CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 1266 Of 2011

[Arising out of Order-in-Appeal No.42/CE/LDH/2010 dated 25.02.2011 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Punj Brothers Limited **: Appellant (s)**
Unit-II, Village Kanech, G.T. Road,
Sahnewal, Ludhiana

Vs

The Commissioner of Central Excise, Ludhiana **: Respondent (s)**
Central Excise House, F-Block, Rishi Nagar, Ludhiana-141001 (Punjab)

APPEARANCE:
Shri Sudeep Singh Bhangoo, Advocate for the Appellant
Shri Rajeev Gupta and Shri Narinder Singh, Authorised Representative for the Respondent

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60200/2023

Date of Hearing: 27.06.2023

Date of Decision:20.07.2023

Per : P.ANJANI KUMAR

The appellants are a limited company engaged in manufacture of M.S. Rounds; they have sold their goods to M/s Lal Punj Brother Pvt. Limited among others. Department was of the view that the appellant and M/s Lal Punj Brothers are related person in terms of Section 4 of the Central Excise Act, 1944 as they have common Directors; therefore, the valuation of the goods cleared by the appellants to the related person should be under Rule 8 of the Central Excise Valuation Rules, 2000, at the rate of 115% of the cost of
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production. A show-cause notice dated 30.06.2005 has been issued to the appellants and the same has been adjudicated by the Original Authority, vide Order-in-Original dated 30.09.2005, confirming a duty of Rs.5,69,009/- along with interest and equal penalty. On an appeal preferred by the appellant, Commissioner (Appeals) while upholding the confirmation of duty on the ground that the same has already been deposited, set aside the penalty and interest. On an appeal made by the Department against such setting aside of penalty and interest, CESTAT vide Final Order No.238/2010-EX (DB) dated 30.04.2010 remanded the matter back to the First Appellate Authority, for a fresh consideration of demand of interest and penalty, while upholding the confirmation of the demand. The said authority has confirmed the duty and interest as proposed vide OIA dated 25.02.2011, which is impugned in this appeal.

2. Shri Sudeep Singh Bhangoo, learned Counsel for the appellants submits that learned Commissioner has erred in holding that the appellants are liable to pay penalty under Section 11AC and interest under Section 11AB of the Central Excise Act, 1944; learned Commissioner did not advert to the statutory provisions of Section 4 of Central Excise Act, 1944, read with Rule 8/9 of the Valuation Rules, 2000; the show-cause notice demanding duty was issued on 30.06.2005, the payment of duty demanded was made on 18.07.2001; the appellants had no intent to file an appeal on merits, as the Department filed the appeal for penalty and interest, the appellant submitted that there was no contravention of Rule 8 & 9 as they specifically are attracted only when the buyer and seller are

related in terms of sub-clause (ii), (iii) & (iv) and not only by the virtue of they being inter-connected undertakings only covered by clause (i) of sub-Section-3 of Section-4; CBEC Circular issued in the regard also confirms the same. The same has been upheld in the case of *South Asia Tyres- 2003 (152) ELT 431*; there was no short payment and as such there was no need for payment of penalty and interest.

3. He further submits that the Department and the Commissioner (Appeals) have failed to show that there was mutuality of interest between the appellant and M/s Lal Punj Brothers; Department has ignored the fact that the appellants were clearing only a small portion of their products to the said inter-connected undertaking and as such, it was a principal to principal transaction; Department erred in seeking assessing the goods cleared at the rate of 115% of cost of production, invoking Rule 8,even though, it was not the case that the entire production was sold to the related person or inter-connected undertaking; therefore, there is no requirement to such an assessment and there was no evasion of duty by the appellants; even then as a good-will gesture, the appellants have debited the entire duty of Rs.5,69,009/- from the CENVAT credit account; there was no need for issuance of show-cause notice and imposition of penalty.

4. Coming to the demand of interest, learned Counsel submits that in terms of sub-Section (ii)B of Section 11A introduced with effect from 11.05.2001, interest on duty short paid etc. was chargeable after the expiry of three months from the passing of the orders; Commissioner erred in holding that interest could be charged for the period prior to the enactment i.e. 11.05.2001; duty for the period for

the month of May 2001 was due to be paid on 5th June, 2001, whereas the duty for the month of June 2001 was to be paid by 5th July, 2001; the interest could be legally demanded for the period of fifty days i.e. from 11.05.2001 to 30.06.2001; however, as no duty is payable, no interest is payable.

5. Shri Rajeev Gupta assisted by Shri Narinder Singh, learned Authorized Representatives for the Department reiterates the findings of the impugned order.

6. Heard both sides and perused the records of the case. The allegation of the Department is that the appellant and M/s Lal Punj Brother are inter-connected/ related in terms of Section 4 (3) (i) of Central Excise Act, 1944 and as such, the duty payable on the clearances made by the appellant to the related party should be, as per Rule 8 of the Central Excise Rule, 2000, at the rate of 115%. It is the case of the appellants that the Department has failed to show that both the units have mutuality of interest as per the provisions of sub-clause (ii), (iii) & (iv) of Rule 8/Rule 9 of Valuation Rules, 2000. We find that the argument of the appellant is acceptable. Though, the Department holds that the two units are related, they fail to show the mutuality of interest. Also, the fact that the appellants do not sell 100% of their production, to the related person, so as to invite assessment at the rate of 115% of the cost of production, is completely ignored. We find that the appellants have correctly relied the case of *South Asia Tyres Ltd.* (supra). The Tribunal finds that:

2. *We have heard Shri Sridharan, ld. Counsel for the appellants and Shri S.V. Parelkar, D.R. for the department. We find that in appeal filed by M/s. South Asia Tyres Ltd. for the prior period, the Tribunal vide Order No. C.II/2803-06/2002-WZB, dated 12-9-2002, has held that the appellants and M/s. Goodyear India Ltd. are not related persons as they do not have interest in the business of each other. In the period covered by the present case, the applicable section is the new Section 4 of the Central Excise Act, inserted with effect from 1-7-2000 by Sec. 94 of the Finance Act, 2000, read with Central Excise Valuation (Determination of Excisable Goods) Rules, 2000. According to the section as amended Sec. 4(3)(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 they have interest, directly or indirectly, in the business of each other.

The explanation to this clause states that " inter-connected undertakings" shall have the meaning assigned to it in clause (g) of Section 2 of the Monopolies and Restrictive Trade Practices Act, 1969.

3. *The appellants do not dispute that they and M/s. Goodyear India Ltd. are inter-connected undertakings. However, they submit that even so, the provisions of Rule 9 of the Valuation Rules are not attracted as this Rule applies only when the assessee so arranges that the excisable goods are not sold by it except to or through a person who is related in the manner specified in either of sub-clause (ii) (iii) or (iv) of Sec. 4(3)(b) of the Act and in the present case, the appellants are not related to M/s. Goodyear India Ltd. in the manner specified above. According to the appellants, they are covered by Rule 10(b), where the value shall be determined as if they are not related persons for the purpose of sub-section (1) of Section 4 of the Central Excise Act.*

> ***4.*** *We see great force in the above submissions which stems from the language of the Rules themselves. Rules 9 & 10 are reproduced below for ease of reference:*
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> *When the assessee so arranges that the "Rule 9. excisable goods are not sold by an assessee except 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, the value of the 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 :*
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> *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 goods shall be determined in the following manner namely :-*
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> *(a) If the undertakings are so connected that they are also related in terms of sub-clause (ii) 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 company of the assessee, then the value shall be determined in the manner prescribed in Rule 9.*
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> *Explanation - In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956).*
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> *(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.*

7. In view of the above and moreover, looking into the fact that the appellants have deposited the duty demanded well five years before the issuance of show-cause notice there too on a debatable

issue, we are of the considered opinion that extended period could not have been invoked and show-cause notice should not have been issued for longer period. In view of the above, we find that the appellants have a strong case in their favour, both on merits and on limitation. Accordingly, we allow the appeal partly by setting aside the penalty and interest. As the appellant did not contest the case on merit, we refrain from passing any order in this regard.

(Pronounced in the open Court on 20/07/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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