::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,

7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, पोलिटेकनिक के पास, आम्बवाडी, अहमदाबाद : 380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad:380015

सत्यमेव जयते

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : V2(84) 40 & 41/Ahd-II/Appeals-II/ 2015-16 / 2168 to 2172

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 050-051 -16-17

दिनांक (Date): 29.09.2016, जारी करने की तारीख (Date of issue): 05/10/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No.02/ADC/2015/DSN Dated: 14-05-2015 issued by: Additional Commissioner.,Central Excise (Div-V), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s India Electricals & Engineering Company

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) अहमदाबाद

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(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, Under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) OFFICE OF THE COMMISSIONER (APPEALS) II CENTRAL EXCISE AHMEDABAD अहमदाबाद

रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

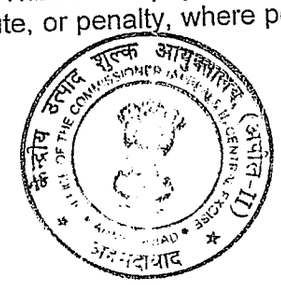
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में ,इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

Subject appeals are filed by M/s. India Electricals & Engineering Company, 10, Kothari Estate, Dudheshwar Road, Ahmedabad and Shri Iqbalbhai I. Mansuri, (hereinafter referred to as "the appellants] against Order in Original No.02/ADC/2015/DSN [hereinafter referred to as *'the impugned order*) passed by the Additional Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as *'the adjudicating authority'*). They are engaged in the manufacturer of Submersible Pumps falling under Chapter 84 of Central Excise Tariff Act,1985 *(hereinafter also referred to as CETA, 1985')*. They also avails Cenvat Credit as provided under the Cenvat Credit Rules, 2004.

2. Brief facts of the case is, during the course of audit by the department it was observed that , M/s. Sabar Enterprises was a marketing agency of M/s. India Electricals & Engineering Co and the goods manufactured by the appellants were sold through them. The partners were brothers and relatives and some of them were common in both the firms which make them related concerns. They had paid duty at the rate of 110% as M/s. Sabar Enterprises was related persons of the appellant. From the invoices issued by both the firms for submersible pumps having specific serial number, it was observed that, the price at which M/s. Sabar Enterprises sold the pumps to their dealers were higher than the 110% value plus duty paid. Shri Imran S. Mansuri, Managing Partner of M/s India Electrical & Engineering Company 2014 stated that M/s India Electrical & Engineering Company were a partnership firm and were manufacturing & clearing SubmersiblePumps; that they were 5 partners in the company. That M/s Sabar Enterprises were also a partnership firm. that since the partners were common in both the firms, their manufacturing firm were covered under the definition of a related person under the Central Excise Rule & Provisions; that therefore they paid the Central Excise duty on the amount of 110% of the cost of production of manufacture of submersible pumps i.e. transaction cost/factory sale price of the submersible pumps taking a stand that both were related persons. Further M/s Sabar Enterprises had sold the said goods to their dealers/buyers at higher than the 110% value. As the appellant had paid the duty on 110% of the cost of production i.e. transaction cost/factory sale price of the submersible pumps and not paid the duty on higher than the 110% value, therefore Rule 9 of the Central Excise Valuation Rules, 2000 was very much applicable in their case and hence they had to pay central Excise duty on the price at which their related person (marketing agency) i.e. M/s Sabar Enterprises sold the goods to unrelated dealers/buyers. Thus, from the above said facts, it appeared that the said assessee had contravened the provisions of sub clauses (ii), (iii) and (iv) of clause (b) of subsection (3) of Section 4 of the Central Excise Act, 1944 read with Rule 9 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000, Under valuation was worked out to Rs. 6,51,56,739/- and the differential

duty payable worked out to **Rs.35,52,491/-** It further appeared that the said assessee did not disclose the fact that they had not paid the Central Excise duty on the amount on which their related person M/s. Sabar Enterprises sold the goods to their dealers/buyers at any point of time, to the department and the said facts had come to knowledge of only during the course of Audit. Therefore, the Central Excise duty of Rs.35,52,491/- for the period April 2008 to July 2013 ,was to be recovered from them under proviso to Section 11A(1)/ section 11 A(5) of Central Excise Act, 1944 along with interest as applicable and liable for penaltyunderSection11AC/11AC (1) (a) of the Central Excise Act, 1944.SCNwas issued and vide above order same was confirmed with interest and penalty on the firm and on Shri Iqbalbhai I. Mansuri, Partner of M/s. Sabar Enterprises.

3. Being aggrieved with the said impugned order the appellants preferred appeals on the following main grounds.

That the firms are not related and assessment was to be done during the disputed period on the basis of transaction value. that their action of paying duty on 110% of the cost of production was an error on their part in view of a misconception about the scheme of valuation of excisable goods and the same should not be held against them and the sale,having been made to an independent buyer, and price being the sole consideration for sale, the valuation should be accepted. In support of this contention, the case of M/s Union Carbide India Ltd reported at 1986 (24) ELT 169 (SC) is cited.

that their clearances do qualify for assessment in terms of Section 4(1) of the Act by adopting the transaction value, as all the conditions for considering said value are fulfilled; that the Show Cause Notices allege assessee and the buyer to be related persons in terms of Section 4(3)(b) of the Act and each of the four sub clauses in said clause (b) refer to different situations; the valuation prescribed in rule 9 can be determined only when interconnected undertakings were related in terms of the sub clauses (ii), (iii) or (iv) of clause (b) of Section 4(3) of the Act. Further, mutuality of interest is the pre-condition for considering the assessee and the buyer as related persons under Section 4 of the CEA 1944. They cited the Circular No. 354/81/2000-TRU dated 30.06.2000, issued by CBEC.

That rule 8 of the Valuation Rules prescribing 110% of the cost of final products is not relevant to their case because there is no further production done on the final products cleared by them.

On the issue of limitation, the appellant has argued that since M/s Sabar Enterprises is not their related concern, there is no non-disclosure of the selling price of the said buyer; that since payment of duty on 110% of the cost of production was disclosed in their periodical returns, department Officers were aware of their manner and method of assessment and therefore, the charge of suppression of facts is not sustainable. They cited the case laws 1. Padmini Products, at 1989 (43) ELT 195 (SC) 2.

Chemphar Drugs and Liniments, reported at 1989 (40) ELT 276 (SC), 3. Continental Foundation jt venture Vs CCE, Chandigarh, at 2007 (216) ELT 177 4. Jaiprakash Industries Ltd at 2002 (146) ELT 481 (SC)

The appellant has denied penalty as illegal. The personal penalty under rule 26 of Central Excise Rules, 2002, on Shri Imran S Mansuri, partner in the assessee firm, is also contested as not sustainable. The following case laws were cited in this regard.1. Jaiprakash Motwani, reported at 2010 (258) ELT 204 (Guj) 2. Mahendra Kumar Kapadia at 2010 (260) ELT 51 (Guj) 3.Mohammed Farrookh Mohammed Ghani, at 2010 (259) ELT 179 [Guj] 4.Jupiter Exports at 2007 (213) ELT 641(Bom)

M/s Sabar Enterprises and Shri Iqbalbhai I. Mansuri, Partner, have contested the penalty by stating that there is no duty evasion by the assessee firm and so, there cannot be the question of supporting any duty evasion.

4. Personal hearing in the matter was held on 03.5.2016, wherein Smt. Shilpa P. Dave Advocate, appeared on behalf of the appellants and reiterated the GOA submissions. They have filed additional submissions. I have carefully gone through the records of the case as well as the written submissions filed. I find that, these proceedings have been initiated following an audit observation regarding the assessee clearing their final products almost exclusively to one M/s Sabar Enterprises, and both these partnership firms, i.e the assessee and M/s Sabar Enterprises, consisting of some common partners, and all partners of both firms being brothers or relatives. The Show Cause Notices charge the assessee firm as being related to the marketing firm in the manner shown in clause (b) of sub section (3) of Section 4 of the Central Excise Act, 1944, warranting assessment to be done in terms of rule 9 of the Valuation Rules, instead of assessing on value as 110% of the cost price, adopted by the assessee. I find that, As per Section 4. Valuation of excisable goods for purposes of charging of duty of excise.

(1)----

(a) ----

(b)

(2)----------

(3) For the purpose of this section,-

(a) --

(b) persons shall be deemed to be "related" if -

(i) ---

(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.

Further, as per Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

" When the assessee so arranges that the excisable goods arenot sold by an assessee except to or through a personwho is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the 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, tobuyers (being related person),who sells such goods in retail..."

5. I find that, In the present case, the aspect of having common partners and family members in the two firms and entire clearances made for home consumption to M/s Sabar Enterprises were the two factors responsible for the method of assessment resorted to by the assessee, on their own. However, the transactions being with a related person, the assessment adopted by them was not proper. I find the Show Cause Notices do mention the assessee and M/s Sabar Enterprises to be "related persons" in terms of Section 4(3)(b) of Central Excise Act, 1944. Since the two partnership firms have three common partners, a fact admitted by the assessee, they are "interconnected undertakings" in terms of the explanation given in Section 4(3)(b) of the Act. They do not cease to be "inter-connected undertakings' only for the reason of not being mentioned so, separately in the notices.

6. I find That, clearances in question do not qualify for assessment under Section 4(1)(a) of the as transaction value is prima facie ruled out as the sales have been made to related persons. With reference to the contention that for being considered as related, the firms should also have interest, directly or indirectly, in the business of each other, I find that such interest can be tangible or intangible. The concept of related person itself points to a merger of interests of the manufacturer and the buyer. In this particular case, from the information submitted, the appellant firm has a total of five partners out of which three are common for both the assessee and M/s Sabar Enterprises. M/s Sabar Enterprises has a total of six partners. It appears that all of the eight persons who are partners in both these firms qualify for being called a relative of other, as defined in Section 6 (Schedule 1A), of the erstwhile Companies Act, 1956.

7. I find that, the appellant is a manufacturer of submersible pumps bearing a reputed brand name. By having a dedicated marketing establishment in M/s Sabar Enterprises, the appellant has avoided "marketing and selling organization expenses" from their books which would otherwise have formed a part of their assessable value. The profits that come from marketing the products did not suffer excise duty because M/s Sabar Enterprises is a trading firm. Since the activities of manufacture and marketing are being looked after by the firms consisting members of an extended family, With three key persons controlling the affairs of both manufacturing and marketing firms, there is a merger of interests and the profits from manufacturing and marketing activities being accounted in the books of the two firms, there is a lesser outgo of direct taxes, which is advantageous to

both the firms as well as to the partners concerned. TheappellantcitedtheBoardCircularF.No.354181120000TRUdated30.06.2000, to claim that in terms of the substituted Section 4, though interconnected undertakings have been defined as related persons, that the appellant and M/s. Sabar Enterprises qualify to be called as "inter-connected undertakings", as defined in clause (b) of sub section (3) of Section 4 of the Act. The said clause has been invoked in both Show Cause Notices. There is mutual benefit gained from this arrangement by both assessee and the buyer, as discussed in above paragraphs.

8. I find that the excisable goods cleared for home consumption has been sold by the assessee to M/s Sabar Enterprises, an inter-connected undertaking and both these Undertakings are so connected that they also have interest, directly or indirectly, in the business of each other. In view of the above, by applying the provisions of rule 10 of the Valuation Rules to the present situation, the value is to be determined in the manner prescribed in rule 9 of the Valuation Rules. I find hat, The said rule 9 prescribes that where whole or part of the excisable goods are 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.

9. I find that, they have disputed the method of computation of the demand by stating that the VAT/CST and other discounts had not been deducted while arriving at the assessable value. the demand has been raised on the very surmise that the value in the present case ought to be the sales value of M/s Sabar Enterprise in terms of the provisions of Rule 9 of the Valuation Rules. The SCN makes it very clear that the value shown by the appellant is not in consideration and the demand has been worked out on the basis of the sale value of M/s Sabar Enterprise to the customers. I find that the following case laws cited by them are found not relevant to this case as the facts involved being different, the citation are not applicable.1. Union of India Vs Atic Industries Ltd, reported at 1984 (17) ELT 323. 2. Union of India Vs Cibatul Ltd, reported at 1985 (22) ELT 302 (SC) 3. Collector Vs Ti Millers Ltd, at 1988 (35) ELT 8 (SC) 4. Union of India vs Bombay Tyre International Ltd, at 1983 (14) ELT 1896 5.Union of India Vs Cibatul Ltd, reported at 1985 (22) ELT 302 (SC) 6.Collector Vs Ti Millers Ltd, at 1988 (35) ELT 8 (SC) 7. British Health Products India Ltd Vs CCE, Jaipur at 1999 (34) RLT 244.

10. On the issue of limitation, the appellants have contended that since M/s Sabar Enterprises is not their related concern, there is no non-disclosure of the selling price of the said buyer; that since payment of duty on 110% of the cost of production was disclosed in their periodical returns,. It was further argued that since the auditors had a free access to all the records of the assessee during the audit, it cannot be said that there was suppression of facts. I find that this is clear case of suppression and willful

mis-statement of facts. By virtue of having common partners in both firms, the assessee knew very well that they are interconnected undertakings and transaction value cannot apply for assessment. Thus, the practice of paying duty on 110% of the cost of production is the first indication of their mens rea. In fact, it is an admission of fact that the goods are cleared to their own concern.

11. I find that, in the prevailing scheme of self assessment, an assessee is responsible for the correctness of assessment and various declarations made in periodical returns. This is not a situation where, under a bonafide impression some information was not disclosed or incorrect information disclosed. In view of the above, I find that the charge of suppression and willful mis-statement stands proved. The appellant has cited few citations; I find that, said case laws are not relevant to this case.

12. I find that, the appellant has made contention for considering the differential value amount of Rs 65156739/-, as the cum-duty price and they have sought an abatement of duty amount from the price. It has been pleaded to re-quantify the duty payable in light of the above submission. The following citations have been quoted in support of the submission: SriChakraTyres Vs CCE, Madras at 1999 (108) ELT 361.I find that the Hon. Supreme Court, in the case of M/s Amrit Agro Industries Vs CCE, Gaziabad, reported at 2007 (210) ELT 0183 (S.C.), has differentiated the judgment in the case of Srichakra Tyres Limited cited above and held that unless it is shown by the manufacturer that the price of the goods includes excise duty payable by him, no question of exclusion of duty element from the price would arise. In the present case, since the appellant had already cleared the goods on payment of duty on the 110% cost price of the goods, there cannot be any question of the buyer factoring in any additional amount towards the duty on the Sales made by him. The citation does not help the case of the appellant.

13. I find that, the appellants have contested the penalty as illegal, the personal penalty on Shri Imran S Mansuri, partner in the appellant firm, is also contested as not sustainable. The case laws were cited in this regard. On perusal of said case laws, it has been held that when the firm is penalized, a separate penalty on the partner is not imposable.

14. I find that,M/s Sabar Enterprises and Shri lqbalbhai I. Mansuri, Partner, have contested the penalty on them by stating that there is no duty evasion by the appellant firm and so, there cannot be the question of supporting any duty evasion. However, in view of the discussions in foregoing paras, it has been concluded that the fact of the firms being interconnected and hence the requirement of adopting the value of M/s Sabar Enterprises was in the knowledge of the partners concerned. Therefore, the act of M/s Sabar Enterprises

and its partner Shri Iqbalbhai I. Mansuri, in assisting the appellant to clear the excisable goods on lesser payment of duty was a deliberate act. I find that penalty under Section 11 AC on M/s Sabar Enterprises has been imposed. However, the aforesaid penalty can be imposed only on a manufacturer. I therefore, hold that the M/s Sabar Enterprises is not liable to penalty.

15. Regarding penalty imposed on Shri Iqbalbhai I. Mansuri, partner in M/s Sabar Enterprises, I find that he has been concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with excisable goods which he knew or had reason to believe are liable to confiscation under Rule 25 of the Central Excise Rules, 2002, and therefore, he is liable to penalty. Therefore, I hold that impugned order is found just and legal.

16. In view of foregoing discussion and findings, I uphold the impugned order and reject both the appeals filed by the appellants. The appeals stands disposed of as above.

(Uma Shanker)
Commissioner (Appeal-II)
Central Excise, Ahmedabad.

Attested

30-09-16

(K.K.Parmar)
Superintendent (Appeal-II)
Central Excise, Ahmedabad

By Regd. Post A.D.

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Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II
3. The asstt. Commissioner, Central Excise, Div-I, Ahmedabad-II
4. The Assistant Commissioner (System), Central Excise, Ahmedabad-II
5. Guard file.
6. PA file.

OFFICE OF THE COMMISSIONER (APPEALS) CENTRAL EXCISE (APPEAL-II) AHMEDABAD अहमदाबाद