

**CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
NEW DELHI.**

PRINCIPAL BENCH, COURT NO. 1

**EXCISE APPEAL NO. 52120 OF 2019**

[Arising out of the Order-in-Original No. RPR/EXCUS/000/COM/CE/022/2019 dated 15/05/2019 passed by Principal Commissioner, Central Tax & Central Excise, Raipur (C.G.) – 429 001.]

**M/s Khyati Ispat Private Limited,  
(Rolling Mill Division),**  
Hirapur – Sondongari Road,  
Jarwah, Hirapur, Raipur (C.G.) – 429 001.

**...Appellant**

**Versus**

**Principal Commissioner,  
Central Tax & Central Excise,**  
Central GST Building, Dhamtri Road,  
Tikrapara, Raipur (Chhattisgarh)

**...Respondent**

**APPEARANCE:**

Shri Kapil Vaish, Chartered Accountant for the appellant.  
Shri Rakesh Agarwal, Authorized Representative for the  
Department

**WITH  
EXCISE APPEAL NO. 52273 OF 2019**

[Arising out of the Order-in-Original No. RPR/EXCUS/000/COM/CE/022/2019 dated 15/05/2019 passed by Principal Commissioner, CGST & Central Excise, Raipur.]

**Principal Commissioner,  
CGST & Central Excise,**  
GST Bhawan, Dhamtri Road,  
Tikrapara, Raipur (Chhattisgarh)

**...Appellant**

**Versus**

**M/s Khyati Ispat Pvt. Ltd.  
(Rolling Mill Division),**  
Hirapur – Sondongari Road,  
Jarwah, Hirapur, Raipur (C.G.) – 429 001.

**...Respondent**

**APPEARANCE:**

Shri Rakesh Agarwal, Authorized Representative for the  
Department  
Shri Kapil Vaish, Chartered Accountant for the respondent.

**CORAM:****HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT****HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)****FINAL ORDER NO. 50209-50210/2022****DATE OF HEARING : 25.10.2021****DATE OF DECISION: 02.03.2022****P.V. SUBBA RAO**

These two appeals have been filed by the assessee and the Revenue assailing the same order-in-original dated 15.05.2019<sup>1</sup> passed by the Principal Commissioner, Central Tax and Central Excise, Raipur, whereby he decided the show cause notice dated 01.05.2015<sup>2</sup> issued to the assessee.

2. The facts of the case, in brief, are that M/s Khyati Ispat Pvt. Ltd., Raipur<sup>3</sup>, is a private limited company engaged in manufacture of Iron and Steel products, such as, angles, channels & joists falling under Chapter 72 of Schedule II to the Central Excise Tariff Act, 1985. During audit, it was observed that it had cleared MS Angles and MS Channels to M/s Ashutosh Engineering Industries, Raipur which is a subsidiary of M/s Ashutosh Structures Pvt. Ltd., Raipur. It was further found that the assessee has two Directors (1) Shri Virender Kumar Agarwal; and (2) Shri Basant Kumar Agarwal. Both these Directors along with Shri K.L. Agarwal and Shri O.P. Agarwal were also found to

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<sup>1</sup> **Impugned order**

<sup>2</sup> **SCN**

<sup>3</sup> **Assessee**

be the Directors of M/s Ashutosh Structures Pvt. Ltd. which is the holding company of the buyer M/s Ashutosh Engineering Industries, Raipur<sup>4</sup>. It was further found that the assessee was clearing similar goods sold to Ashutosh and to independent buyers on the same date on different prices and was paying duty on such prices.

3. It appeared that the assessee and Ashutosh were interconnected undertakings and therefore, related persons in terms of Section 4 of the Central Excise Act, 1944 and that it was selling goods at a lower price to Ashutosh and was paying excise duty on a lower value. It was felt that the value of the goods sold to Ashutosh must be determined as per Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000<sup>5</sup> upto 30.11.2013 and thereafter through cost plus method under Rule 8 of the Valuation Rules. Accordingly, the SCN was issued demanding differential duty of Rs. 3,27,90,997/- under Section 11A of the Central Excise Act along with interest under Section 11AB (upto 07.04.2011) and under Section 11AA (after 07.04.2011) on the duty short paid. It was also proposed in the SCN to impose a penalty upon the assessee under Section 11AC.

4. In the impugned order, the Principal Commissioner has partly confirmed the demand and partly rejected it as follows:-

<b>Sl. No.</b>	<b>Period</b>	<b>Valuation method proposed in SCN</b>	<b>Differential duty (Rs.)</b>	<b>Decision by impugned order</b>

<sup>4</sup> Ashutosh

<sup>5</sup> Valuation Rules

1.	April, 2010 to 30 November, 2013	Determination of value of final products in terms of Rule 4 of Central Excise Valuation Rules, 2000	2,85,26,865	Dropped
2.	1 December 2013 to 31 March, 2014	Determination of value of final products in terms of Rule-8 of Central Excise Valuation Rules, 2000	42,64,132	Confirmed
		<b>Total</b>	<b>3,27,90,997</b>	

Revenue is in appeal against the Commissioner dropping the demand with respect to (1) in the table above, while assessee is in appeal against confirmation of demand with respect to (2) above.

5. Revenue's appeal is on the following grounds:

- (i) The show cause notice dated 01.05.2015 was issued proposing value to be determined and shown by the noticee on the invoices in respect of clearances of their final products to independent unrelated customers, as mentioned, to be considered as comparable value under Rule 4 of Valuation Rules for the period 2010-2011 to November 2013. The impugned order has not discussed this proposal that the transaction value of excisable goods should be based on greatest quantity of identical/same goods sold to independent buyers as well as related buyers must be determined in terms of various judgments of the Supreme Court/High Courts/Tribunal based on sales to independent buyers ;
- (ii) Rule 2 (b) of Valuation Rules defines the normal transaction value as the transaction value on which the greatest quantity of goods are sold ;
- (iii) As per Rule 4 of the Valuation Rules, the value of excisable goods should be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment as may appear reasonable.

6. The prayer in Revenue's appeal is that the impugned order may be modified by confirming the entire demand as proposed in the show cause notice along with interest and penalty.

7. The appeal by the assessee is to set aside the entire demand confirmed in the impugned order along with interest and penalties on the following grounds:

- (i) The Commissioner has confirmed the demand of Rs. 42,64,132/- holding that the assessee and Ashutosh are inter-connected undertakings and are relatives because two Directors namely Shri Virender Kumar Agarwal and Shri Basant Kumar Agarwal are common to the appellant and the holding company of Ashutosh - viz., M/s Ashutosh Structures Pvt. Ltd. Hence, the assessee and Ashutosh are related persons in terms of Section 4 (3) (b) (i) and (ii) of the Central Excise Act, 1944.
- (ii) However, the assessee does not own either Ashutosh or its holding company nor do they own the assessee.
- (iii) Ashutosh, the buyer, is not a body corporate although the assessee and M/s Ashutosh Structures Pvt. Ltd. are bodies corporate. However, they do not manage each other and neither is a subsidiary of the other. The assessee and M/s Ashutosh Structures Pvt. Ltd. are not under the same management. The assessee does not exercise any control over M/s Ashutosh Structures Pvt. Ltd. and vice-versa. Therefore, they do not meet the definition of interconnected undertakings.
- (iv) There is no mutuality of interest between the assessee and M/s Ashutosh Structures Pvt. Ltd. ;
- (v) The Adjudicating Authority has not established that the assessee has influenced the value of the goods sold to M/s Ashutosh Engineering Industries ;
- (vi) The assessee and M/s Ashutosh Structures Pvt. Ltd. are not relatives as per Section 2 (41) of the Companies Act, 1956. Therefore, they prayed that their appeal may be allowed and the demand in the impugned order may be set aside along with interest and penalties.

8. Learned Counsel for the assessee vehemently asserted the above points. Learned Departmental Representative forcefully submitted the contention in the Revenue's appeal. We have considered the submissions made by both sides and perused the records.

9. Central excise duty is levied as per Central Excise Act, 1944. Section 3 is the charging section which levies as per the Schedule to the Central Excise Tariff Act, 1985. Duties of excise can be levied either based on quantity (specific rate of duty) or value (ad valorem rate of duty). In most cases, including in this case, the duty is levied on ad valorem basis. There are also some categories of goods where the duty is levied based on the maximum retail price as per Section 4A of the Act which is not relevant to these appeals.

10. The goods in dispute in this case are exigible to duty on ad valorem basis under Section 4 of the Act. Prior to 01.07.2000, the value of excisable goods was the "normal value" i.e., the price at which such goods are ordinarily sold in the course of wholesale trade for delivery at the time of place of removal where the buyer and seller were not related to each other. In short, it was to be levied on the factory gate price for sale to independent buyers. Therefore, even if the goods were sold to different persons at different prices, duty had to be paid on the normal value. The assessees were required to submit price lists for approval by officers for the purpose.

11. Section 4 was amended with effect from 1.7.2000 and duty became payable on "transaction value" (which is relevant to the current period). The assessable value for each removal of the goods is the transaction value if four conditions are met:

(a) there is a sale ;

(b) the sale is for delivery is at the time and place of removal;

**(c) the assessee and the buyer of the goods are not related;** and

(d) the price is the sole consideration of sale.

12. If any of these four conditions are not met, the value has to be determined as per the Valuation Rules. Of the above, what is relevant to these appeals is whether or not the assessee and the buyer Ashutosh were related persons. The buyer and seller are 'related persons' according to clause (b) of sub-section (3) of section 4 if one more of the following conditions are met:

**(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.

13. The Valuation Rules treat cases where the buyer and seller are related persons because of being inter-connected undertakings different from those cases where the buyer and seller are related persons under any of the other clauses of sub-

section (3) of section 4. Further, the Rules also make a distinction between cases where the buyer and seller are only 'inter-connected undertakings' and those cases where, the buyer and seller, in addition to being inter-connected undertakings, are also related in any of the other ways indicated in clause (b) of sub-section (3) of section 4.

14. This leads to the next question as to what are inter-connected undertakings. Up to 1 April 2012, inter-connected undertakings, according to clause (i) of Explanation to clause (b) to sub-section (3) to section 4 have the meaning assigned to it in Clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969. From 1 April 2012, the definition has been incorporated in Section 4 itself.

15. The next question is who are relatives as per section 4. Clause (ii) of the Explanation to clause (b) of sub-section (3) of section 4 states that "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956.

16. The valuation rules had also undergone some changes in 2013. The period upto November 2013, which is the subject matter of appeal of the Revenue, is covered by the un-amended valuation rules. The demand from December 2013 to March 2014, which is the subject matter of appeal by the assessee, is covered by the amended valuation rules. Section 4 and the valuation rules are reproduced below. Section 4 makes a cross reference to some provisions of the Monopolies and Restrictive



Trade Practices Act and the Companies Act,1956 which are also extracted below:

**Section 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.

.....

(3) For the purpose 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 -

**BEFORE 1 April 2012**

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

**FROM 1 April 2012**

**(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,

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(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 1. - 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 anybody 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;**

(ii) "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;

(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.

**Clause (g) of Section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 defined 'inter-connected undertakings' as follows:**

(g) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner, namely:-

- (i) if one owns or controls the other,
- (ii) where the undertakings are owned by firms, if such firms have one or more common partners,
- [(iii) where the undertakings are owned by bodies corporate,-
  - (a) if one body corporate manages the other body corporate, or
  - (b) if one body corporate is a subsidiary of the other body corporate, or
  - (c) if the bodies corporate are under the same management, or
  - (d) if one body corporate exercises control over the other body corporate in any other manner];
- (iv) 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,-
  - (a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or
  - (b) exercise control, directly or indirectly, whether as [Director-General] or otherwise, over the body corporate,
- (v) if one is owned by a body corporate and other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management [\* \* \*],
- (vi) if the undertakings are owned or controlled by the same person or [by the same group],
- (vii) 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 Act, ][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 the 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 the 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.

[\* \* \*]

[\* \* \*]

17. We find in these appeals the following questions need to be answered.

- (a) Are the assessee and the buyer Ashutosh interconnected undertakings and thereby, related persons?
- (b) Are the assessee and the buyer Ashutosh also related persons in any of the other ways indicated in section 4?
- (c) Which Valuation Rule should be adopted for the period prior to 2013?
- (d) Which Valuation Rule should be adopted for the period after 2013?
- (e) Is the demand of differential duty sustainable on merits under section 11A as confirmed in the impugned order

or does it need to be enhanced as prayed for by the Revenue or set aside as prayed for by the assessee?

- (f) Has the extended period of limitation for raising the demand correctly invoked in the case?
- (g) Is the demand of interest sustainable?
- (h) Is the imposition of penalties sustainable?

18. Inter-connected undertakings are defined in Section 4 (3) (b) (i) for the period after 28.05.2012 and as per MRTP Act, 1969 for the period prior to this date. As per both these provisions, two undertakings can be treated as inter-connected if they are related with each other in any of the following:

- (a) one is owner or controls the other ;
- (b) where the undertakings owned by firms, if such firms have one or more common partners ;
- (c) where the undertakings are owned by bodies corporate under
  - (i) a one body corporate manages the other body corporate or
  - (ii) a 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) when one undertaking is owned by a body corporate and the other is a firm, if one or more partners of the firm -
  - (i) hold directly or indirectly not less than 50% of the shares whether prefers or equity of the body corporate or ;
  - (ii) exercise control, directly or indirectly whether has Directors or otherwise, or 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 body 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 whether directly or through any number of undertakings which are interconnected undertakings within the meaning of one or more of the foregoing sub-clauses.

19. In this case, it is undisputed that the buyer Ashutosh is owned by M/s Ashutosh Structures Pvt. Ltd. which has four Directors, two of whom are the same as the Directors of the assessee. In other words, Shri Virender Kumar Agarwal and Shri Basant Kumar Agarwal who are the two Directors of the assessee are also the Directors of M/s Ashutosh Structures Pvt. Ltd. whose subsidiary is the buyer Ashutosh.

20. In fact, this aspect has come to light from the assessee's own disclosure under the head of "related party disclosure" as per the Accounting Standard 18 of Institute of Chartered Accountants of India in the assessee's balance sheet. Under the head "list of enterprises over it key managerial persons or the relatives have significant influence with whom transactions have taken place", the assessee had declared the name of M/s Ashutosh Structures Pvt. Ltd. It is also not disputed that the buyer Ashutosh is a subsidiary of M/s Ashutosh Structures Pvt. Ltd. In view of these facts, we find that the assessee as well as the buyer Ashutosh are controlled by the same persons Virender Kumar Agarwal and Basant Kumar Agarwal. When these facts were disclosed by the assessee in its own balance sheets, we find no reason to accept the contention of the assessee and that they

are not inter-connected undertakings in these appeals before us. We, therefore, find that the assessee and M/s Ashutosh are inter-connected undertakings in terms with Section 4 (3) (b) (i) of the Act.

21. The next question is whether the assessee and M/s Ashutosh are also related persons in terms of clause (ii) or (iii) or (iv) of Section 4 (3) (b). Commissioner has found that the assessee and M/s Ashutosh have interest directly or indirectly in the business of each other and therefore held that they constitute "related persons" as per clause (iv) of Section 4 of Section 4 (3) (b). Paragraph 15.2 and 15.3 of the impugned order is reproduced below :-

"15.2 Secondly, under the 'Related Party disclosure', mandated as per Accounting Standard – 18 issued by Institute of Chartered Accountants of India, Noticee in its balance sheet, under the 'list of enterprises over which key managerial persons or their relatives have significant influence with whom transactions have taken place', in addition to other names, the name of M/s Ashutosh Structures Pvt. Ltd. was declared.

15.3 Thus, it is seen that to be related party, as per the definition of inter-connected undertakings and clause (iv) of Section 4 (3) (b) *ibid*, they are required to be associated and associated in such a manner that they have interest, directly or indirectly, in the business of each other".

22. We, find that the assessee has an interest indirectly in the business of the buyer Ashutosh as the directors of the assessee are also two of the four directors of the holding company of the buyer Ms/ Ashutosh Structurals Pvt. Ltd. However, there is no evidence to show that the buyer Ashutosh also has an interest in the business of the assessee. Therefore, while the interest has been established in one direction there is no evidence of business

interest in the other direction namely that there is no evidence that the buyer was interested in the business of the assessee. Therefore, we find that they are not related persons in terms clause (iv) of section 4(3) (b).

23. We further proceed to see if the appellant and the buyer Ashutosh are related as per clause (ii) or clause (iii). The term 'relative' in Section 4 (3) (b) (ii) is explained in Explanation (vi) Clause (III) (ii) as follows :-

"relative shall have the meaning assigned to it in Clause 41 of Section 2 of the Companies Act 1956.

24. Section 2 (41) of the Companies Act defines relative as "anyone who is related to such a person in any of the ways specified in Section 6 of the Companies Act and no others". Section 6 defines relative to mean members of a Hindu undivided family or husband and wife or related in the manner indicated in Schedule (1A) to the Act. A perusal of Schedule (1A) also shows that it deals with individuals, such as, father, mother, son, daughter, wife, husband etc. Nothing in the Companies Act suggests that two companies can be called relatives in terms of that Act. In this case, the assessee is a company and the buyer is a Proprietor firm owned by another company. Neither the assessee nor the buyer is an 'individual' and, therefore, they cannot be relatives. Hence, they cannot be related persons as per clause (ii) of section 4 (3) (b). Clause (iii) to section 4 (3) (b) applies to cases where the buyer is a relative

and the distributor of the assessee or the sub-distributor of such distributor. There is no allegation that the distributor is the distributor or the sub-distributor of the assessee in this case. Therefore, the assessee and the buyer Ashutosh cannot be related persons as per clause (iv) to Section 4(3)(b).

**25. To conclude, while we find that the assessee and M/s Ashutosh are inter-connected undertakings and hence are related in terms of Clause (i) of Explanation to Section 4 (3) (b), they are not related in terms of Clause (ii) (iii) or (iv).**

26. The next question is which is the correct valuation rule to be applied for the period prior to 2013 and which is the correct valuation rule to be applied for the period after 2013.

27. The proposal in the show cause notice was to apply Rule 4 for the period prior to 2013 and assess the goods on a value at 110% of the cost of manufacture for the period post 2013. The Commissioner has dropped the demand for the period prior to 2013. The appeal of the Revenue is that for the period prior to 2013, Rule 4 should be adopted and the demand should be confirmed.

28. As we have discussed above, Section 4 of the Act requires transaction value to be adopted for valuation with four exceptions viz., (a) where the goods are not sold (b) where the delivery is not at the time and place of removal, (c) where the assessee and

buyer are related persons or (d) where price is not the sole consideration for sale. These four exceptions have been dealt with in the Valuation Rules as follows:

- (a) Rules 1 and 2 are the preliminary provisions.
- (b) Rule 3 mandates that valuation should be done as per the rules.
- (c) Rule 4 deals with situations where goods are sold but not at the time of removal.**
- (d) Rule 5 deals with situations where goods are sold, but not at the place of removal.
- (e) Rule 6 deals with situations where there is an additional consideration for sale.
- (f) Rule 7 deals with situations where there is no sale and the goods are transferred to the assessee's owned depot not at the premises of the consignment agent.
- (g) Rule 8 deals with situations whether goods are captively consumed by the assessee or on its behalf in which case, the valuation has to be done at 115% of the cost of production.**
- (h) Rule 9 deals with the situations where the assessee and the buyer are related persons as per sub-Clauses (ii) (iii) or (iv) of Clause (b) of sub-Section (iii) of Section 4.

- (i) Rule 10 (a) deals with situations related persons as per sub-Clause (i) of Clause (b) of sub-Section (iii) of Section 4 also known as interconnected undertaking where the assessee and the buyer are, in addition also related persons as per sub-Clause (ii) or (iii) or (iv) or the buyer is the holding company or a subsidiary company.
- (j) **Rule 10 (b) deals with situations where the assessee and the buyer are interconnected undertakings as per sub-Clause (i), but they are not also related persons in terms of sub-Clauses (ii) (iii) or (iv) nor is the buyer holding for a subsidiary company of the assessee.**
- (k) Rule 11 deals with situations which are not covered by any of the above rules.

29. The changes which have been brought in w.e.f. 2013 are only in Rules 8, 9 and 10 and not in the remaining rules. In Rule 8, which deals with captive consumption, making mandatory the assessable value to be 115% of the cost of manufacture which was reduced to 110% and 2013. Rules 9 and 10 dealt with only situations where goods were not sold except (ii) or (iii) to a related person prior to 2013. After 2013 these Rules are applicable where either whole or part of goods sold by the assessee to or through related persons. There is no other



material change w.e.f. 2013. A summary of the Valuation Rules is reproduced below :-

Summary of Central Excise Valuation Rules

S.No.	Rule and the situation it deals with	Before 2013	From 2013
1	Rules 1, 2 and 3-	Preliminary	No change
2	Rule 4- Goods are <b>sold but not at the time of removal.</b>	Based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods	No change
3	Rule 5- Goods are sold but for <b>delivery not at the place of removal but elsewhere.</b>	Transaction value minus the cost of transportation from the factory to the buyer's premises	No change
4	Rule 6- Goods are sold but <b>price is not the sole consideration for sale</b>	Value shall be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee	
5	Rule 7- Goods are not sold by the assessee at the time and place of removal but are <b>transferred to a depot, premises of a consignment agent or any other place or premises</b> (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where <b>the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale.</b>	The value shall be normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment	No change
6	<b>Rule 8-</b> Goods are not sold by the assessee but are <b>used for consumption by him or on his behalf in the production or manufacture of other articles</b>	The value shall be <b>one hundred and fifteen per cent of the cost of production or manufacture</b> of such goods.	The value shall be <b>one hundred and ten per cent of the cost of production or manufacture</b> of such goods.
7	<b>Rule 9-</b> Goods sold to a	<b>Only when goods are</b>	<b>Where whole or</b>

	<b>'related person' as per sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act</b>	<b>not sold except to or through a related person as per sub-clauses (ii), (iii) or (iv).</b> The price shall be the price at which the related person sells to other non-related persons. If the related person consumes the goods, valuation should be done as per Rule 8.	<b>part of the excisable goods are sold by the assessee to or through a related person as per sub-clauses (ii), (iii) or (iv).</b> Rest is the same.
8.	<b>Rule 10(a)- Goods sold to an 'inter-connected undertaking', as per sub-clause (i) of clause (b) of sub-section 3 of section 4 of the Act who are also related persons in terms of sub-clauses (ii) or (iii) or (iv) or the buyer is a holding company or a subsidiary company of the assessee</b>	<b>Only when the assessee so arranges that the excisable goods are not sold by him except to or through an inter-connected undertaking.</b> Valuation should be as per Rule 9.	<b>Where whole or part of the excisable goods are sold by the assessee to or through an inter-connected undertaking.</b> Valuation should be as per Rule 9.
9	<b>Rule 10(b)- Goods are sold to inter-connected undertaking, as per sub-clause (i) of sub-section 3 of section 4 of the Act but is not related as per sub-clauses (ii) to (iv)</b>	Value shall be determined <b>as if they are not related persons</b> for the purpose of sub-section (1) of section 4	Value shall be determined <b>as if they are not related persons</b> for the purpose of sub-section (1) of section 4
10	<b>Rule 11-</b> value of any excisable goods cannot be determined under the foregoing rules.	The value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act	No change

30. We have already recorded our finding that the assessee and M/s Ashutosh, the buyers are inter-connected undertakings and, therefore, they are related persons in terms of sub-Clause (i) of Clause (b) of sub-Section (3) of Section 4. We have also found that the two are not related persons in terms of sub-Clauses (ii) or (iii) or (iv).

31. The prayer of the Revenue that the goods cleared by the assessee and sold to M/s Ashutosh should be valued under Rule 4

cannot be accepted. Rule 4 deals with goods which are sold but not at the time of removal. In such a case the value should be as per the transaction value at any time nearest to the time of removal of goods under assessment subject to adjustment on account of the difference in the dates of delivery of goods. In this case, there is no dispute that the goods were sold at the time of removal. The only allegation is that the assessee and M/s Ashutosh are related persons. The Commissioner found that they were related in terms of clauses (i) and (iv) of Section 4(3) (b). However, we have recorded our finding that they are not related as per clause (iv) of section 4(3)(b) because the interest of the buyer M/s Ashutosh in the business of the assessee has not been shown or established. Therefore, the appropriate rule to be applied is Rule 10 (b) both for the period prior to 2013 and after 2013.

32. As Rule 10 (b) squarely covers the transaction, value has to be determined as per this Rule. For the goods cleared to Ashutosh, it should be assessed as if the assessee and the buyer are not related persons. In other words, the transaction value has to be accepted.

33. We, therefore, find that Revenue's appeal seeking valuation of goods sold prior to 2013 as per Rule 4 is not correct and the valuation has to be done in terms of Rule 10 (b), i.e., as per the transaction value both for the period prior to and after 2013. Consequently the demand of duty under Section 11 A cannot be

sustained either in the normal period or for the extended period. The demand of interest and the penalties imposed also cannot be sustained consequently.

34. In view of the above, we answer the questions which are raised above, as follows:

Question (a): Yes. The assessee and M/s Ashutosh are inter-connected undertakings;

Question (b): They are NOT related persons as per sub-Clauses (ii) (iii) and (iv).

Question (c) & (d): The correct valuation rules to be applied before or after 2013 is Rule 10 (b).

Question (e) to (h): The demand, interest and penalties cannot be sustained.

35. In view of the above, we find that the impugned order cannot be sustained and needs to be set aside. Excise Appeal No. E/52273 of 2019 filed by the Revenue is rejected. Excise Appeal No. E/52120 of 2019 filed by the assessee is allowed and the impugned order is set aside with consequential relief, if any, to the assessee.

(Order pronounced in open court on 02/03/2022.)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**