

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

EXCISE APPEAL NO. 2840 of 2011

[Arising out of Order-in-Appeal No. 117-119/CE/Appeal/CHD-II/2011 dated 17.08.2011 passed by the Commissioner (Appeals), Central Excise and Customs, Chandigarh]

M/s Nectar Lifesciences Ltd. (Unit-I)

...Appellant

Village Saidpura, Barwala Road,
Derabassi-140 507.

Versus

Commissioner of Central Excise

...Respondent

Plot No. 19, Central Revenue Building,
Sector 17-C, Chandigarh-160 017.

**E/2841/2011,
E/1686/2012,**

**E/2842/2011,
E/60108/2013,**

**E/1422/2012
E/60109/2013**

Appearance:

Shri Sudhir Malhotra, Advocate for the appellant.
Ms. Amita Gupta, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 07.07.2025

Date of Decision: 31.07.2025

FINAL ORDER NOs. 60916-60922/2025

BINU TAMTA:

1. M/s Nectar Life Science ¹ have filed appeals before this Tribunal, mainly on the issue of valuation of goods cleared by the appellant to its

¹ The Appellant

own unit. The details of the appeals as submitted by the appellant is set out below:-

S.No	CESTAT Appeal No.	Order-in-Appeal No. & Date	Order-in-Original No. & Date	Show cause notice No. & Date	Period as per SCN	Duty demanded under Section 11 A & Interest under Section 11AB	Penalty imposed
1.	E/2840/2011	117-119/CE/Appeal/Chd-II/2011 dt. 17.08.2011	10/DC/DB/2010 dated 22.02.2010	56698 dated 24.06.2009	21.04.2007 to 16.06.2007	11,207/-	11207/ under Rule 25
2.	E/2841/2011	-do-	19/CE/ADC(P&V)/2010 dt.25.11.2010 confirmed Rs.9,79,104/- & dropped Rs.29,75,921/-	4888 dt. 05.11.2009 Rs. 39,55,825/- demanded	4/2007 to 12/2008 (same period Overlapping with SCN at Sr. No. 1)	9,79,904/- Vacated 29,75,921/-	10,000/- U/R 25(1) (a)
3.	E/2842/2011	-d0-	22/CE/ADC(P&V)/2010 dt. 01.12.2010	5739 dt. 11.12.2009	01/2009 to 09/2009	13,35,534/- u/s 11A, Intt. u/s 11 AB	-do-
4.	E/1422/2012	Dept.Appeal before Id. Commr (A) 82/CE/APPL/Chd-II/2012 dt.06.03.2012	19/CE/ADC(P&V)/2010 dt. 25.11.2010 confirmed Rs. 9,79,104/- & Dropped Rs. 29,75,921/-	4888 dt. 05.11.2009 Rs. 39,55,825/- demanded	5/2007 to 12/2008 (same period overlapping with SCN 1 & 2)	29,75,921/- Dept. Appeal allowed by Id. Id. Commr.(A)	39,55,825/-
5.	E/1686/2012	Dept.Appeal before Id. Commr(A) 129/CE/Appeal/Chd-II/2012 dt.02.04.2012	08/2011-12/ADC/RJ dt. 18.05.2011 Dropped SCN	1807 dt. 28.10.2010	10/2009 to 5/2010	21,43,167/- Dept. Appeal allowed by Id. Commr. (A)	2 Lac U/R 25
6.	E/60108/2013	47-48/13-14 dt.31.07.2013	54/CE/ADC/P&V/2012 dt. 10.04.2012	1057 dt. 18.05.2011	6/2010 to 12/2010	14,16,574/-	Rs.4 Lac U/R 25
7.	E/60109/2013	-do-	23/AC/DB/2012 dt. 30.03.2012	1257 dt. 11.03.2011	20.09.2010 to 31.12.2010 period overlapping with SCN 06	2,05,383/-	10,000/- U/R 25(1)
				Total		90,67,690/-	45,97,032/-

2. The undisputed facts are that the appellant (Derabassi unit) is engaged in the manufacture of excisable goods and were holding Central

Excise Registration No. AABC6468GXM002 and the other unit of the appellant at Baddi was holding Central Excise Registration No. AABC6468GXM004 under common PAN AABCS6468G. The appellant had cleared goods to independent buyers and also to their own unit, M/s Nectar Life Sciences Ltd at Baddi, who in turn used the impugned goods captively for manufacture of the excisable goods. The period involved in all the appeals are from April 2007 to December 2010. The Department demanded duty on clearance to appellant's own unit as per Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 ², whereas the appellant paid duty as per Rule 8 of CEVR.

3. The Authorities below relying on the decision of the Larger Bench in **Ispat Industries Limited Vs. CCE, Raigad** ³ concluded that the valuation of goods cleared by the appellant has to be done under Rule 11 read with the Rule 4 of CEVR, i.e., price at which goods were sold by the appellant to the independent buyers is as per the relevant provisions of law. Being aggrieved, the appellant has preferred the present appeals before this Tribunal.

4. Heard Mr. Sudhir Malhotra, learned counsel for the appellant and Ms. Amita Gupta, learned Authorized Representative for the Department.

5. Mr. Sudhir Malhotra, the learned Counsel for the appellant has submitted that Baddi unit is neither related nor inter-connected company of the appellant unit at Derabassi. He pointed out that the appellant's unit is under the same name and PAN number and the goods manufactured

² CEVR

³ 2007 (209) ELT 185 (Tri.-LB)

in one division or unit is captively used in another division or unit of the appellant. He further submitted that the appellant have paid duty on goods cleared to independent buyers as per the transaction value and the goods cleared to their own unit were on payment of duty on value, 110% of cost of production as per Rule 8 of CEVR. Referring to the substituted provisions of Section 4 of the Central Excise Act ⁴ and the Circulars dated 30.06.2000 (para 21) and 01.07.2002 (Sl.No.5) issued by the Department, the learned Counsel emphasised that the concept of "captive consumption" would include transfer to sister unit or another factory of the same company or firm for further use in the manufacturer of goods. The settled position of law is that the Circular issued by the Department are binding on them. The learned Counsel has also contended that the duty paid by the appellant was available as credit to other unit of the appellant and hence the entire exercise is revenue neutral. As a result, there is no intention to evade the duty element and therefore, the extended period invoked is unjustifiable. He further submitted that the appellant bonafide believed that as per the Circular, they are liable to pay duty in terms of Rule 8 of CEVR and they accordingly, discharged their liability. In the circumstances, the Revenue cannot invoke the extended period of limitation.

6. Ms. Amita Gupta, the learned Authorised Representative for the Department reiterated the findings of the Authorities below and submitted that the issue is no longer *res-integra* and has been decided by various decisions of the Tribunal. Reliance was placed on the decision of the Larger Bench in the case of **Ispat Industries (supra)** which has been

⁴ CEA

subsequently followed by the Tribunal in the later decisions. The learned Authorised Representative submitted that extended period of limitation has been upheld under similar issue of valuation and, therefore, the same has been rightly invoked. The learned Authorised Representative disputed the plea taken by the appellant regarding revenue neutrality.

7. While raising the contention that the Circular issued by the Department are binding on them, the learned Counsel for the appellant has relied on para-21 of Circular No. 354/81/2000-TRU dated 30.06.2000 and S.No.5 of Circular No. 643/34/2002 dated 1.07.2002. On the other hand, the Department has relied on the provisions of Sl.No.12 of Circular dated 01.07.2002. Before advertng to the controversy as to the applicability of para-5 or para-12 of the Circular, the relevant provisions thereof are quoted below:-

S.No.	Point of Doubt	Clarification
5.	How will valuation be done in cases of captive consumption (i.e. consumed captive within the same factory) including transfer to a sister unit or another factory of the same company/firm for further use in the manufacture of goods?	For captive consumption in one's own factory, Valuation Rules i.e, the assessable value will be valuation would be done as per rule 8 of the 115% of the "cost of production" of the goods. If the same goods are partly sold by the assessee and partly consumed captively, the goods sold would be assessed on the basis of "transaction value" [provided they meet the conditions of Section 4 (1)(a)] and the goods captively consumed would be valued as per Rule 8 of the Valuation Rules. This is because, as per new Section 4, transaction value has to be determined for each removal. Where goods are transferred to a sister unit or another unit of the same company valuation will be done as per the proviso to Rule 9.
12.	How will valuation be done when goods are sold partly to related persons and partly to independent buyers ?	There is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per

		Section 4(1) transaction value is to be determined for each removal . For sales to unrelated buyers valuation will be done as per Section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the residuary Rule 11 read with Rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are to related buyers only.
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8. Reading of the two provisions quoted above leaves no manner of doubt that the two provisions deal with two different situations of arriving at the valuation. Under Sl. No.5, the Circular specifically deals where the issue of valuation is only *qua* "captive consumption" and, therefore, enumerate the instances of captive consumption to include consumption within the same factory and further including transfer to a sister unit or another factory of the same company or firm for further use in the manufacture of goods. Whereas Sl.No.12 provides for an eventuality where the valuation has to be done both in respect of goods, which are sold partly to related person and partly to independent buyers. The undisputed facts as stated by the appellant clearly reveals that they have cleared the goods to independent buyers as well as to their other unit and accordingly, paid the duty on goods cleared to independent buyers as per the transaction value under Section 4. In view thereof, provisions of Sl.No.12 would be applicable to the present controversy which in unequivocal terms require that valuation in respect of sales to unrelated buyers will be done as per Section 4(1)(a) and for sale of the same goods to related buyers, recourse will have to be taken to the Residuary Rule 11 read with Rule 9 or 10. It further clarifies that Rule 9 cannot be applied in such

cases directly since it covers only those cases, where all the sales are to related buyers only. There is no ambiguity in the provisions of the Circular and the Revenue is correct in applying the same.

9. The provisions of Point No.12 of the Circular has been considered by the Apex Court in **Merino Panel Products Ltd** ⁵ and clarified that Point No.12 in the Circular dated 01.07.2002 is not contrary to the intent of the CEA or CEVR. The object behind it, is to merely use "reasonable means" as outlined under Rule 11 of CEVR in conformity with section 4(1)(a) of CEA and Rule 9 of CEVR so as to reach the assessable value of goods for determination of excise duty. The observations of the Apex Court in this regard are quoted below:-

"35. The unequivocal position which emerges before us is that the price charged from 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

⁵ 2023(383)ELT 129.

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 provision 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."

10. To further appreciate the applicability of the provisions of the Circular it is necessary to quote the relevant provisions of Valuation Rules as follows:-

"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 whole or part of 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. [Where whole or part of the excisable goods are sold by the assessee to or through an interconnected undertaking, the value of such 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 (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.

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."

11. The opening line of Rule 8 which provides that, "where whole or part of the excisable goods are not sold by the assessee" itself makes it inapplicable for the purpose of valuation in the present context where the goods are sold to independent buyers and, therefore, the appellant was wrong in valuing the goods cleared to the other unit at Baddi as per Rule 8. In this context, the decision is **Avon Tubes vs. CCE**⁶, the Tribunal held that Rule 8 of CEVR is applicable only in a situation where all the excisable goods manufactured by an assessee are captively consumed by him or on his behalf in the production or manufacture of other articles.

12. We may now appreciate the decision of the Larger Bench in **Ispat Industries**, where the question referred was whether the assessable

⁶ 2004(117) ECR 616

value in respect of goods which are transferred to another plant of the same assessee is required to be determined as per Rule 4 of the CEVR (as claimed by the appellant) or as per Rule 8 of the said rules (as claimed by the Revenue) in a case where the same goods are sold to independent buyers. Same issue arises in the present case and, therefore, the observations made therein are binding on us. The conclusion arrived at is set out below:-

"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."

13. Following the said order, the Tribunal has taken a consistent view in the subsequent decisions of **Ultratech Cement Private Limited**⁷ affirmed by the Gujarat High Court. Similar view has been expressed in **Sudershan Castings & others**⁸ and **Steel Complex Limited**⁹. The decision of the Tribunal in **Steel Complex Ltd. (supra)** was challenged by the Revenue before the **Apex Court** ¹⁰ and the same was dismissed observing as under:-

⁷ 2014(302)ELT334

⁸ Final Order No.60965-60970/2017 dated 29.05.2017

⁹ 2004 (171) ELT 255 (Tri.-Bang.)

¹⁰ 2015 (321) ELT A-138 SC

“ 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.

We are therefore, not inclined to interfere, on this ground alone, with the order passed by the Customs, Excise & Service Tax Appellate Tribunal. The appeals are, accordingly, dismissed.”

14. Thus the law is settled that once there are substantial sales to independent buyers, Rule 8 cannot be invoked. Similarly, the provisions of Rule 9 of CEVR would not apply when some part of the production of goods are cleared to the independent buyers as well as related buyers and in such a case, resort will have to be made to section 4(1)(a) that is the price at which the goods are sold to other independent buyers at the same time and place. We find, that in the present case there are substantial sales to independent buyers , the valuation has to be done under Rule 11 read with Rule 4 of CEVR. The contention raised by the appellant that the valuation has to be by applying Rule 8 is unsustainable and needs to be rejected. Hence, the issue stands decided against the appellant.

15. The recent decision of the Tribunal in the case of **National Aluminium Company Limited Vs. Commissioner of CGST & Excise, Bhubaneswar**¹¹ relied upon by the appellant also needs to be appreciated. This decision was based on the earlier order in the case of the appellant themselves. Further, the decision of the Larger Bench in

¹¹ 2024(18) Centax 456 (Tri-Calcutta)

Ispat Industries was distinguished on the ground that the goods in that case were cleared to another plant not for captive consumption. With due respect, we find that the distinction drawn is neither relevant nor correct as noted in para-5 of the order, the Larger Bench accepted the contention of the assessee as correct that provisions of Rule 8 would apply only in a case where entire production of a particular commodity is captively consumed. Moreover, when the issue is referred to the Larger Bench, it decides the same on the basis of statutory provisions and the interpretation rendered by the judicial forums. What is decided by the Larger Bench is pure question of law and therefore, the principle of law laid down that the provisions of Rule 8 of CEVR would not apply in a case where some of the production of goods were cleared to the independent buyers is clearly applicable. In other words, the proposition is that if the transfer of part of the production is to another plant of the same assessee and balance production is sold to independent buyers, the provision of Rule 8 will not apply. Hence, we are of the view that the decision of the Tribunal in **National Aluminium Company (supra)** is of no help to the appellant. As discussed above, the decision of the Gujarat High Court in **Ultratech Cement (Supra)** and the order of the Supreme Court in **Steel Complex Limited** ¹²reiterates the principle that Rule 8 will not apply, where the goods are partly sold on ex-factory basis and partly cleared for captive consumption, however, the said decisions have not been taken note of by the Tribunal in the case of **National Aluminium Company**.

16. The learned Counsel for the appellant has also pointed out that the period covered in the show cause notices as reflected in the chart is

¹² 2015 (321) ELT A 138 (SC)

overlapping, which is unsustainable. We agree with the same on the simple principle that there cannot be any duplication of the period and the tax amount in that regard. Accordingly, the matter is remitted to the Original Authority to calculate the duty amount by deleting the period which is overlapping in the subsequent show cause notice.

17. We may now deal with the contention raised by the appellant regarding revenue neutrality that the duty paid by the appellant was available as credit to other unit of the appellant. In response to the said contention, the Revenue has relied on the decision of this Tribunal in the case of **Maruti Suzuki India Ltd. Vs. Commissioner of Service Tax, Delhi** ¹³ observing that had the appellant paid duty as applicable, there was no way that anybody would have stopped them for availing CENVAT Credit, if due. We agree with the said decision that if the argument of the appellant is accepted, it would disturb the very scheme of CENVAT Credit. Further, the observations of the Apex Court in **Dharampal Satyapal Vs. Commissioner of Central Excise, New Delhi** ¹⁴ also supports the view taken by the Tribunal, holding that modvat is basically a duty collecting procedure which provides relief to the manufacturer on the duty element borne by him in respect of the inputs used by him. The relief is given under the Modvat scheme on the actual payment of duty on the input. On such payment, the assessee gets a right to claim adjustment or set-off against the duty on the final product. Under Modvat, excisable finished products made out of duty paid inputs are given relief of excise duty to

¹³ (2024) 22 Centax 112 (Tri.-Chan.)[16-04-2024]

¹⁴ 2005(183) E.L.T.241 (S.C.)

the extent of duty paid on inputs. In view of the above proposition, the appellant is not entitled to the relief of revenue neutrality.

18. On the issue of limitation, we find that the appellant was under bonafide belief that valuation of the goods captively consumed by the Baddi unit would be governed by the provisions of Circular dated 30.06.2000 read with Point No.5 of Circular dated 1.07.2002. Apart from the belief of the appellant, the Revenue itself was not clear about the applicability of the Rule in such like cases and, therefore, the benefit of the same should go in favour of the appellant. The plea taken by the Revenue that the discrepancy was noted only during audit is not sustainable in view of the decision of the Tribunal in **M/s. Sunshine Steel Industries** ¹⁵ upheld by the **Supreme Court** ¹⁶ that extended period cannot be invoked for a demand raised on the basis of audit. The ingredients for applying the extended period of limitation are not made out by the Revenue and, therefore, the demand is maintained only for the normal period.

19. We, therefore, conclude that:

- a) valuation adopted by the appellant in terms of Rule 8 of CEVR is not correct.
- b) goods cleared by the appellant to their Baddi unit has to be valued in terms of Rule 4 of CEVR read with Point No. 12 of Circular dated July 1,2002.
- c) demand for the period overlapping in the subsequent show cause notice is set aside.

¹⁵ (2023)8 Centex 209 (Tri.-Del.)

¹⁶ 2023 (385) ELT 826 (SC) = (2023) 8 Centax 210 (SC)

d) the appellant is not eligible to claim any relief on the plea of revenue neutral.

e) extended period of limitation is not invokable and the demand is upheld only for the normal period.

20. On merits, we do not find any reason to interfere with the impugned order and the same is affirmed. The impugned order is modified to the extent indicated above. The appeals are remanded for limited purpose of calculation in terms of our observations in this order. The appeals stand partly allowed by way of remand.

[Order pronounced on 31st July, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)