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

REGIONAL BENCH- COURT NO. 02

Excise Appeal No. 10836 of 2020

[Arising Out Of OIO No. KUCH-EXCUS-000-COM-10-2020-21 Dated-22/09/2020 passed by the Commissioner of Central Excise & CGST, Kutch (Gandhidham)

Solaris Chemtech Industries Ltd .....**Appellant**
Khavda Marine Commercial Complex Village-Khavda,
Taluka-Bhuj, Dist. Kutch, Gujarat

VERSUS

Commissioner of Central Excise & CGST-
Kutch (Gandhidham) ...**Respondent**
GST Bhavan, Plot No. 82,
Sector-8, Ramleela Maidan,
Gandhidham (Kutch)-370201

APPEARANCE:
Shri Amal Dave, Advocate for the Appellant
Shri R.K. Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. 10430/2026

DATE OF HEARING:20.02.2026
DATE OF DECISION:16.07.2026

SATENDRA VIKRAM SINGH

M/s. Solaris Chemtech Industries Ltd, Taluka-Bhuj, Dist. Kutch, (Appellant) are engaged in the manufacture of Bromine falling under Chapter 28 of the Central Excise Tariff Act, 1985. A major part of their product (Bromine) is sold to independent buyers at higher rate and the rest quantity is cleared to their Vadodara unit at lower value, for manufacture of further products. A show cause notice dated 31.10.2009 was issued to the appellant for demanding Central Excise duty of Rs. 55,59,299/- on the quantity of Bromine cleared to their sister unit during the period from December 2004 to March-2009, under proviso to Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AB (now Section 11AA) and penalty under Section 11AC of the said Act. In the show cause notice, sale price to unrelated buyers in the range of Rs. 65,000/- to Rs.70,000/- Per MT was adopted to demand differential duty on clearance to related party sales that remained constant @ Rs. 50,000/- Per MT throughout the period of five years.

1.1 The matter was initially decided by the Commissioner vide order dated 26.04.2011 wherein he confirmed the demand along with interest and penalty. This order was challenged by the appellant before CESTAT Ahmedabad which vide order No. A/10826/2019 dated 09.05.2019 set aside the above order and remanded the matter to the adjudicating authority for deciding afresh after considering the amendment in Rule 8 of the Central Excise Valuation Rules, 2000, Board Circular dated 25.11.2013 and various judgments passed by the Tribunal including decision in the case of M/s Ultratech Cement Ltd. and M/s. Surya Roshni Ltd.

1.2 In remand proceedings, Learned Commissioner considered the submissions of appellant, Board's Circular, various decisions of the Tribunal and of Hon'ble High Courts and thereafter, vide order dated 22.09.2020 confirmed the duty demand for the larger period alongwith interest. He also imposed a penalty equal to duty amount on the appellant under section 11AC of the Central Excise Act, 1944.

2. The appellant took the following grounds in their appeal:-

a) Rule 8 of the Central Excise Valuation Rules, 2000 was amended, vide Notification No. 14/2013-CE dated 22.11.2013 to provide that where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his benefit in the production or manufacture of other articles, the value of such goods that are consumed shall be 110% of the cost of production of such goods. The Board vide Circular No. 976/9/2013-CX dated 25.11.2013 has clarified that amended rule 8 to apply irrespective of whether the whole or a part of the clearance of manufactured goods are covered by the circumstances given in these rules. It mentions that Board circular No. 643/34/2002-CX dated 01.07.2002 already clarifies the position that when goods are cleared to a sister concern or consumed captively, then the valuation would be done as per Rule 8. Even when certain part of the goods are cleared to a related party and not the entire quantity of manufactured goods, then also, Rule 8 would be applied to the portion cleared to the related buyer.

b) While deciding the case of Surya Roshni Ltd. reported at 2017 (357) ELT 978 and M/s. Ultratech Cement Ltd., CESTAT Delhi considered the decision of Larger Bench in M/s. Ispat Industries reported at 2007 (209) ELT 185 and the decision of Hon'ble Apex Court in the case of M/s Fiat India Pvt. Ltd reported at 2012 (283) ELT 161 and held that the provisions of amended Rule 8 would be applicable for the prior period also where goods were partly cleared to sister concern and partly to unrelated buyers. It distinguished the decision in the case of M/s. Ispat Industries by observing that the position which was clarified by Circular dated 01.07.2002 was the same, as after amendment in Rule 8 vide Notification No. 14/2013-CE.

c) The adjudicating authority has completely erred in holding that Board Circular dated 25.11.2013, and the Tribunal's decision in Ultratech Cement Ltd and Surya Roshni Ltd case are not applicable to the present matter.

d) In Ispat Industries case, the Tribunal, categorically observed that Rule 8 was substituted vide Notification No. 14/2013-CE (N.T) dated 22.11.2013 and the scope of new Rule vis-a-vis old rule was explained in the Board's Circular dated 25.11.2013. The substituted provisions of Rule 8 clearly provided for its application irrespective of whether the whole or a part of manufactured goods are cleared for captive consumption. These amendments in the rule addressed the issues already clarified vide Board Circular dated 01.07.2002. Therefore, provision for application of 110%/115% of cost of production to be adopted for valuation has all along been the same.

e) It has been held in various decisions such as CCE, Bopur vs. Ratan Melting & Wire Industries, reported in 2008 (231) ELT 22 (SC.), Siva Industries and Holdings Ltd vs. Commissioner of S.T, Chennai-2017 (47) S.T.R 126 (Mad.), Prayas Engineering Ltd vs. Commissioner of C.EX. S.T, Vadodara-I-2015 (37) S.T.R 508 (Tri-Ahmd.) Commissioner of C.EX. & Customs Vs. Stovec Industries Ltd.-2014 (33) S.T.R 124 (Guj.), Ambuja Cements Ltd Vs. Union of India-2009 (14) S.T.R 3 (P &H) that Board's circulars are binding on the field authorities. Learned Commissioner has not followed the principles laid down in board circular and therefore, said order is not illegally tenable.

f) Extended period of limitation cannot be invoked merely on the ground that the assessee did not show facts, which it was otherwise not required to show. They rely on Hon'ble Gujarat High Court decision in the case of M/s. Meghmani Dyes reported at 2013 (288) ELT 514 wherein it was held that if the format of the return is prescribed by the Government, and the assessee provides the details as per format, then it cannot be said that the details provided by the assessee were not in accordance with law. As they have not suppressed or misstated anything before the department, extended period cannot be invoked. He also relied on the decision of Hon'ble Gujarat High Court in the case of CCE Vs. Ultratech Cement-2014 (302) ELT 334 and CCE vs. Dynamic Industries-2014 (307) ELT 15.

g) They rely on CBEC Circular No. 818/15-2005-CE which prescribed that the officers should call for details and scrutinize the returns. Since, returns have not been scrutinized by the department, extended period cannot be invoked.

h) It has been held by the Tribunal in a series of decisions that extended period of limitation cannot be invoked in those cases where particular issue involved interpretation of law, as no malafides can be attached to such interpretation. He relies on Final Order No. A/11071/2019 dated 05.07.2019 in the case of M/s. Hi Scan Pvt. Ltd, Final Order No. A/11715/2018 dated 30.07.2018 in the case of M/s. Dharti Automobiles and Final Order No. A/11707/11714/2019 dated 06.09.2019 in the case of J & J Plast.

i) The appellant prayed for allowing their appeal as demand against them is not sustainable. Consequently, they are also not liable to any penalty as has been imposed on them under Section 11 AC of the Central Excise Act, 1944. They relied on the decision of Hon'ble Supreme Court in the case of Hindustan Steel Limited reported at 1978 ELT (J159).

3. During arguments, learned Advocate mentioned that the issue whether Rule 8 or Rule 4 of the Central Excise Valuation Rules, 2000 is applicable when goods are cleared for captive consumption to sister unit, , came up for decision before CESTAT Delhi in the case of M/s Ultratch Cement Ltd.(cited supra). It was observed that amendment to Rule 8 of the Valuation Rules was clarificatory in nature and it was applicable to the pending cases as per Circular No. 975/9/2013 dated 25.11.2013. Considering such position of law, it was held that Rule 8 was applicable for valuation of goods cleared on basis stock transfer to the sister concern. Similar view was held by CESTAT Delhi in Surya Roshni case (cited supra), which relied upon the decision of Hon'ble Apex Court in Fiat India case reported at 2012 (283) ELT 161. He therefore,

pleads that the value of goods calculated @ 110% of the cost of production of goods is proper and there is no case of evasion of any excise duty.

3.1 On limitation, Learned Advocate pleads that the appellant has regularly filed ER-1 returns with the department and hence, there is no suppression or mistatment of facts. He relies on the decision of Hon'ble Gujarat High Court in the case of CCE, Bhavnagar Vs. Ultratech Cement Pvt. Ltd-2014 (32) ELT 334(Guj.) which held that invocation of extended period for demanding differential duty is not justified, since monthly returns have been regularly filed by the assessee indicating all possible details. Learned Advocate further relied on the decision of CESTAT Hyderabad in the case of Rashtriya Ispat Nigam Ltd. Vs. CCE & ST, Visakahpatnam-I (cited supra) to plead that extended period would not be applicable in this case. The relevant portion of Para 11 is reproduced below:-

> *"Since, there was litigation on the issue at various forums, we find that the plea of Learned Counsel that there was no mala fide in valuing the captively consumed goods based upon the cost of production formulae needs to be accepted. In view of this, we hold that the demands raised in these appeals by invoking the extended period of time are unsustainable and liable to be set aside."*

3.2 Learned Advocate also relies on the decision of CESTAT Allahabad in the case of Polymer Papers Ltd. Vs. CCE, Meerut-I-2019 (369) ELT 1369 (Tri-All.) where it was held that since duty paid by the assessee was available as Cenvat Credit to the sister unit, it was a revenue neutral exercise and hence, invocation of extended period of limitation along with interest amount and penalty was not sustainable. To plead the point of revenue neutrality in his case, he relies on the decision in Sanghi Industries Limited case reported at 2024 (5) TMI 776-CESTAT. Learned Advocate pleaded to set aside the impugned order and allow their appeal.

4. Countering the arguments, Learned AR reiterated the finding of the lower authority. He referred the decision of Hon'ble Supreme Court in the

case of Commissioner vs. Steel Complex Ltd reported at 2015 (321) ELT A138 to plead that the value of goods sold by job worker for captive consumption to principal manufacturer operating at loss, is to be determined by adopting sale price to other buyers and not at 115% of production cost of such goods. In this case while dismissing revenue's appeal, the Apex Court held that *"After hearing learned counsel for the parties, we are of the opinion that Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which was prevailing at that time will have no application in the present case where the goods are only partly sold under ex-factory basis and partly cleared for capitation consumption"*. He also relied on the decision of CESTAT KolKata in Balajee Electro Steel Ltd vs. Commissioner of C. Ex, Ranchi reported at 2007(219) ELT 563 (Tri-Kol) wherein it was held that Rule 8 would not be applicable if the entire quantity of the excisable goods has not been taken for captive consumption but only a part has taken for captive consumption and about 90% have been sold to independent buyers. It held that in this situation, Rule 4 of the Central Excise Valuation Rules, 2000 will apply as sale price to independent buyers was available. Similar finding was given by CESTAT Delhi in the case of Jindal Steel & Power Ltd reported at 2017 (3) TMI 1085 which held that if there are independent sales of similar items, then the provisions of Rule 8 of Valuation Rules, 2000 will not apply.

4.1 Learned AR also cited the decision of CESTAT Kolkata in the case of M/s. SAIL [2010 (251) ELT 571] and in Gangotri Electrocastings Ltd case [2013 (293) ELT 395] to plead that Rule 8 will not be applicable where only a part of excisable goods are consumed captively and the balance quantity is sold to independent buyers. In both the cases, decision of Larger Bench in Ispat Industries case has been relied.

4.2 Learned AR also justified invocation of extended period on the ground that the appellant has not separately shown clearance of Bromine to Vadodara unit in their ER-1 returns and showed combined clearance quantity and clearance value. Thus, the appellant has wilfully suppressed the fact that per unit transaction value of Bromine cleared to Vadodara unit for captive consumption is lower than price at which it is sold to independent buyers They hid correct facts from the department with intent to evade payment of duty. He prayed for upholding the order of the lower authority by dismissing the appeal.

5. We have heard both sides. Before proceeding in the matter, the provisions of Rule 4, Rule 8, Rule 9, Rule 10 and Rule 11 of the Central Excise Valuation Rules 2000 during material time are reproduced 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 8****. Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods.*
>
> ***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."*
>
> ***Rule 10.***
>
> *When the assessee so arranges that the excisable goods are not sold by him except to or through an inter-connected undertaking, the value of the goods shall be determined in the following manner, namely :-*

(a) If the undertakings are so connected that they are also related in terms of sub-clause (i) or (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act or the buyer is a holding company or subsidiary

Explanation. - In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956).

(b) In any other case, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4.

Rule 11.

If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act.

5.1 A bare reading of the extracted provisions indicates that Rules 9 and 10 are applicable only in situations where the entire batch of goods is sold to a related party. This would have ordinarily excluded applicability of those Rules in the present case, given that the assessee was selling its products partly to independent buyers and partly to related buyers. The only remaining option would have been taking recourse to Rule 11, the residuary provision which addresses scenarios that are not otherwise covered by the Central Excise Valuation Rules. The Rule refers back to Section 4(1)(a) of the Central Excise Act, 1944 and outlines a broad requirement to determine the assessable value of the goods while keeping in mind the "principles and general provisions" of the Valuation Rules.

5.2 As per facts, appellant is clearing of around 80% quantity of Bromine to independent buyers at higher price and the balance quantity to their Vadodara Unit for captive consumption at a lower value. The Commissioner has confirmed differential duty for the period from December 2004 to March 2009 on the ground that valuation of captively consumed goods as per Rule 8 is not correct when transaction value of the same goods sold to independent buyers is available. We find that CBIC had issued Notification No. 14/2013-CE (N.T) dated 22.11.2013 which substituted Rule 8 and 9 of the Central Excise Valuation Rules, 2000 to provide that where whole or part of excisable goods are not sold by assessee but are used for consumption by him or on his behalf in the production 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.

5.3 It is the contention of learned advocate that Circular No. 975/09/2013-CX dated 25.11.2013, clarifies that post amendment, Rule 8, Rule 9 & Rule 10 shall apply for determination of assessable value irrespective of whether the whole or a part of the clearances of manufactured goods are covered by the circumstances given in these rules. As per him, circular favours the assessee and in view of various decisions relied upon by him, the demand of differential duty does not survive on merits. The demand also does not survive on limitation as the issue involved legal interpretation as held by Hon'ble Gujarat High Court in Ultratch Cement Ltd case (cited supra).

5.4 We find that Rule 8 which existed at the material time provided for valuation of goods at the rate of 110% of the cost of production if the goods are not sold by the assessee but are used for consumption by him or on his behalf ....In present case, 80% goods were sold to independent buyers and the remaining 20% were transferred to their sister unit for being used captively in the manufacture of other finished goods. Therefore, it is not a case were entire quantity of goods was consumed captively. We find that the case laws relied upon by revenue comprehensively deal with this situation where only a part of manufactured goods were consumed captively and the rest were sold to independent buyers. It was held in these relied upon decisions that sale price to independent buyers shall be adopted for valuation of goods cleared for captive consumption. Even the decision in case of Rashtriya Ispat Nigam Ltd relied by the appellant also upholds valuation of captively consumed goods on the basis of price at which goods are sold to independent buyers.

5.5 In case of *Ispat Industries Ltd.* [2007 (209) E.L.T. 185 (Tri.-LB)] following has been held:

> *"5. We have considered the rival submissions and are of the view that the assessee is correct in contending that provisions of Rule 8 would apply only in a case where its entire production of a particular commodity is captively consumed. This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under*
>
> *"Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods" (emphasis supplied).*
>
> *If the intention was not to restrict the applicability of Rule 8 to cases where the entire production was being captively consumed, the Rule would have simply stated "where excisable goods are consumed by an assessee himself or on his behalf in the manufacture of other articles" instead of preceding the above expression with the words "where the excisable goods are not sold". This view is also supported by the judgment of the jurisdictional High Court in the case of Indian Drug Manufacturers Association v. Union of India, wherein the Court held that Rule 8 applies in a situation where goods are not sold but are cleared „exclusively? to be used in consumption or for manufacture of other articles. We also agree with the contention of the assessee that Rule 8 will apply only in two situations, (a) where the goods are consumed by him in the same factory (captive consumption) or (b) where such goods are transferred to another factory for consumption in the manufacture of other articles on behalf of the assessee. In this case, it is not the case of the revenue that the goods were transferred to other units for manufacture of other articles on behalf of the assessee/appellant, i.e. the Dolvi Unit. We agree with the assessee?s contention that the expression „assessee?, wherever it appears in the Central Excise Rules, applies to a particular factory, which is why different units belonging to one company are separately registered and separately assessed to duty. Since the assessee in the present case is the Dolvi plant and it is not the revenue?s case that the other three units of the company to whom HR coils were transferred were undertaking further manufacturing operations on behalf of the Dolvi Unit, the provisions of Rule 8 will not apply. We, therefore, hold that Rule 8 is inapplicable in the instant case.*
>
> *6. We also note that in the present case the application of Rule 4 is being disputed by the Revenue not on the ground that the said rule is inapplicable to the present case but on the ground that a more specific provision in Rule 8 is available to enable determination of the assessable value. As discussed above, the provisions of Rule 8, in our view, are not applicable to the present case and therefore the value determined by the assessee under Rule 4 deserves acceptance.*
>
> *7. We also agree with the submission of the assessee that even if both the rules, i.e. Rule 4 and Rule 8, were applicable, it would only be*

logical to read and apply the various rules in the Central Excise Valuation Rules in a sequential manner. Though the Central Excise Valuation Rules, 2000 do not specifically prescribe such sequential application of various rules, the same, in our view, is the only reasonable way to read these rules. Any other interpretation would only lead to confusion and chaos.

Since the applicability of Rule 4 is not really in dispute, there was no need to look further and regardless of the applicability or otherwise of Rule 8, the assessable value should have been determined in terms of Rule 4 of the Valuation Rules.

8. The conclusion that we are drawing in the present case would lead to determination of a value which, in our view, will not only be reasonable but also consistent with the provisions of Section 4 of the Central Excise Act. We would, at this stage, draw support from the judgment of the Supreme Court in the assessee's own case, as reported in 2006 (202) E.L.T. 561 (S.C.), wherein the Court applied "The Gunapradhan Principle" in interpreting the Customs Valuation Rules. We have kept in mind the following observations of the Court in coming to our above conclusion :

"26. In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.

27.................

36. In our opinion, the Gunapradhan principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14. We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9(2) are the 'accessories'. The 'accessory' must, therefore, serve the "primary".

9. In view of what we have observed above, we answer the reference in the following terms :

(a) the provisions of Rule 8 of the Valuation Rules will not apply in a case where some part of the production is cleared to independent buyers;

(b) the provisions of Rule 4 are in any case to be preferred over the provisions of Rule 8 not only for the reason that they occur first in the sequential order of the Valuation Rules but also for the reason that in a case where both the rules are applicable, the application of Rule 4 will lead to a determination of a value which will be more consistent and in accordance with the parent statutory provisions of Section 4 of the Central Excise Act, 1944."

5.6 In case of *Shiv Shakti Ingots Ltd.* [2016 (338) E.L.T. 421 (Tri.-Ahmd)] The CESTAT Ahmedabad held as follows. The period of dispute is December, 2008 to June, 2013. The appellants were engaged in manufacture of MS Ingots and TMT bars through their different units. The dispute relates to Unit-1 and Unit-2 who manufacture MS Ingot and supply Unit-3 for manufacture of TMT bars etc. Unit-1 and Unit-2 paid duty on transaction value on the goods cleared to their other Unit-3 but revenue alleged that the appellant is liable to pay duty on one hundred and ten per cent, as per Rule 8 of the Valuation Rules.

> *3. After hearing both the sides and on perusal of the records, we find that the issue is no more res integra, in view of the decision of the Larger Bench of the Tribunal in the case of Ispat Industries Ltd. v. Commissioner of Central Excise, Raigad - 2007 (209) E.L.T. 185 (Tri.-LB), which was followed by this Bench in the case of Jai Corporation v. Commissioner of Central Excise & Service Tax, Daman - 2015 (317) E.L.T. 353 (Tri.-Ahmd). In the case of Jai Corporation (supra), the Tribunal, allowed the appeal of the assessee, observed as under :-*
>
> *"6. At the outset, we would like to recall that there is no dispute as to the fact that as the appellant had valued the products cleared by them to their sister concern on the value which is charged by them to independent buyers.*
>
> *7. Admittedly, the clearance made to their sister concern would fall under the provisions of Section 4(i)(b) of the Central Excise Act, 1944, as the clearance to their sister concern is not a sale. We find that for determining the correct value under Section 4(i)(b) of the Central Excise Act, 1944, provisions of Central Excise Valuation Rules, 2000 needs to be followed. In the said provisions, Rule 4 of the Valuation Rules clearly indicates that the value of excisable goods shall be based on such goods sold by the assessee. In order to appreciate the correct position of law, we reproduce the said Rule."*
>
> *3. Rule 8 of valuation Rules provides the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods. In the present case, the appellants sold the goods partly and therefore, Rule 8 as it stood during the relevant period would not be applicable. We have noticed that the Rule 8 of the Valuation Rules was amended, by Notification No. 14/2013-C.E. (N.T.), dated 22-11-2013."*

5.7 In case of *Sterlite Optical Technologies Ltd.* [2018 (359) E.L.T. 723 (Tri.-Bom)] Mumbai bench held as follows:

> *"2. Ld. AR for the Revenue argued that the respondents were supplying certain goods to their own subsidiary and they were also selling the said goods in the open market to unrelated buyers. He argued that the respondents were raising the Central Excise invoices, following Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the cost plus 15% basis. He pointed out that the respondents were recovering the balance amount of the difference between the price at which they were selling to the unrelated parties and*

the assessable value arrived at by the cost construction method through debit note. He argued that by raising on demand note they were recovering additional consideration, over and above the invoice value and therefore, the same was to be included in the assessable value.

5. In view of the above, the correct method of assessment in these circumstances would be adoption of the price at which the said goods were sold to independent buyers. In the instant case, the demand has been raised on the transaction value for sale to related buyers. The law of the land takes precedence over the circulars issued by the C.B.E. & C. and also any letters issued by the Revenue by way of audit or by show cause notice."

5.8 We further find that Hon'ble Supreme Court examined similar facts in the case of Commissioner of Central Excise & S.T, Rohtak Vs. Merino Panel Product Ltd reported at 2023 (383)ELT 129 (S.C). The duty demand in this case pertained to Financial Year 2009-2010 and 2010-2011 and the goods were partly sold to independent buyers at higher price and partly at lower price to related parties. It was held that the price charged from independent parties under Section 4(1)(a) of the central Excise Act, 1944 being readily available, can be transposed onto related party purchases as well, to arrive at assessable value. It also upheld invocation of extended period as undervaluation of sales made to related parties was suppressed facts and assessee failed to provide accurate information to revenue regarding its sales. The relevant Paras of the decision are reproduced below:-

35. The unequivocal position which emerges before us is that the price charged from independent parties for the sale of excisable goods can be used as a benchmark for determination of excise duty on related transactions when such a price is readily available. However, we add the caveat that when making such calculations via transposition, the Revenue cannot act in a mechanical way. The assessment of the appropriate value of the related party transaction must be made after considering relevant material and due application of mind. The entire quasi-judicial process of issuing a show cause notice and considering the distinguishing factors placed by the Assessee must be completed before the price of sales to independent buyers is utilized as a benchmark for sales to related parties. The general principles of Section 4(1) of the CEA, read with Rule 11 of the CEVR, are meant to provide a pathway for determination of the "normal price" and "value" of goods in cases where no alternative methodology is applicable. This fulfils the dual objectives of being in consonance with the Circular dated 01.07.2002 and harmonizing different provisions of the CEA and CEVR.

36. The sum and substance of our analysis is that the assessable value for the related party sales can be established by referring to the normal price under Section 4(1)(a) of the CEA, which is readily available in the present case. This is, in our opinion, the true meaning and intention underlying the Circular of 01.07.2002. The reference to Rule 11 in Point No. 12 of the Circular simply mandates the usage of "reasonable means" keeping in mind Section 4(1)(a) of the CEA and Rule 9 of the CEVR. This is merely a method by which the Revenue is required to apply its mind to a case of partial sales to both independent and related parties. The conclusion reached through this process may very well be in consonance with our analysis.

37. Regardless of the value the Revenue finally settles upon, we do not find the Circular itself to be contrary to any statutory provisions. To do so would essentially render Point No. 12 ineffective and such an outcome should, ideally, be avoided as far as possible. In fact, the Commissioner's order proceeds to determine the value of the sales made by the Respondent-Assessee to its sister concerns on the basis of the value of its sales to independent parties. In our considered view, this is entirely consistent with the actual intent of the Circular dated 01.07.2002, which we have already held is not in contravention with either the CEA or the CEVR.

38. The only remaining facet of the case is the extended period of limitation invoked against the Respondent-Assessee under the CEA. The justification of extending the period of limitation depends upon whether the Respondent-Assessee has suppressed facts and failed to provide accurate information regarding its sales to the Revenue. To this extent, there is a finding of fact against the Assessee. At the same time, we are of the considered view that since the Revenue itself appeared to be unclear on the correct method of valuation of the goods, it is not appropriate to saddle the Respondent with additional liability, namely, other than the excise duty. Hence, though we confirm the demand made by the Appellant, we do not approve the levy of interest and penalties upon the Respondent, and direct that these amounts be reduced from the total recoverable amount from the Assessee.

D. CONCLUSION

39. Having held so, we can now bring this matter to a close. For the purposes of current dispute, it suffices for us to clarify that Point No. 12 in the Circular of 01.07.2002 is not contrary to the intent of the CEA and CEVR and the object behind it is to merely use "reasonable means" as outlined under Rule 11 of the CEVR, in conformity with Section 4(1)(a) of the CEA and Rule 9 of the CEVR, so as to reach the assessable value of goods for determination of excise duty.

40. When the normal price that is ordinarily charged in dealings where the price itself is the sole consideration of the transaction is available, as it is here, that price can be transposed onto the related party purchases as well, to arrive at the assessable value. Hence, the order of the Commissioner regarding the value of the goods sold to the Respondent's sister concerns is in consonance with this Court's earlier judgments and the Circular dated 01.07.2002."

5.9 Regarding extended period, we find that the show cause notice clearly alleges that the appellant had declared total quantity of Bromine cleared from the factory in the month and it’s gross value in their excise returns without breakup of the quantity and value of related party sales. This tantamount to suppression of full and correct details of clearances. As the appellant has not disclosed full facts in their excise returns and suppressed vital information with intent to evade duty, we are inclined to hold that the revenue has correctly invoked extended period in this case for demand of excise duty for the larger period. We accordingly uphold the order of Learned Commissioner and set aside the appeal.

6. The appeal is rejected.

(Pronounced in the open court on 16.07.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi