

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

1. Excise Appeal No. 60175 of 2016

[Arising out of Order-in-Original No. 11-13/15-16/Commr/YG/FBD-I dated 28.01.2016 passed by the Commissioner of Central Excise and Service Tax, Faridabad-I]

M/s Prime India Polymix Pvt. Ltd.

Plot No.132, Sector-24,
Faridabad, Haryana-121005

.....Appellant

VERSUS

**Commissioner of Central Excise,
Delhi-IV**

Plot No.36-37, Sector-32, Opp. Medanta
Hospital, NH-IV, Gurgaon, Haryana-121001

.....Respondent

WITH

**2. Excise Appeal No. 60177 of 2016 [Shri Raj Kumar,
Bhatia, Managing Director]**

[Arising out of Order-in-Original No. 11-13/15-16/Commr/YG/FBD-I dated 28.01.2016 passed by the Commissioner of Central Excise and Service Tax, Faridabad-I]

**3. Excise Appeal No. 60181 of 2016 [Shri Saket Bhatia,
Director]**

[Arising out of Order-in-Original No. 11-13/15-16/Commr/YG/FBD-I dated 28.01.2016 passed by the Commissioner of Central Excise and Service Tax, Faridabad-I]

APPEARANCE:

Ms. Krati Singh and Shri Aman Singh and Ms. Jashanpreet Kaur,

Advocates for the Appellant

Shri Aniram Meena, Shri Goverdhan Dass Bansal, Authorized

Representatives for the Respondent

AND

4. Excise Appeal No. 60396 of 2016

[Arising out of Order-in-Original No. FBD-EXCUS-001-COM-0011-15-16 dated 28.01.2016 passed by the Commissioner of Central Excise and Service Tax, Faridabad-I]

**Commissioner of Central Goods and
Service Tax, Faridabad**

GST Bhawan, New CGO Complex, NH-IV
Faridabad, Haryana-121001

.....Appellant*VERSUS***M/s Prime India Polymix Pvt. Ltd.**

Plot No.132, Sector-24,
Faridabad, Haryana-121005

.....Respondent**APPEARANCE:**

Shri Aniram Meena, Shri Goverdhan Dass Bansal, Authorized
Representatives for the Appellant

Ms. Krati Singh and Shri Aman Singh and Ms. Jashanpreet Kaur,
Advocates for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)****FINAL ORDER NO.60938-60941/2025**

DATE OF HEARING: 25.07.2025

DATE OF DECISION: 07.08.2025

P. ANJANI KUMAR:

M/s Prime India Polymix Pvt. Ltd., herein after called as appellants, (E/60175/2016) are engaged in manufacture of rubber compound and cleared the same to M/s Bony Polymers Pvt. Ltd. on payment of central excise duty in terms of Section 4 (1) (a). On conduct of audit of the appellant's records, Revenue observed that Shri Raj Kumar Bhatia (E/60177/2016) was Managing Director of the appellant as well as M/s Bony Polymers and controlled both the units; the appellant and M/s Bony Polymers are related in terms of Section 4 (3) (b) (1) of the Central Excise Act; therefore, the

appellants were required to discharge central excise duty on 110% of the cost of production in terms of Section 4 (1) (b) of the Central Excise Act, 1944 read with Rules 8 & 9 of Valuation Rules; three show cause notices dated 12.12.2014, 28.05.2015 & 28.12.2015, covering the periods February 2010 to September 2014, October 2014 to March 2015 and April 2015 to November 2015, seeking to recover central excise duty of Rs.94,84,776/- along with interest and penalty on the appellant and penalty on Shri Raj Kumar Bhatia, Managing Director and Shri Saket Bhatia, Director, (E/60181/2016) were issued. Learned Commissioner vide impugned order dated 28.01.2016 dropped the demand under extended period and the penalty under Section 11AC on the grounds that there was no suppression on the part of the appellants and that the issue was revenue neutral; however, he imposed penalties of Rs.10 Lakhs and Rs.5 Lakhs on the Managing Director and the Director. Hence, these appeals. Revenue is also in appeal (E/60396/2016) challenging the dropping of demand for the extended period and setting aside the penalty under Section 11AC.

2. M/s Krati Singh, Learned Counsel, for the appellants submits that the Appellant has correctly computed the excise duty based on the transaction value under Section 4(1)(a) of the Excise Act; Rule 9 and Rule 8 of the valuation Rules are not applicable in the present case; Rule 9 is applicable only in cases where the buyer and seller are related to each other in the manner prescribed under sub-clauses (ii),(iii) or (iv) of Section 4(3)(b) of the Excise Act; in the

present case even if the Appellant and BPPL are treated as inter-connected undertakings, the said relationship is not sufficient to hold that goods cleared are to be valued under Rule 8/Rule 9 of the valuation Rules; neither the SCNs or the Impugned Order explain as to how the Appellant and BPPL are related in terms of the sub-clauses (ii),(iii) or (iv) of Section 4(3)(b) of the Excise Act; hence, in such Rule 9 has been incorrectly invoked.

3. Learned Counsel submits further that Rule 10 of the Valuation Rules, governs the transactions between undertakings which are “inter-connected undertaking” and in terms of Rule 10(a), the inter-connected undertakings should be so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of Section 4(3)(b) of Excise Act or the buyer is a holding company or subsidiary company of the seller, to attract determination of the value in the manner prescribed in Rule 9 of the Valuation Rules ; in the instant case, BPPL is not holding company or a subsidiary company of the Appellant; neither they are related in terms of sub-clause (ii) or (iii) or (iv) of Section 4(3)(b) of Excise Act; hence, the only recourse left to is to value goods cleared to BPPL under Rule 10(b), which in other words means that the value shall be determined as if they are not related persons for the purpose of sub-section (1) of Section 4; this is supported by Board’s Circular F. No. 354/81/2000 -TRU dated 30-06-2000, wherein it was clarified that while dealing with transactions between inter-connected undertakings, if the relationship as described in clauses (ii), (iii) or (iv) does not exist and the buyer is also not a holding company or a subsidiary

company, then for assessment purposes, they will not be considered related' ; impugned Order has recorded no finding as to how the Appellant and BPPL are related in terms of clause (ii),(iii) or (iv) of Section 4(3)(b) or that BPPL is a holding company or subsidiary company of the Appellant; Ld. Commissioner himself held that key managerial persons cannot be held to be relatives; therefore, in such a case, valuation of goods is to be done under Rule 10(b) read with Section 4(1)(a) of the Excise Act. She relies on.

- DSRM Steel Pvt Ltd & another 2025 (2) TMI 209-CESTAT Chennai
- Shree Vaishnav Industries Pvt Limited 2025 (3) TMI 568- CESTAT Mumbai
- Shiva Steel Industries (Nagpur) Limited 2025 (3) TMI 955- CESTAT Mumbai
- Khyati Ispat Private Limited (Rolling Mill Division) 2022 (3) TMI 399- CESTAT New Delhi
- Mahendra Sponge & Power Ltd 2022 (8) TMI 1250- CESTAT New Delhi
- Kwaliti Foundry Industries 2019 (4) TMI 1642- CESTAT New Delhi
- Ramsons Casting Pvt Ltd 2017 (357) ELT 431 (Tri. - Mumbai)
- Apsara Metallica Industries 2019 (369) ELT 1619 (Tri. - Mumbai)

4. Learned Counsel submits also, without prejudice to the submissions above, that the Appellant and BPPL are not related in terms of Section 4(3)(b)(ii), (iii) or (iv); they are not natural persons, hence, clause (ii) has no applicability in the present case;

further, BPPL is neither a relative nor a distributor or sub-distributor of Appellant, hence clause (iii) will also not apply; lastly, as there is no financial flow-back and no mutuality of interest between the Appellant and BPPL, clause (iv) also is not applicable; there is no allegation in the SCN or any finding in the Impugned Order as to how Assessee-Appellant No.1 and BPPL are related in terms of clause (ii),(iii) or (iv) of Section 4(3)(b) of the Excise Act. Hence, in such case it cannot be concluded that the Appellant and BPPL are interconnected entities.

5. Learned Counsel submits in addition, without prejudice to the submissions above, that even if it assumed, without admitting, that excise duty is liable to be paid under Rule 9 and Rule 8 of the Valuation Rules, the demand of excise duty has been quantified incorrectly; as per the said Rules, the duty is to be calculated on 110% of the cost of production as per CAS-4 issued by a Cost Accountant; in the present case, duty has been computed on 110% of the value at which the appellant supplied/sold impugned goods to BPPL; demand considering sale value as cost of production, is obviously incorrect. Learned Counsel submits that the demand has been computed without taking into account the cum-duty benefit; amount received by the appellant should be treated as cum-tax-price in terms of Section 4(4)(d)(ii) of the Excise Act, as held in Maruti Udyog Limited 2002 (141) ELT 3 (SC).

6. Learned Counsel submits that Ld. Commissioner has appropriated the excise duty of Rs. 45,87,731/- along with interest

amounting to Rs. 4,81,607/- already paid by the appellant; as demand of duty in itself is not sustainable as detailed above, appropriation of demand paid under protest is not legally sustainable; demand of interest under Section 11AA/11AB of the Excise Act also is not sustainable; the amounts paid under protest are liable to be refunded.

7. Learned Counsel submits that both the ingredients of Rule 26, i.e. the concerned person should have the knowledge that the goods are liable for confiscation and that the concerned person should have dealt with the goods in the manner specified in the said Rule, are required to be satisfied cumulatively; in the present case, there is no evidence on record to show that the Appellant and their Managing Director and Director had any knowledge or reason to believe that the goods were liable for confiscation; in the absence of such evidence, the penalty imposed is liable to set aside; there is no evidence in the SCN or the Impugned Order that the Appellant and their Managing Director and Director physically dealt with such goods; hence, imposition of penalty under Rule 26(1) is not sustainable. She submits that in order to impose penalty under Rule 26(1), it is necessary that certain goods are confiscated; hence, penalty under Rule 26(1) can only be imposed wherein goods are confiscated. She relies on the following.

- Shri Piyush Agarwal Director Basai Steels Power Pvt Ltd 2024 (6) TMI 754- CESTAT Bangalore
- Apple Sponge and Power Ltd 2018 (5) TMI 772- CESTAT Mumbai The Impugned Order has not even confiscated any goods.

- Gouri Shankar Poddar 2024 (9) TMI 615- CESTAT Ahmedabad
- Zapak Digital Entertainment Limited 2023 (2) TMI 40- CESTAT Mumbai
- Goodyear India Ltd and Shri R.K. Gupta, Manager Excise 2024 (10) TMI 287- CESTAT Chandigarh.

8. Learned Counsel submits, as far as the Revenue appeal against dropping of invocation of extended period and setting aside penalty under section 11AC is concerned, that Revenue contend that the Learned Commissioner failed to appreciate the allegations in the SCN; he wrongly dropped the demand and penalty; the Appellant and BPPL are inter connected entities; there is undervaluation on part of the Appellant; the appellant did not disclose the relation with BPPL in the ER-1 returns filed; the practice came to light only when scrutiny was undertaken by the department; there was sufficient evidence establishing undervaluation on part of the Appellant and hence, non-imposition of penalty is not sustainable. Learned Counsel submits that the ingredients required for invocation of extended period and thus imposition of penalty under Section 11AC are not fulfilled; demand has been raised on the basis of the audit; all the facts were already well within the knowledge of the department; thus, extended period of limitation cannot be invoked in such a case. She submits further that the issue involves difference in interpretation of legal provision; department had made out a case on the basis of the accounts maintained by the appellants; the entire transaction is revenue neutral as duty demanded was

available as Cenvat Credit; hence, it is settled position of law that extended period of limitation cannot be invoked in such circumstances. She relies on the ration decided in following cases.

- Nizam Sugar Factory 2006 (197) ELT 465 (SC)
- Mico Glass Industries Pvt Ltd 2025 (7) TMI 1332-CESTAT Chandigarh
- Mark Exhaust Systems Pvt Ltd 2025 (2) TMI 848-CESTAT Chandigarh
- Indigo Flavors Pvt Ltd. 2024 (8) TMI 261-CESTAT Chandigarh
- Mehra Metal Components Pvt Ltd 2018 (6) TMI 123- CESTAT Chandigarh

9. Shri Aniram Meena, Learned Authorised Representative, reiterates the findings of the impugned order as far as appeal Nos. E/60175/2016, E/60177/2016 & E/60181/2016 are concerned and the grounds of appeal as far as revenue appeal No. E/60396/2016 is concerned.

10. Heard both sides and perused the records of the case. Brief issue that requires consideration in the instant case is as to whether the appellant and their customer M/s Bony Polymers Pvt Ltd (BPPL) are related in terms of Section 4(3)(b)(i) of Central Excise Act, 1944; consequently, whether the appellants are required to assess the value of goods cleared to them at 110% of the cost of production; whether penalties are imposable on the appellants and their Managing Director and Director. The case of the Department is that the appellant and M/s BPPL are related as the management of

the companies is in the same hands and therefore, valuation of the goods cleared by the appellants to M/s BPPL should be done under Rule 8 & 9 of Central Excise Valuation Rules. The appellants, on the other hand, claimed that the appellants and M/s BPPL can at best be termed as inter-connected undertakings and thus, valuation requires to be done under Section 4(1)(a) of the Central Excise Act, 1944 in view of Rule 10 of Central Excise Valuation Rules. We find that it will be useful to have a look at the provisions of the Statute before we proceed further.

11. Section 4(1) stipulates that:

[4. Valuation of excisable goods for purposes of charging of duty of excise—

(1) Where under this Act, 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 the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the 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 case where the goods are not sold, be the value determined in such manner as may be prescribed.

[Explanation.— For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly

from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

11.1. Section 4(2)(b) stipulates that:

(3) For the purposes of this section,—

(a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;

(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 that they have interest, directly or indirectly, in the business of each other. Explanation.—In this clause— 2[(i) “inter-connected undertakings” means two or more undertakings which are inter-connected with each other in any of the following manners, namely—

(A) if one owns or controls the other;

(B) where the undertakings are owned by firms, if such firms have one or more common partners;

(C) where the undertakings are owned by bodies corporate,—

(I) if one body corporate manages the other body corporate; or

(II) if one body corporate is a subsidiary of the other body corporate; or (III) if the bodies corporate are under the same management; or

(IV) if one body corporate exercises control over the other body corporate in any other manner;

(D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,—

(I) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate; or

(II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;

(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;

(F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

Explanation I.— For the purposes of this clause, two bodies corporate shall be deemed to be under the same management—

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the Managing Director or manager of one such body corporate is the Managing Director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than

one-fourth of the total membership of the Board of Directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or employees of the first mentioned body corporate) one-fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly

by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.— If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

Explanation III.— If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV.— In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account. Illustration Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

Explanation V.— For the purposes of this clause, “group” means a group of—

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or (ii) "associated persons".

Explanation VI.— For the purposes of this clause,—

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) associated persons—

(a) in relation to a director of a body corporate, means—

(i) a relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) any trust of which any such director or his relative is a trustee;

(iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of Directors;

(iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;]

(b) "relative" shall have the meaning assigned to it in clause (41) of Section 2 of the Companies Act, 1956 (1 of 1956); (c) "place of removal" means— (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;]

[(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; 2[(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;]

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise,

sales tax and other taxes, if any, actually paid or actually payable on such goods.]

11.2. Rule 8, 9 & 10 of Central Excise Valuation Rules, 2000 provides that:

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 inter connected 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.

12. We find that in order to invoke Rule 9 of CEVR, 2000, the assessee should sell the goods only to a person related; related person should be as defined under clauses (ii), (iii) & (iv) of sub-section 3 of Section 4 of the Central Excise Act, 1944; then the assessable value shall be the value at which these goods are sold by the related persons to their customers were not related; if the transaction comes under the provisions of Rule 9 then valuation should be done under Rule 8 which prescribes that the assessable value shall be 110% of the cost of production. In the instant case, the appellants cleared the rubber compound manufactured by them to M/s BPPL on payment of excise duty on the transaction value; M/s BPPL further used the rubber compound in the manufacture of automobile components, which are cleared to Maruti Suzuki, Hero MotoCorp etc.

13. In the instant case, there is no doubt that the appellants are clearing 97% of their production to M/s BPPL. We find that the period involved is after the said Rule 9 was amended. We find that

whereas the show cause notice alleges that the appellant and M/s BPPL are related under clauses (ii), (iii) & (iv) of sub-section 3 of Section 4, it is not explained as to how they are related. Learned Commissioner finds that the key managerial person being the same cannot be said to be relatives; learned Commissioner relying on the Explanation to Section 2(g) of Monopolies and Restrictive Trade Practices Act, 1969, they being interconnected, are deemed to be related for the purposes of Section 4(3)(b)(i). The appellants submit that as it has not been explained as to why the appellants are related in terms of Clauses (ii), (iii) & (iv) of Section 4(3)(b). We find that the appellants and M/s BPPL are inter-connected undertakings. In order to be treated as related persons, they should also satisfy the Clauses (ii), (iii) & (iv) of Section 4(3)(b); M/s BPPL is neither a holding company or a subsidiary of the appellant. Learned Commissioner held that they are not relatives; so, they are not related in terms of Clause (ii) of Section 4(3)(b); M/s BPPL are not a distributor or a sub-distributor of the Distributor; no evidence has been put forth to say that they are so associated that they have interest, directly or indirectly, in the business of each other. Therefore, we find that the valuation of the goods cleared by the appellant to M/s BPPL requires to be done under Rule 10(b) which provides for valuation in terms of Section 4(1) of Central Excise Act, 1944.

14. We find that the issue is no longer *Res integra*. We find that in a number of cases, it has been held that inter-connected undertakings cannot be held to be related. We find that Mumbai Bench of the

Tribunal in the case of Shree Vaishnav Industries Pvt Ltd. – 2025 (3) TMI 568- CESTAT Mumbai gone into the issue as to whether the valuation of excisable goods cleared to an inter-connected undertaking, is to be done under Rule 8 & 9 of Central Excise Valuation Rules, 2000 or under Rule 10, the Bench held that:

8.3 Further, we have also examined the relevant legal provisions concerning 'related person' as follows. The essence of the legal provisions contained in Section 4(3)(b) of the Central Excise Act, 1944, state that 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 distributor of the assessee, or a sub-distributor of such distributor; or
- (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

In the Explanation clause it is clearly provided 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 (64 of 1969); and "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956). From the plain reading of the above legal provisions, it appears that interconnected undertakings are also related person. However, as per Rule 9 of Central Excise Valuation Rules, 2000, it is clear that Rule 9 *ibid* shall apply only when the goods are sold through person as specified under sub-clause (ii), (iii) or (iv) of clause (b) of Section 4 of the Act. Further, Provisio of Rule 9 also suggests

that merely because buyer is interconnected undertaking that alone is not sufficient for holding as related person. It is nowhere discussed in the impugned order or any evidence produced by the authorities below to state that the appellants and their interconnected undertaking are related in terms of the above provisions of the Central Excise statute. Therefore, we are of the opinion that on this ground alone the impugned order is liable to be set aside and it does not stand the scrutiny of law.

9.1 We find that in the case of Gajra Gears Private Limited (supra), the Co-ordinate Bench of the Tribunal has held that valuation of goods between inter-connected undertaking shall be determined as prescribed under Rule 10. The relevant paragraph of the said order is extracted and given below:

"5. Merely because the assessee and his buyers are interconnected undertakings in terms of Section 2(g) of Monopolies and Restrictive Trade Practices Act, 1969, for the purpose of valuation, the two cannot be treated as 'related person' and the transaction value cannot be rejected merely on this basis, as for rejecting the transaction value in such cases the conditions prescribed in Rule 10 of the Central Excise Valuation Rules have to be satisfied which are that - (a) all the sales of the excisable goods are to or through the interconnected undertaking; and (b) either the assessee or its buyer are the holding company or subsidiary company or they are also related in terms of clause [(ii), (iii) or (iv)] of Section 4(3)(b) and only when the above conditions are satisfied, the transaction value can be rejected and has to be determined in the manner prescribed in Rule 10. In this case according to the appellant, these conditions are not satisfied, but the Commissioner (Appeals) in the impugned order has

not examined this plea. In view of this, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for de novo decision.”

9.2 We further find that in the case of Ramsons Casting Private Limited (*supra*), the Co-ordinate Bench of the Tribunal has held that in the absence of evidence, even if two companies are operated as ‘interconnected undertakings’, they cannot be treated as ‘related person’ for valuation purpose and the transaction value cannot be rejected. The relevant paragraphs of material on record the said order is extracted and given below:

“7. The transaction value can be rejected only when the buyers are related in the sense in clause (ii), (iii) or (iv) of Section 4(3)(b) or buyer is holding company or subsidiary company of the assessee. It was made further clear that while dealing with transaction between interconnected undertaking, if the relationship as described in clause (ii), (iii) or (iv) does not exist and buyer also not holding or subsidiary then for assessment purpose they will not be considered related. In view of above clear position as regard transaction between interconnected undertakings, it is crystal clear that in existing status of interconnected undertaking they should fall under the category of sub-clause (ii), (iii) or (iv) of Section 4(3)(b). In the present case Revenue contended that the respondent and buyers company are interconnected undertaking therefore, they are related and consequently proposed Rule 8 of Central Excise Valuation Rules, 2000 and adopted the valuation of cost construction method. The show cause notice or original order have not brought any material to establish that the relationship between respondent and buyers company are one of the relationship as prescribed under sub-clause (ii), (iii) or (iv) of

Section 4(3)(b) of Central Excise Act therefore, in our considered view even if it is accepted that the buyers company are interconnected undertaking of the appellant company it cannot be treated as related person in terms of Section 4(3)(b). In absence of relationship as specified under sub-clause (ii), (iii) or (iv) of Section 4(3)(b). In this position, the transaction value of the goods between respondent and the so-called interconnected undertaking is correct valuation and the same cannot be disturbed, therefore, value as provided under Rule 8 is not applicable in the present case. We have gone through judgments relied upon by the rivals. We find that the judgment relied upon by the Id. Counsel are directly applicable in the facts of the present case. As regard the judgment in case of Avon Scales Co. (supra) relied upon by the Id. AR the same is not applicable for the reason that relationship is related to the partners and partnership firm, whereas in the present case respondent and the buyer are two independent private limited companies. In view of our above discussion we are of the considered view that the respondent have correctly valued their goods sold to their group company..."

15. Intriguingly, though the Revenue alleges that the valuation of the goods supplied by the appellant to M/s BPPL should be valued at 110 percent of the Cost of Production, where the costing is arrived on the basis of certificate is from CAS-4, Show cause Notice and the impugned order proceed to value the goods at 110% of the present value at which the goods are presently being sold to M/s BPPL. That is to say, revenue has taken the value at which the appellants cleared goods to M/s BPPL as the cost of production. There is no

mention of any CAS-4 either. Revenue has calculated the cost of production in an unscientific and unacceptable manner. We find that such a method of re-determination of the Value for the purposes of Rule 8, is not provided. We find that the demand, considering sale value as cost of production, is factually ridiculous and legally not tenable. Moreover, learned Counsel submits that the demand has been computed without taking into account the cum-duty benefit and that the amount received by the appellant should be treated as cum-tax-price in terms of Section 4(4)(d)(ii) of the Excise Act, as held in Maruti Udyog Limited 2002 (141) ELT 3 (SC). We find that the argument is valid. For the reason that the impugned order adopts a legally invalid method of determination, the same becomes liable to be set aside.

16. We find that the Show Cause Notice is issued on conduct of an audit. Audit has taken the figures from public Documents. No substantiated allegation exists as regards suppression of fact etc with an intent to evade payment of duty. Moreover, it's an interpretational issue and therefore extended period cannot be invoked. We find that Principal bench of the Tribunal in the case of Sunshine Steel Industries (2023) 8 Centax 209 (Tri.-Del) held that:

19. With the assistance of the learned authorized representative appearing for the Department Form ER-I that has to be submitted online has been perused. There is no space designated for the assessee to disclose that it is a related party and indeed the learned authorized representative appearing for the Department has not been able to point out any space where this information was required to be disclosed by

the appellant. What has been alleged in the show cause notice is that the appellant had suppressed this information in the ER-I Form. As the said form does not require an assessee to disclose this information, it is not open to the Department to contend that the assessee had suppressed any information.

20. The Department cannot be permitted to invoke the period of limitation by merely stating that it is a case of self-assessment as even in a case of self-assessment, the Department can always call upon an assessee and seek information. It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 (the Rules) that the assessee is expected to self-assess the duty and sub-rule (3) of rule 12 of the Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.

25. It is thus evident that not only do the Rules mandate officers to scrutinize the Returns to verify the correctness of self-assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.

26. If the scrutiny by officers reveals short payment or non-payment of duty, a demand can be raised under section 11A. As per section 11A of the Excise Act, the relevant date prescribed for reckoning the time limit is „the date of filing of the return? and if no return is filed, „the last date on which the return should have been filed? This is the date on which the officer acquires knowledge of the activities of the assessee in the form of the Return, if it is filed. The Officer can scrutinize and call for documents and records which he considers necessary. The Officer has a period of one year within which to issue the show cause notice under section 11A of the Excise Act. If no Return is filed by the due date, the officer can initiate appropriate action. The Audit examined the returns and because of the objections raised, the show cause notice was issued. The Officers of the Department could also have scrutinized the returns and raised a demand within the normal period of limitation. The assessee cannot be blamed by merely stating that it was only when the Audit pointed out that suppression was noted or by stating that it was a case of self assessment.

27. This apart, as noticed above, the show cause notice only alleges that the appellant had suppressed facts. It does not allege that the appellant had suppressed facts with intent to evade payment of excise duty. In the absence of any allegation made in the show cause notice that the appellant had suppressed facts with intent to evade payment of duty, the Department could not have invoked the extended period of limitation under section 11A (4) of the Act. This issue was raised by the appellant before the Commissioner (Appeals), but no finding has been recorded.

16. We find that as far as the circumstances of invoking the extended are concerned, the above case is identical to the present case. Show Cause Notice in the impugned case does not

allege, with evidence, any suppression etc. with intent to evade payment duty. Learned Commissioner also held that extended period is not invocable and hence, Penalty under Section 11AC is not imposable. Therefore, we find that there are no reasons so as to interfere with the impugned order to this extent. We find that as Revenue did not make out any case to invoke extended period, the revenue appeal has no merits and is liable to be dismissed.

17. In the result, appeal No. E/60175/2016 (M/s Prime India Polymix), E/60177/2016 (Shri Raj Kumar Bhatia, MD) and E/60181/2016 (Shri Saket Bhatia, Director) are allowed and Revenue's Appeal No. E/60396/2016 is dismissed.

(Order pronounced in the open court on 07/08/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)