

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

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 972 of 2011

(Arising out of **Order-in-Appeal** No.12/2011(H-IV) CE dated 27.01.2011 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s N R Polymers Pvt Ltd.,

..

APPELLANT

(Formerly known as M/s KJR
Poly Films Pvt Ltd.,)
Plot No. 12/B, Phase-III, IDA,
Geedimetla, Ranga Reddy,
Telangana – 500 055.

VERSUS

**Commissioner of Central Tax
Hyderabad – I**

..

RESPONDENT

11-5-423/1/A,
Sitaram Prasad Tower,
Red Hills,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:

Shri G. Prahlad, Advocate for the Appellant.

Shri Sandeep Kumar Payal, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30107/2025

Date of Hearing:17.02.2025
Date of Decision:03.04.2025

[ORDER PER: A.K. JYOTISHI]

The Appeal No. E/972/2011 was decided by this Bench vide Final Order No. A/30217/2019 dated 18.02.2019, whereby, the appeal was rejected and the impugned order was held as correct and legal not requiring any interference. Against the said order, M/s NR Polymers Pvt Ltd., (appellant) went to the Hon'ble High Court of Telangana vide Appeal CEA No. 18/2024. The Hon'ble High Court thereafter passed an order dated 27.01.2025 allowing the said appeal partly and remanding the matter back for taking a decision on the limited aspect of applicability of the judgment in

the case of M/s Super Synotex (India) Ltd., [2014 (301) ELT 273 (SC)] for the period prior to 31.06.2000 in so far as appellant is concerned. Accordingly, this Bench restored the appeal in terms of the order of the Hon'ble High Court of Telangana and heard the matter.

2. Learned Advocate has mainly contended that there is no dispute as far as facts are concerned. However, only dispute is that the reliance placed by the Tribunal in their order dated 18.02.2019 on the judgment of CCE, Jaipur Vs M/s Super Synotex (India) Pvt Ltd., is not relevant or applicable for the period prior to 01.07.2000. It is an admitted fact that demand is for the period 1996-97 to 2003-04. He has also relied on another judgment of Hon'ble Supreme Court in the case of CCE, Jaipur Vs National Engg. Industries [2015 (320) ELT 27 (SC)] and the judgment of the Co-ordinate Bench in the case of CCE, Raigad Vs Uttam Galva Steels Ltd., [2016 (331) ELT 261 (Tri-Mumbai)] in support of his contention that the reliance placed for rejecting the appeal on the judgment for the period prior to 01.07.2000 is not correct. He has also submitted that since there were conflicting views on the issue covered in the show cause notice during the relevant period, the extended period should not have been invoked. He has relied on various judgments in support of the submission.

3. On the other hand, Learned AR reiterates findings in the order passed by the Commissioner (Appeals) dated 27.01.2011 and subsequently upheld by the Tribunal vide its order dated 18.02.2019. He further submits that the order has been partly set aside by the Hon'ble High Court of Telangana and has now been remanded back to this Bench for examining the limited issue of applicability of the judgment in the case of M/s Super Synotex (India) Ltd., supra, for the period prior to 01.07.2000.

4. Heard both the sides and perused the records.

5. At the very outset, it is made clear that this appeal has been taken up in terms of order of the Hon'ble High Court of Telangana dated 27.01.2025. The Hon'ble High Court examined the said order dated 18.02.2019 passed by the Tribunal, wherein, inter alia, the Tribunal had relied on the judgment of M/s Super Synotex (India) Ltd., supra, for rejecting the entire appeal, wherein, certain arguments made by the appellant regarding applicability of the judgment for the period prior to 01.07.2000 was not considered by the Tribunal while deciding the said appeal. The Hon'ble High Court has observed that the period covered in this dispute is from 1996-97 and 2003-04 and if the M/s Super Synotex (India) Ltd., case is to be made applicable only with effect from 01.07.2000, there has to be decision for the earlier period also and therefore it was required to be remanded back to the Tribunal to the limited extent to ascertain whether the judgment in the case of M/s Super Synotex (India) Ltd., supra, would also be applicable for the period prior to 31.06.2000 or not.

6. In view of the observations and direction of the Hon'ble High Court of Telangana, the Tribunal has taken up this appeal only in terms of the said order to determine the limited issue of applicability of the said judgment in the case of M/s Super Synotex (India) Ltd., supra, for the period prior to 01.07.2000. We note that the issue involved in this appeal is whether the appellant is required to discharge Central Excise duty on the amount of sales tax retained by them after availing benefit extended by the State Government for pre-payment of such sales tax which was collected by the appellant or otherwise. The Tribunal felt that the issue was no longer res-integra in view of the Hon'ble Supreme Court judgment in the case of M/s

Super Synotex (India) Ltd.,, which was also followed by Co-ordinate Bench of this Tribunal in the case of Honda Motorcycles & Scooters India Pvt Ltd., Vs CCE, Delhi-III [2017 (357) ELT 828 (Tri-Che)]. In so far as the facts of the case are concerned, there is no dispute from either side, therefore, we are not reiterating the same. We have gone through the judgment in the case of M/s Super Synotex (India) Ltd., supra, and we find that the Hon'ble Supreme Court has examined the issue of taxability in respect of amount retained by the assessee by treating the said retention as price of goods under the basic fundamental conception of transaction value as substituted with effect from 01.07.2000 under Section 4 of the Central Excise Act. It also took into account CBEC Circular No. 378/11/98 dated 12.03.1998 which protected industrial units availing incentive scheme as there was conceptual book adjustment of sales tax paid to the Department. The issue involved was that the assessee had not paid the duty on the additional consideration collected towards the sales tax. The Revenue felt that the assessee was availing exemption from the payment of sales tax even though it was showing sales tax but assessable value was shown separately for the payment of Central Excise duty. On the other hand, the assessee said that it was a incentive scheme and not an exemption and therefore the sales tax collected was not includable in the assessable value and the deduction was admissible. After going through various case laws, the Hon'ble Supreme Court held as under:

23. In view of the aforesaid legal position, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" under [Section 4\(4\)\(d\)](#), for it is not excludible. As is seen from the facts, 25% of the sales tax collected has been paid to the State exchequer by way of deposit. The rest of the amount has been retained by the assessee. That has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1.7.2000. Therefore, the assessee is bound to pay the excise duty on the said sum after the amended provision had brought on the statute book.

It is therefore apparent that in the given situation what have been clearly held that in terms of amendment in Section 4 of the CEA, wherein the concept of "transaction value" was brought, unless the sales tax is actually paid to the Sales Tax Department of the State Government no benefit towards excise duty can be given under Section 4(4)(d). Therefore, from the plain reading of the judgment in the case of M/s Super Synotex (India) Ltd., it is obvious that the said judgment has not considered the period before 01.07.2000 and therefore the said judgment is only applicable for the period after 01.07.2000.

7. We also find that in the case of National Engineering Industries, supra, Hon'ble Supreme Court took same view in a similar factual matrix relying on the earlier judgment of Hon'ble Supreme Court in the case of M/s Super Synotex (India) Ltd., supra. We also find that Co-ordinate Bench in the case of Uttam Galva Steels Ltd., by relying on catena of judgments and Departmental clarification, inter alia, held that in terms of various circulars dated 12.03.1998, 30.06.2000 and 04.12.2002, the Department has all along with been of the view that under the Department Scheme of Sales Tax, the sales tax is payable though after long period of time and since the sales tax is payable, the same still stand excluded from the normal value or the transaction value.

8. We note that the Hon'ble High Court has set aside the order dated 18.02.2019 to the extent of period from 1996-97 till 31.06.2000 only leaving this power to Tribunal to decide the applicability of the said judgment for the aforesaid period. In view of our findings, supra, we find that the Tribunal has applied the said judgment for the period both prior to 01.07.2000 as

well as post 01.07.2000, which is not tenable as the judgment of Hon'ble Supreme Court is not applicable for the period prior to 01.07.2000. Thus, the reliance placed by the Tribunal in their order dated 18.02.2019 on the judgment of M/s Super Synotex (India) Ltd., for the period prior to 01.07.2000 is not correct and hence demand to the extent of Rs. 1,50,325/- pertaining to the said period upto 30.06.2000 is not sustainable. Accordingly, the order of the Commissioner (Appeals) is set aside to that extent.

9. Appeal allowed partly.

(Order Pronounced in open court on 03.04.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)