IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 22/05/2017.
DATE OF DECISION : 24/05/2017.

Excise Appeal No. 2671 of 2011

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/323/2011 dated 16/08/2011 passed by The Commissioner (Appeals – I), Central Excise & Customs, Indore.]

M/s Surabh Tubes P. Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

None – for the appellant.

Shri Dharam Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53406/2017 Dated : 24/05/2017

Per. B. Ravichandran :-

The appeal is against order dated 16/08/2011 of Commissioner (Appeals-I), Indore. The appellants are engaged in the manufacture of Steel Wires liable to Central Excise duty.

During the period 01/12/2004 to 14/03/2008 the appellants have cleared steel wires to M/s Neminath Tubes Industries, Indore. The Revenue entertained a view that the appellants and M/s Neminath Tubes Industries are related persons and accordingly the value of goods cleared to M/s Neminath was sought to be revised, to demand differential duty. Applying the provision of Rule 9 readwith Rule 11 of Central Excise Valuation Rules, 2000, the lower Authorities confirmed the differential duty of Rs. 1,03,222/- and Rs. 13,555/- Penalty of equivalent amount was also imposed on the appellant both under Rule 25 and Rule 26 of Central Excise Rules, 2002 (main appellant and the Director of the appellant).

2. When the case is called, none appeared on behalf of the appellant, in spite of notice. We note that on earlier occasions, 20/03/2017 and 18/04/2017, also none appeared on behalf of the appellant. Accordingly, we take up the case for disposal based on the appeal records and the submissions made by the learned AR.

3. We note that the show cause notice and the lower Authorities in their findings recorded that the appellant is a related person of M/s Neminath Tubes Industries as per the provisions of Section 4 (3) (b) (ii) of Central Excise Act, 1944. Accordingly, the transaction value of the sale was rejected and the value was re-determined applying the provisions of Rule 9

readwith Rule 11 of Valuation Rules. We note that the appellant strongly contested that they are a private limited company registered under Companies Act, 1956 and M/s Neminath Tubes Industries is a partnership firm. As such, a private limited company cannot be a relative of a partnership firm. The show cause notice as well as both the lower Authorities proceeded against the appellant to recover differential duty only on the ground that the appellants are "relative" of M/s Neminath in terms of Section 4 (3) (b) (ii). The said provision is applicable only if the parties are "relative" as per Section 2 (41) of the Companies Act, 1956. We note that a juristic person, like a private limited company, cannot be called as a 'relative' of a partnership firm. The scope of term "relative" will apparently apply to only natural persons. Reference can be made to the decision of Tribunal in **CCE, Raipur vs. Akash Ispat Ltd.** reported in **2016 (337) E.L.T. 295 (Tri. – Del.)**. On this ground alone, the proceedings against the appellant are unsustainable. Even if some of the Directors of the appellant are partners of the buying firm, this by itself do not make them related persons. It is a well settled legal position that the relationship between two legal entities are to be established by the facts applicable to each case. We note that the lower Authorities have misdirected themselves in examining the legal provision of Section 4 (3) (b) (ii), and without examining the facts of the present case applied a completely inapplicable provisions of law to decide the valuation issue. We note that the impugned order suffers from serious legal infirmity, as discussed above and accordingly the same is set aside. The appeal is allowed.

(Order pronounced in open court on __/05/2017.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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