining on the basis of transaction value at the depot but later on, started deducting cost of barrels from the sale value, for payment of duty. Both sides agree that Bitumen packed in barrels is not cleared from the refinery.

5.1 The relevant provisions of Section 4 of the Central Excise Act,1944 and Central Excise Valuation Rules, 2000 are reproduced as under:-

Section 4 of the Central Excise Act, 1944 provides that, "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 goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of 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 cases where the goods are not sold be the value determined in such manner as may be prescribed.

- Section 4(3)(c) of the Central Excise Act, 1944 defines, "place of removal" to mean—

(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; or

(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.

- Section 4(3)(cc) defines "Time of removal" as under:-

(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.

- Rule 4 of the Central Excise Valuation Rules, 2000 as under:-

"RULE 4.The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of 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 7 of the Central Excise Valuation Rules, 2000 as under:-

"RULE 7.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 (hereinafter referred to as "such other place") 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."

5.2 For goods cleared from depot, time of removal shall be deemed to be the time at which "such goods" are cleared from the factory. At refinery, some quantity of bulk bitumen is sold to independent buyers whereas the rest quantity is transferred to depots located in Jamnagar for packing in barrels for further sale from there as well as distribution to other depots for sale. Since, barreled Bitumen is not sold from the refinery, value of such goods (barreled Bitumen) cannot be determined at the refinery under Section 4(1)(a) of the above Act, and it becomes necessary to take recourse to Section 4(1)(b) read with Central Excise (Determination of Value) Rules, 2000. Going sequentially, Rule 4 which deals with situations where delivery of goods takes place at time other than the time of removal of goods under assessment, is not applicable. Therefore, reliance by the appellant on decision in the case of Ispat Industries reported in 2007 (2) TMI 5-CESTAT Mumbai (LB) which deals with valuation of goods transferred to other plant for captive consumption, is of no help as facts in this case are entirely different. Rule 5 & 6 also have no applicability. Rule 7 as reproduced above is applicable as excisable goods (i.e. barrelled Bitumen) are not sold by the assessee at the refinery. Instead, bulk Bitumen is transferred to depot, for packing in barrels for further sale there from or stock transfer to other depots, for sale.

5.3 The appellant has relied on the decision of Mumbai Tribunal in the case of M/s. Savita Chemicals Limited (cited supra) but facts in that case are entirely different. In the case of M/s. Savita Chemicals, dispute was regarding valuation of goods cleared in bulk in tankers to job workers who was repacking them and then dispatched it to the depots of M/s. Savita Chemicals. In this decision, it has been clearly held that oil packed in containers of different sizes would not become "such goods" in relation to each other. The goods which are cleared in bulk cannot be even comparable goods, let alone be entitled to the terms "such goods". In the present case also, the goods packed in depot by the appellant are a different class of goods than the goods cleared in bulk at the refinery, to some of the buyers. Therefore, reliance on the above judgement is of no benefit to the appellant.

5.4 We find that the Tribunal in the case of Century Laminating Co. Ltd. Vs. Commissioner of C. Ex., Meerut-II reported at 2013 (288) E.L.T. 276 (Tri. - Del.) while dealing with issue of deduction of packing and forwarding charges incurred on packing of goods sold from the depot, held in para 9 of the said decision that such charges have to be examined with reference to whether goods manufactured by the appellant are normally sold without packing or are normally sold in wholesale trade in packed condition. Para 9 of the said judgment is reproduced below:-

> ***"9.*** *As regards the question as to whether deduction of "packing and forwarding charges" is to be allowed, the packing and forwarding charges are mainly expenses incurred on packing of the goods sold from the depot. The appellant's contention is that the goods manufactured by them - laminated sheets are normally sold without packing and only in some cases where the sales are to the outstation customers, the goods are packed in cartons on the instruction of the customers. The department's contention on the other hand, is that the laminated sheets cannot be sold in the ordinary course of trade without packing and, therefore, the packing charges would be includable in the assessable value. The Apex Court in the case of U.O.I. v. Bombay Tyre International Ltd. (supra) on the question of inclusion of packing charges in the assessable value has held that the packing in which the goods are ordinarily sold in the course of wholesale trade to the wholesale buyer is includable in the assessable value - the degree of packing in which the excisable article is contained may vary from one class of articles to another. The Apex Court in the case of Union of India v. Godfrey Philips India Ltd. reported in 1985 (22) E.L.T. 306 (S.C.) has held that the cost of packing which is essential for protection of excisable goods during transportation is also includable in the assessable value. Relying upon these judgments, the Apex Court in other judgments in the case of Royal Enfield v. CCE, Chennai 2011 (270) ELT 637(SC) has held that the packing used by an assessee in respect of the goods, which is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market would be includable in the assessable value. In this case, on the question as to whether the laminated sheets manufactured by the appellant are normally sold without packing or are sold in packed condition there are contradictory claims. The Commissioner (Appeals) in the impugned order has not given any finding on this issue and has simply disallowed its deduction. Therefore, on this point, the matter needs to be remanded to the Commissioner (Appeals) for ascertaining as to whether the goods manufactured by the appellant are normally sold without packing or are normally in wholesale trade in packed condition and after ascertaining this fact, the issue is required to be decided in accordance with the Apex Court judgment in the case of U.O.I. v. Bombay Tyre International Ltd. (supra), U.O.I. v. Godfrey Philips India Ltd. (supra) and Royal Enfield v. CCE, Chennai (supra)."*

Thus, cost of packing is includible if packing is necessary for putting excisable goods in condition in which same are generally sold in wholesale at factory gate. In this case, we find that some of their buyers, namely M/s. KMC Constructions, M/s. Agarwal Petrochem Pvt Ltd, DSC Ltd. etc. purchase bulk Bitumen from the refinery. To meet the requirement of small buyers, appellant stock transfers bulk bitumen from refinery to their two depots located in Jamnagar who buy duty paid barrels and pack the bitumen. These two depots not only sell barrelled Bitumen to their customers but also stock transfer to other depots located elsewhere in the country, for further sale. Up to May, 2010, appellant was assessing such goods (i.e. packed Bitumen) at the sale value at the depots but from June, 2010, they started deducting cost of barrels from the sale price of packed Bitumen on monthly basis, based on CA certificate. As mentioned above, barreled Bitumen sold from the depots is not cleared as such from the refinery, therefore, it is incorrect to assess "such goods" at the same price at which bulk Bitumen is cleared from the refinery. We therefore hold that the goods in packed condition cleared from the depot are liable to be assessed under Rule 7 of the Central Excise Rules, 2000 without deducting the cost of barrel. We agree that the lower authority has correctly relied on the decision of CESTAT Mumbai in the case of Clariant (I) Ltd. Vs. CCE, Thane-I (cited supra), where it has been held that where goods are not sold when removed from the factory but are merely transferred to the depot, the depot becomes a place of removal under the Law and smaller packages are sold from there only and not from the factory and therefore, cost of packing included in the transaction of the such packages.

5.5 The appellant has contested invocation of extended period in the case on the ground that they had intimated the department vide their letter dated 20th May, 2010 regarding change in assessment practice in respect of goods sold from depot. The above say has also not been disputed by the department. Therefore, it cannot be said that the appellant had suppressed nonpayment of excise duty on cost of barrel, from the department. We are not convinced with the department's argument for invocation of extended period and therefore, hold that extended period in this case is not invocable. For the same reasons, we set aside penalty under Section 11AC of the Central Excise Act, 1944 with liberty to the department to consider whether or not to impose penalty under Rule 25 of the Central Excise Rules, 2002.

5.6 Regarding alternate submission of the appellant for allowing Cenvat Credit on purchase of barrels for packing of Bitumen in their depot before clearance, we agree with their contention that depot is also an extension of their factory and if some inputs or input services are used in depots for making the goods marketable, Cenvat Credit on such inputs and/or input services cannot be denied. We find that CESTAT Allahabad in the case of Simbholi Sugar Ltd. Vs. CCE, Noida reported at 2023 (10) TMI 525 has held that Cenvat Credit on packing material which was delivered at warehouse located at the place other than the factory gate premises, is available to the tax payer as these inputs are used in or in relation to the manufacture and clearance of the finished product, if the depot has been considered as the place of the clearance for excisable goods. Warehouse where these boxes were delivered is a depot of the appellant from where sugar was cleared after being repacked in these corrugated boxes. While arriving at this decision, the Tribunal has considered the decision of Mumbai Tribunal in the case of Hawkins Cookers Ltd Vs. CCE, Mumbai-III reported at 2014 (299) ELT 101 and also the decision of Hon'ble Supreme Court in case of Vikram Cement reported at 2006 (1) TMI 130-SC. Therefore, agreeing with the contention of the appellant, we hold that the appellant is eligible to Cenvat Credit of excise duty paid on purchase of barrels for packing of Bitumen in their depots before clearance. Needless to say, the appellant shall be liable to pay excise duty on the value of barreled Bitumen. We therefore, remand the matter to the Adjudicating Authority for the limited purpose to redetermine duty liability on the appellant for the normal period along with interest and penalty, if any. The appellant will also be allowed the Cenvat Credit of duty paid on packing materials as per Cenvat Credit Rules, 2004.

6. With these observations, both the appeals are partially allowed by way of remand.

(Pronounced in the open court on 22.01.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi