CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1260 of 2012

(Arising out of Order-in-Original No. 21/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Commissioner Of Central Goods And Service Tax, Kolhapur **...Appellant**
Vasant Plaza, Rajaram Road, Kolhapur-416003.

Versus

FIE SPHERPTECH **....Respondent**
Plot No. 6,7,8, 1 & 9, Shree Laxmi Co. Op.
Industrial Estate, Hatkanangale, Kolhapur-416001.

WITH

Excise Appeal No. 1268 of 2012

(Arising out of Order-in-Original No. 21/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Commissioner Of Central Goods And Service Tax, Kolhapur **...Appellant**
Vasant Plaza, Rajaram Road, Kolhapur-416003.

Versus

Rajendra Krishnaji Pujari **....Respondent**
Excise Incharge of Fie Spherotech , Plot No.6,7,8,
1 & 9, Shree Laxmi Co. Op. Indl. Estate, Hatkanangale,
Kolhapur-416314.

AND

Excise Appeal No. 1269 of 2012

(Arising out of Order-in-Original No. 21/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Commissioner Of Central Goods And Service Tax, Kolhapur **...Appellant**
Vasant Plaza, Rajaram Road, Kolhapur-416003.

Versus

Chandrakant Vasudev Deshpande **....Respondent**

Appearance:

Shri M. P. Joshi, Advocate for the Appellant
Shri N. N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85643-85645/2022

Date of Hearing: 22.04.2022
Date of Decision: 14.07.2022

Per: P. Anjani Kumar

M/s Fie Spherotech, respondent herein, are engaged in the manufacture of excisable goods i.e. Castings for Automobile components and other machinery parts; they cleared the goods to units like Telco, Maruti Udyog, Voltas etc. and also cleared to the units like, M/s FIE, M/s SPM Tools, M/s IMF etc. whom the Revenue alleged that they are related persons. The allegations of the Revenue were that during the period April, 2004 to March, 2008, the respondents have cleared the goods to their related persons, who used them for further manufacture in their units; the respondent did not discharge duty on the basis of CAS-4 certificate or 110% of the cost of manufacture. A show-cause notice dated 22.07.2007 was issued to the respondents demanding the differential duty of Rs.73,37,143/-; seeking to impose penalty under Section 11AC and Rule 25 & 27 of the Central Excise Rules, 2002. The show-cause notice proposed penalty on Shri Chandrakant Vasudev Deshpande, partner of the respondent and Shri Rajendra Krishanji Pujari, Excise In charge of the respondent. The said show-cause notice was decided by Order-in-Original No. 21/CEX/2012 dated 30.03.2012. The learned Adjudicating authority vide impugned order discharged the show-cause notice, therefore, the Revenue is in appeal against such dropping of the proceedings on the grounds, which are summarized as follows: -

- The adjudicating authority has erred in not examining the interconnected undertakings, who are also relatives. When the partners are common, the test of relative is automatically satisfied as one is always a relative to himself.
- The adjudicating authority decided the issue on the old definition of 'related person' prior to 01.07.2000 on the basis of Tribunal's judgment in the case of *Sudarshan Casting Pvt. Ltd. – 2007 (217) ELT 428 (Tri-Del).*
- The details of Directors of the respondent company and the related concerns are as follows: -

Sr. No.	NAME OF UNIT	STATUS OF UNIT
1	Fuel Instrument & Engineers Pvt. Ltd.	Pvt. Ltd.
2	Ichalkaranji Engineering Cantre Pvt. Ltd.,	Pvt. Ltd.
3	Ichalkaranji Machine Center P. Ltd	Pvt. Ltd.
4	Ichalkaranji Metalloy Founders P. Ltd.	Pvt. Ltd.
5	Saroj Engineering Udhyog Pvt. Ltd.	Pvt. Ltd.
6	Technovision	Pvt. Ltd.
7	FIE SPHEROTECH	Partnership
8	Auto Line	Partnership
9	Auto Parts	Partnership
10	Engineering Technologies	Partnership
11	Saroj Engineers	Partnership
12	Spm Tools Indl Estate	Partnership
13	Fluid Line, Jaysingpur	Partnership
14	Flame Industries	Proprietary

Sr. No.	Name Of Person	Male/ Female	Relationship with each other
1	Kulkarni Panditrao Daji	M	Founder Member
2	Kulkarni Sudha Panuitrao	F	Wife of Sr. No. 1
3	Deshpande Rama Arvind	F	Daughter of Sr. No. 1
4	Kulkarni Alka Ajit	F	Daughter of Sr. No. 1
5	Laxmeshwar Anuradha Manoi	F	Daughter of Sr. No. 1
6	Laxmeshwar Manoj Vitthal	M	Daughters Husband of Sr. No. 1
7	Kulkarni Vishnupant Vyankatesh	M	Brother's Son of Sr. No. 1
8	Kulkarni Suresh Vyanktesh	M	Brother's Son of Sr. No. 1
9	Kulkarni Sulbha Suresh	F	Wife of Sr. No. 8
10	Kulkarni Tushar Suresh	M	Son of Sr. No. 8
11	Kulkarni Nilesh Suresh	M	Son of Sr. No. 8
12	Deshpande Chandrakant Vasudeo	M	Sister's Son of Sr. No. 1
13	Deshpande Rajiv N.	M	Sister's Son of Sr. No. 8

14	Yalgl Suahs Gajananrao	F	Wife's brother of Sr. No. 8
15	Arvind G. Deshpande	M	Daughters Husband of Sr. No. 1
16	Ajit T. Kulkarni	M	Daughters Husband of Sr. No. 1
17	Vyas Girish Dinesh	M	

- From the above, the Directors are common in both the companies and one of the Directors of their companies is also a partner in the partnership firm; the remaining partners in partnership firms are wives of two Directors in both the companies.
- The show-cause notice proceeded to fix the assessable value under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; the present case is one where the goods are partly sold to related persons and partly to independent buyers. There is no specific rule covering such a contingency, therefore the residual Rule 11 was needed to be invoked and accordingly, the same was invoked; though the Rule 8 through Rule 11 and 9 has not been explicitly mentioned in the show-cause notice, but the pith and substance for fixing the value has been elaborated in the show-cause notice; therefore, the adjudicating authority erred in view of the Supreme Court judgment in the case *of Pradyumna Steel Ltd.- 1996 (82) ELT 441.*
- The adjudicating authority has repented solely on the submission of the respondent that the value adopted for the related person was also comparable to the value adopted to independent buyers; however, the adjudicating authority has not given the opportunity to Department to verify the claim of the noticee that they have raised supplementary invoices.

2. Learned Authorized Representative for the Department reiterates the grounds of appeal and submits that as per Para 14 of the show-

cause notice, it can be seen that all the corporate bodies of the group, 100% share holding is by the partners of the assessee firm either directly or indirectly through their relatives; the ld AR took us through the statutory provisions of Section 4(1) of the Central Excise Act, 1944, Section 4(3)(b) ibid and submits that in terms of the provisions, the respondents are related. Ld AR submits that the respondents vide letter dated 21.05.2008 submitted CAS-4 certificate for the periods 2004-05, 2005-06 and 2006-07 but refused to submit CAS-4 certificate for the remaining period; therefore it appears that the proper valuation of the goods cleared to the units was required to be done at 110% of the manufacture's cost as per CAS-4 guidelines as per Rule 8 and Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2.1 Learned AR submits that learned Commissioner has wrongly relied upon the judgments in the case of *Atic Industries Ltd. - 1984 (17) ELT 323 (SC); Bajaj Auto ltd. – 2008 (232) ELT 299 (Tri-Mum), Vinny Overseas Pvt. Ltd. S. CCE, Ahmedabad – 2009 (245) ELT 759 (Tri-Ahmd.), Lloyds Metals & Engineers Ltd. Vs. CCE, Nagpur – 2008 (222) ELT 84 (Tri-Mum), Electronic Calculators & Computer Co. – 2008 (224) ELT 559 (Tri-Chennai), Cosepa Fiscal Industries Ltd. – 2008 (229) ELT A128 (SC)*. He submits that the adjudicating authority wrongly held that the assessee firm and other body corporate are not to be treated as related and that if supplementary invoices raised by them are taken into account the price charges to the related person is equal to the price charged to independent buyers. Ld AR relied upon the following cases and submits that in all the cases, interconnected undertakings should be treated as related to each other.

3. Learned Counsel for the respondent reiterates the findings of the adjudicating authority and submits that the show-cause notice has been correctly set aside by the adjudicating authority.

4. Heard both sides and perused the records of the case.

5. We find that the issue which requires consideration is as to whether the respondents have undervalued the goods cleared to their interconnected undertakings or related persons. It is the case of the Department that the interconnected nature of the companies involved are as follows: -

Sr. No.	NAME OF UNIT	STATUS OF UNIT
1	Fuel Instrument & Engineers Pvt. Ltd.	Pvt. Ltd.
2	Ichalkaranji Engineering Cantre Pvt. Ltd.,	Pvt. Ltd.
3	Ichalkaranji Machine Center P. Ltd	Pvt. Ltd.
4	Ichalkaranji Metalloy Founders P. Ltd.	Pvt. Ltd.
5	Saroj Engineering Udhyog Pvt. Ltd.	Pvt. Ltd.
6	Technovision	Pvt. Ltd.
7	FIE SPHEROTECH	Partnership
8	Auto Line	Partnership
9	Auto Parts	Partnership
10	Engineering Technologies	Partnership
11	Saroj Engineers	Partnership
12	Spm Tools Indl Estate	Partnership
13	Fluid Line, Jaysingpur	Partnership
14	Flame Industries	Proprietary

Sr. No.	Name Of Person	Male/ Female	Relationship with each other
1	Kulkarni Panditrao Daji	M	Founder Member
2	Kulkarni Sudha Panuitrao	F	Wife of Sr. No. 1
3	Deshpande Rama Arvind	F	Daughter of Sr. No. 1
4	Kulkarni Alka Ajit	F	Daughter of Sr. No. 1
5	Laxmeshwar Anuradha Manoi	F	Daughter of Sr. No. 1
6	Laxmeshwar Manoj Vitthal	M	Daughters Husband of Sr. No. 1
7	Kulkarni Vishnupant Vyankatesh	M	Brother's Son of Sr. No. 1
8	Kulkarni Suresh Vyanktesh	M	Brother's Son of Sr. No. 1
9	Kulkarni Sulbha Suresh	F	Wife of Sr. No. 8
10	Kulkarni Tushar Suresh	M	Son of Sr. No. 8
11	Kulkarni Nilesh Suresh	M	Son of Sr. No. 8

12	Deshpande Chandrakant Vasudeo	M	Sister’s Son of Sr. No. 1
13	Deshpande Rajiv N.	M	Sister’s Son of Sr. No. 8
14	Yalgl Suahs Gajananrao	F	Wife’s brother of Sr. No. 8
15	Arvind G. Deshpande	M	Daughters Husband of Sr. No. 1
16	Ajit T. Kulkarni	M	Daughters Husband of Sr. No. 1
17	Vyas Girish Dinesh	M	

On the basis of the above, the Department is of the contention that they are interconnected undertakings. The learned Commissioner, however, held that no mutuality of interest has been evidenced between the alleged interconnected undertaking or related person and therefore, the re-determination of value is not required. The learned adjudicating authority has also relied upon the submissions of the respondent that supplementary invoices have been issued in respect of the sales to interconnected undertakings and have used together the price charged from the interconnect ted undertakings as comparable to the price at which the goods are supplied to the independent buyers.

5.1 We find that the Department insists that the adjudicating authority has held in appreciating the change in the definition of ‘related person’ after 01.07.2000 and has relied upon the judgments which are delivered in the pre-amendment era. We find that the definition of ‘related person’ before and after 01.07.2007 is as follows:

(Prior to amendment dated 1-7-2000)

“Related person" means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor. Explanation - In this clause "holding company", "subsidiary company" and “relative” have the same meanings as in the Companies Act, 1956 (1 of 1956);”

(After Amendment Dated 1-7-2000) "

(3) For the purpose of this section, -

(a) ……………………………………………

(b) person 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 –

(i) "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
(ii) "relative" shall have the meanin assigned to it in clause (41) of Section 2 of the Companies Act, 1956 (1 of 1956)."

5.2. On going through the new definition of the 'related person' after amendment and the facts of the case, we find that amendment in the definition is of no much consequence having regard to the facts of the case as the case of the Department is not that the respondents are selling their entire goods through related person nor interconnected undertakings. The case laws relied upon by the Learned Authorized representative are mostly those where the appellants therein were selling the goods exclusively through their related persons/connected undertakings. The case of Fiat India Ltd (supra) was about selling at a price less than the cost price. The facts of the present case are different. In this case it is evident on record that a selling price to independent buyers is available. No reasons for rejection of the declared value are established. Learned commissioner has gone in to this aspect and spelt out reasons in detail as to why he doesn't consider the group companies are not related for the purposes of the Central Excise Valuation Rules. Having gone through the findings of the commissioner, we are of the opinion that when the respondents are selling their goods at the same price to the unrelated independent buyers and the alleged related buyers or undertakings, the question of going in to valuation Rules does not arise. Such value can be adopted as a transaction value.

5.3. Moreover, it has been held by the adjudicating authority that if the supplementary invoices are taken into consideration, the price at which the goods sold to related person is same as the price at which the goods are sold to unrelated independent buyers. Therefore, we find that the case heavily hinges on the fact of the issuance of supplementary invoices by the respondent to their related buyers. We find that learned AR submits during the course of hearing that in view of the Letter F. No. TC/KOP/372/12 dated 10.03.2022, it was informed that no supplementary invoices had been issued by the assessee during the period 2004 to 2008. However, this letter was neither before the adjudicating authority for consideration nor the respondents have not been given any opportunity to represent themselves and to show the evidence of issuance of supplementary invoices. We are of the considered opinion that reasonable opportunity should be given to either parties in the interest of justice. Therefore, the issue needs to go back to the adjudicating authority to verify the claims of the respondents with documentary evidence.

5.4. Coming to the penalties, we find that the show-cause notice has not substantiated with any evidence to levy penalty on Shri Chandrakant Vasudev Deshpande, partner of M/s Fie Spherotech except stating that they are actively participated in contraventions. Similarly, it was alleged that Shri Rajendra Krishanji Pujari, Excise Incharge of the respondent has willfully not paid the applicable Central Excise duty. However, his role also has not been established with evidence. It is also not brought on record as to whom was a pecuniary or any other benefits obtained by these two persons in the alleged undervaluation by the respondent company. Therefore, we find that appeals as far as penalties on these two persons are concerned do not merit consideration. Accordingly, the appeals are set aside.

6. In the result

(i). Appeal No. E/1260/2012 is partly allowed by way of remand to the adjudicating authority to ascertain the claim of the respondent on the issue of supplementary invoices issued to their interconnected undertakings or related persons. The duty liability on the respondent shall be fixed after verification of such supplementary invoices. Needless to say that reasonable opportunity shall be accorded to the appellants to produce evidence in their favour.

(ii). Appeals No. E/1268 & 1269/2012 are dismissed.

(Pronounced in open court on 14.07.2022)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha