CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 87259 of 2025
In
Excise Appeal No. 86991 of 2016

(Arising out of Order-in-Appeal No. CD/335 to 336/ Bel/2016 dated 13.01.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II)

Sanghi Organization **.... Appellant**
Plot No. 04, MIDC, Taloja,
Dist.-Raigad, Maharashtra- 410 208.

Versus

Commissioner of CGST & Central Excise, Belapur **.... Respondent**
1st Floor, CGO Complex,
C.B.D., Belapur, Navi Mumbai- 400 614.

APPEARANCE:

Shri Rajesh Ostwal, Advocate a/w Ms Hanisha Jatania, Chartered Accountant for the Appellant

Shri Ranjan Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85781/2026

Date of Hearing: 16.04.2026
Date of Decision: 16.04.2026

Per: S.K. MOHANTY

Applicants/Appellants have filed this miscellaneous application, praying for amendment to the cause title in the appeal filed by them. It has been stated that the respondent's name and address in the appeal memorandum as 'The *Commissioner of CGST and Central*

Excise, Belapur, may be changed and to be read as "*Commissioner of Central Goods and Service Tax, Raigad"*, having office at Plot No. 1, Sector-17, Khandeshwar, New Panvel- 410 206, consequent to change in the jurisdiction of such adjudicating authority. Prayer made by the appellants is considered and accordingly, the changed name and jurisdiction of the respondent has been incorporated in the appeal records. Miscellaneous application is disposed of.

2. Briefly stated, the facts of the case are that the appellant is engaged *inter alia,* in the manufacture of Oxygen/Nitrogen/Acetylene/ Nitrous Oxide plants, Liquid Oxygen Pumps etc., falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. During the period in dispute, the appellants had cleared those final products to the related parties viz., Sanghi Overseas (Merchant Exporter), Vitesse Pvt. Ltd., Sanghi Udyog Pvt. Ltd. and Geldhof Pvt. Ltd. The appellants had also sold the said final product to the independent buyers. The appellant had claimed that the supplies made to the related parties (interconnected undertakings), should fall within the purview of Section 4(3)(b) of the Central Excise Act, 1944, for valuation of the excisable goods. The department had also accepted that the buyers named above are the related party to the appellants. The department had applied Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 for determining the assessable value for the purpose of payment of duty by the appellants. However, the appellants had contested that their case should fall under the scope and purview of Rule 10 (b) of the Rules of 2000 and on the basis of such rule, they had appropriately discharged the Central Excise duty liability. The appellants had also contended that in respect of the supplies made to Sanghi Overseas, no Central Excise Duty was paid while removing the goods from the factory inasmuch as the said goods were removed under bond for export. The contentions made by the appellant were not accepted by the department and accordingly, show cause proceedings were initiated, seeking confirmation of the differential Central Excise duty. The matter arising out of the show cause notices dated 06.02.2013 and 11.11.2013 were adjudicated vide order dated 06.03.2015, wherein the adjudicating authority had confirmed the differential Central Excise duty demand along with interest and also imposed

penalty on the appellants. The appeal against the said adjudication order dated 06.03.2015 was upheld by the learned Commissioner (Appeals) vide the impugned order dated 13.01.2016. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellants submitted that since the appellants and the buyers of the goods are related being interconnected undertaking, their case should fall under the purview of clause (i) of Section 4(3)(b). Thus, he submitted that provisions of Rule 9 shall not be applicable in the case of the appellants inasmuch as the clause (i) in Section 4(3)(b) is not finding place in the said rule for determination of the value. He submitted that the case of the appellant squarely falls under Rule 10(b) of the Rules of 2000 and since the Central Excise duty liability was discharged by the appellants under the said Rule, the differential duty confirmed by the authorities below cannot be sustained. To substantiate the stand that the case of the appellants should fall under the scope of Rule 10(b) of the Rules of 2000, Learned Advocate has relied upon the order passed by the Co-ordinate bench of the Tribunal, in the case of *South Asia Tyres Pvt. Ltd. Vs. Commr. of C. Ex., Aurangabad* – 2003 (152) ELT 434 (Tri-Mumbai), which was upheld by the Hon'ble Supreme Court, reported in 2015 (322) ELT 389 (S.C.). He further submitted that for the subsequent period, the learned Commissioner (Appeals) by relying upon the judgment of Hon'ble Supreme Court in the case *of Commissioner Vs. Sanghi Organization* - 2007 (209) E.L.T. A160 (S.C.) on the identical facts, has allowed the appeal filed by the appellants.

4. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. In this case, we find that the department had not specifically alleged that the appellants and their buyers are interconnected undertaking and as such, are related. In view of the fact that the appellants and their buyers are interconnected undertaking, they

should be governed under the provisions of Section 4(3)(b) (i) of the Act of 1994. The Valuation Rules 2000 has dealt with determination of transaction value on different circumstances. The dispute involved in the present appeal relates to the applicability of either Rule 9 or Rule 10 ibid for determination of the assessable value for the purpose of payment of Central Excise duty. Rule 9 and 10 of the Rules of 2000 are extracted herein below:

> ***"RULE 9.*** *Where the assessee so arranges that the excisable goods are not 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 the assessee so arranges that the excisable goods are not 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".*

7. On reading of Rule 9 *ibid*, we find that the interconnected undertaking as per clause (i) of Section 4(3)(b) has not been considered therein for the purpose of determination of the assessable value. Rather, the case of the appellants fall under Rule 10 of the Rules, wherein it has been provided that the value shall be determined as if they are not related persons for the purpose of sub-section (i) of Section 4 of the Act of 1944. Since the appellants had complied with

the provisions of Rule 10 (b) of the Rules, the fact of which had also not been disputed by the department, we are of the considered view that determination of value by the department under Rule 9 of the Rules of 2000 cannot be sustained. We find that under the identical set of facts, the Co-ordinate Bench of the Tribunal in the case of South Asia Tyres Pvt. Ltd. (supra), has allowed the appeal in favour of the appellant, which was subsequently upheld by the Hon'ble Supreme Court (supra). The relevant paragraphs in the judgement of the Hon'ble Supreme Court are quoted herein below:

> ***"14.*** *No doubt that the assessee became the fully owned company of Goodyear, the relationship between the two would be that of related persons as they became "inter connected undertaking" and are covered by the provisions of amended Section 4(4)(3)(b) of the Act which provides that the person would be deemed to be "related" if :*
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> *"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 they have interest, directly or indirectly, in the business of each other."*
>
> ***15.*** *This position was not denied even by the assessee. However, their submission was that provisions of Rule 9 of the Valuation Rules are not attracted as this Rule applies only when assessee so arranges its affairs that the excisable goods are not sold by it except to or through a person who is related in the manner specified in either of the sub-clauses (ii), (iii) or (iv) of Section 4(3)(b) of the Act. [Rule 9 does not cover clause (i)].*
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> ***16.*** *This contention of the assessee is accepted by the CEGAT and the CEGAT is justified in adopting this course of action. It is clear that the two are companies and therefore, they are not relatives and therefore, clauses (ii) and (iii) are not applicable on the basis of it. Insofar as clause (iv) is concerned, what is to be shown is that they have interest, directly or indirectly, in the business of each other. The expression "each other" would signify the element of mutuality and we have already held above that this mutuality principle has not been satisfied in the instant case."*

8. In view of the fact that the issue arising out of the valuation dispute involved in the present appeal is no more *res integra,* in view of the judgement of Hon'ble Supreme Court in the case of *Goodyear South Asia Tyres Pvt. Ltd., (supra)*, we are of the view that the impugned order passed by the learned Commissioner (Appeals) cannot

be sustained on merits. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Order dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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