CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No.1709 of 2012

[Arising out of Order-in-Appeal No. 120-121/BK/PKL/2012 dated 30.03.2012 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

M/s Hindustan Engineering Enterprises **......Appellant**
(presently known as M/s Hindustan Pumps and Electricals Engineering P Ltd.) 13 IDC Kunjpura Road, Karnal

VERSUS

Commissioner of Central Excise, Panchkula **......Respondent**
SCO 407-408, Sector-8, Panchkula-134119

WITH

(ii) Excise Appeal No.1710 of 2012 [M/s Hindustan Engineering Enterprises]

[Arising out of Order-in-Appeal No. 120-121/BK/PKL/2012 dated 30.03.2012 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

(iii Excise Appeal No.58705 of 2013 [Malkoh Marketing Pvt. Ltd.]
[Arising out of Order-in-Appeal No.DLI-EXCUS-002-APP-089-090-13-14 dated 16.04.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

(iv) Excise Appeal No.58706 of 2013 [Malkoh Marketing Pvt. Ltd.]
[Arising out of Order-in-Appeal No.DLI-EXCUS-002-APP-089-090-13-14 dated 16.04.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

APPEARANCE:

Shri Hemant Bajaj, Advocate for the Appellant

Shri Yashpal Singh, Authorized Representative for the Respondent

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

FINAL ORDER NO.60685-60688/2024

DATE OF HEARING: 19.12.2024
DATE OF DECISION: 19.12.2024

P. ANJANI KUMAR:

The appellants, M/s Hindustan Engineering Enterprises (Appeal No. E/1709/2012 & E/1710/2012) and M/s Malkoh Marketing Pvt. Ltd. (Appeal No. E/58705/2013 &E/58706/2013), have filed these appeals against the impugned orders passed by Commissioner (Appeals).

2. Brief facts of the case are that the appellants are engaged in the manufacture of submersible pumps falling under Chapter Sub-Heading 8413.13 of Central Excise Tariff Act, 1985 and are registered with Central Excise; on the basis of an investigation conducted by the officers of the Anti-Evasion Wing of the Central Excise, Panchkula, the Revenue was of the opinion that partners of M/s Hindustan Engineering Enterprise viz. Shri Vijay Kohli and Shri Vinay Kohli are real brothers and sons of Shri M.L. Kohli, who is one of the four directors in the marketing company i.e. M/s Malkoh Marketing Pvt. Ltd; similarly, Shri Rajiv Malhotra and Shri Anil Malhotra are real brothers and sons of Shri P.R. Malhotra, who is one of the four directors of M/s Malkoh Marketing Pvt. Ltd., the remaining directors being Shri Vinay Kohli and Shri Rajiv Malhotra were partners of M/s Hindustan Engineering Enterprises. Therefore, the Revenue entertained an opinion that these two firms are related to one another as per Schedule 1A to the Clause (c) of Section 6 of the

Companies Act, 1956 and as provided under Section 4(3)(b) of the Act; therefore, the valuation of the goods, cleared by M/s Hindustan Engineering Enterprises, should be made in terms of Section 4(1)3(b)(ii) of Central Excise Act, 1944 read with Rule 9 of Central Excise Valuation Rules; show cause notices were issued and were adjudicated demanding duty and penalties; the original authority confirmed the demands raised along with penalties and the appeals filed by both the appellants were rejected by the Commissioner (Appeals). Hence, these appeals.

2. Shri Hemant Bajaj, learned Counsel for the appellants, submits that the present issue is no longer res integra between the parties as CESTAT has decided the issue in favour of the appellants in their own case – 2018 (10) TMI 532 (CESTAT) and by the Commissioner (Appeals) vide Order dated 29.01.2024. Learned Counsel submits that the authorities below have wrongly held that both the appellants are related in terms of Section 4(1)3(b)(ii) of Central Excise Act, 1944 read with Rule 9 of Central Excise Valuation Rules; a perusal of Section 2(41) of the Companies Act, 1956 read with Section 6 and Schedule IA of the said Act, it can be appreciated that the relationship between the natural persons have been enumerated as relatives and therefore, two corporate entities cannot be held to be relatives. He relies on M/s Hind Lamps Ltd. – 1977 ELT (J1) (All.) affirmed by the Hon'ble Supreme Court – 1989 (43) ELT 161 (SC) and Jay Engineering Works Ltd. – 1981 (8) ELT 284 (Del.).

3. Learned Counsel further submits that whereas the show cause notice merely alleges that the appellants are related persons the adjudication order proceeds to confirm that the appellants are related as per Section 4(1)(3) of Central Excise Act, 1944; thus, the show cause notice travels beyond the scope of the show cause notice which is not permitted as held in Champdany Industry Ltd. – 2009 (241) ELT 481 (SC) and Balarpur Industries Ltd. – 2007 (215) ELT 489 (SC).

4. Learned Counsel further submits that the show cause notice does not reveal that the transaction price charged by M/s Hindustan Engineering Enterprises to M/s MalkohMarketing Pvt. Ltd; M/s MMPL sold the same goods at the profit of 5-7% only; though M/s Hindustan Engineering Enterprises did not sell 100% of its clearances to M/s Malkoh Marketing Pvt. Ltd., Rule 9 of Central Excise Valuation Rules was wrongly invoked.

5. Shri Yashpal Singh, learned Authorized Representative for the Department reiterates the findings of the OIO and OIA.

6. Heard both sides and perused the records of the case. We find that the same issue has come for consideration before this Bench in the appellant's own case for the demand raised for the period 2003-04 and 2005-06. The Bench vide Final Order No.63235-63241/2018 dated 05.10.2018 held that:

> 11. On going through the above provisions, we find that in terms of section 4(3)(b)(ii), if the person is relative then he should be relative in terms of Section 2(41) of Companies Act, 1956,

> which defines that relative means with reference to any person who is related to such person in anyway specified section 6 of and no others. The section 6 as cited hereinabove defines the relationship.
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> 12. On going through the same, we find that as the Private Limited Company is not a living person and partnership firm is consist on various partners but the private limited company/partnership firm find no mention in schedule of 1(A) of section 6 of the Companies Act, 1956, therefore, the Revenue's case fails on this ground only.
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> 13. In view of the above, we hold that the appellants are not related person in terms of Section 4(3)(b)(ii) of the Central Excise Act, 1944.
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> 14. Further, we take note of the fact that valuation is to be done if the goods are not sold by the assessee except through the persons who is related. Admittedly, whole of the goods are not sold by the M/s Hindustan through M/s Malkoh. In fact, M/s Hindustan is selling goods to Government Department as well as for exports. In that circumstances, the provisions of Rule 9 of Central Excise Valuation Rules, 2000, are not applicable to the facts of this case. Therefore, on that ground also, the charge of Revenue of under valuation is not sustainable.
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> 15. Without going to the other aspect of the case, we hold that the appellant are not related persons in terms of section 4(3)(b)(ii) of Central Excise Act,1944 and provisions of Rule 9 of the Central Excise Valuation Rules, 2000, are not applicable to the facts of this case, therefore, the impugned orders are not sustainable in the eyes of law.

7. We further find that Commissioner (Appeals) vide Order dated 16.04.2013, deciding an order passed in respect of proceedings initiated against the appellants for the period January 2010 to September 2010, dropped the allegations. On an appeal filed by the Revenue against the said order, this Bench vide Final Order No.60628-60629/2023 dated 28.11.2023 dismissed the appeal, albeit

on monetary grounds. We further find that Commissioner (Appeals) vide Order dated 28.01.2014 dropped the proceedings initiated for the period October 2010 to July 2011.

8. In view of the above, we find that the issue is squarely covered in favour of the appellants and the impugned orders cannot be sustained. Accordingly, we allow all the four appeals.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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