सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015
☎: 079-26305065 टेलेफ़ैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

985+987

क फाइल संख्या (File No.) : **V2(85)111/Ahd-II/Appeals-II/ 2016-17**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 303-17-18**
दिनांक (Date): **30.01.2018** जारी करने की तारीख (Date of issue): 14/2/2018
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं---------- दिनांक _----------से सृजित
Arising out of Order-In-Original No .**_27/JC/2016/GCJ__Dated: 19.10.2016** issued by: Joint Commissioner Central Excise (Div-III), Ahmedabad-II

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

M/s Yazaki India Pvt. Ltd

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 पूवोक्त 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 |

C. file

Cont...2

(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 नें 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।

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

The subject appeal is filed by M/s Yazaki India ltd. A-4. Tata Motors Vendor Park. S.No.1, North Kotpura, Sanand. Dist-Ahmedabad, (hereinafter referred to as 'the appellant') against Order-in-Original NO.41-49/AC/D/BJM/2016 (hereinafter referred to as 'the impugned orders') passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority') is engaged in the manufacture of excisable goods Wiring Harness under Chapter Heading 85 of the First Schedule to the Central Excise Tariff Act, 1985. They are availing the benefits of CENVAT credit facility as stipulated under CENVAT Credit Rules, 2004.

2. Facts in brief of the case are that, during the course of audit, it was observed that the appellant was selling the finish goods to M/s.Tata Motors Ltd (in short TML) that the appellant had declared name of their related party and M/s Tata Autocomp Systems Ltd. which shares the holding of the company. That the appellant was having their factory in the vendor park which is owned by TML and TML had share in the M/s Tata Autocomp Systems Ltd., Sanand. The related party disclosure of M/s.Tata Autocomp Systems Ltd., Sanand mentioned and declared TML as promoters Group Company and also declared M/s Tata Yazaki Autocomp Ltd. (now M/s.Yazaki India Ltd.) as Joint Venture Company. i.e. a related party of M/s. Yazaki India Ltd. TML. So, Rule 9 may not applicable. Rule 8 was also not appropriate because the goods were sold by the appellant to the interconnected undertaking and further manufacture of motor vehicle was not on behalf of the appellant. However, the fact remains that there exists a special relation between the appellant and the buyer which has influenced the price. For that reason, transaction value cannot be accepted for assessment. recourse needs to be taken to rule 11 of the Valuation Rules2000, That the clearances of finish goods made to TML were assessed where the loading in value was not even 10 per cent of the cost of production.. The transaction value cannot be accepted at face value in such cases. In view of the above, the appellant was required to determine the value of the goods in the manner specified as per Rule 11, thus the appellant was required to sale such goods when sold to related i.e. TML and the value shall be the 110% of the cost of production of final products. It appeared that the appellant and TML were "interconnected undertakings" as defined in Section 2(g) of the erstwhile Monopolies & Restrictive Trade Practice Act, 1969, and in the explanation for clause (i) in clause to) of sub section (3) of Section of Central Excise Act. 1944 with effect from 28.05.2012. Since the appellant was clearing or portion of their production to TML, and both these Units being interconnected Units. (Determination of Price of Excisable Goods) Rules. 2000. Accordingly, the value shall be 110% of the cost of production of final products. As clarified by the Circular No.975/09/2013-CX dated 25.11.2013, The definition of inter-connected undertaking, given in Rule 2(g) of Monopolies and Restrictive Trade Practice Act, 1969, and which has been taken into Central Excise Act with effect from 2S.05.2012 in **clause** (b) of sub section **(3)** of Section 4 *ibid.* That the appellant was functioning from the factory premises

established in the Tata Motors Vendor Park at Sanand and all the infrastructural requirements for setting up and running the manufacturing facility were provided by TML. it can be said that the transactions between the appellant and TML were mutually beneficial. So, this was a situation where the sale was done to an interconnected undertaking and further, there exists mutuality of benefit also. That final products of the appellant were inputs for TML and then was no further sale of said inputs by TML. The transaction value cannot be accepted at face value in such cases. It appeared that loading a margin of at least ten percent of the cost of production to the cost price would be a reasonable method to arrive at the fair value for assessment. In view of the above, the appellant was required to determine the value of the goods in the manner.as per Rule 11, thus appellant was required to sale such goods when sold to related TML ,and the value shall be the one hundred and ten percent of the cost of the production of manufacture of such goods..the appellant vide letter dated 23-04-2015 submitted CAS-4 statement for the year 2010-11, 2011-12 and 2012-13 along with CAS-4 Certificate. According to the CAS-4 **statement** /worksheet ,they were required to pay differential duty of Rs.46.46.458/- during the year 2010-11.

A statement of Shri Yogesh Kumar Jadeja, Deputy Manager (Finance) and authorized signatory of the appellant was recorded on 08- 05-2015. he stated that earlier upto January-2013. M/s Tata Autocomp Syslems Ltd. was holding 50% share of M/s.Yazaki India Ltd. and in January-2013, M/s.Yazaki India Ltd had purchased all the shares held by M/s Tata Autocomp Systems Ltd. and hence from January, 2013 (w.c.f. 11.01.2013) M/s Tata Autocomp Systems Ltd. has no share in the business of M/s Yazaki India Ltd. and the name of the company changed from M/s.Tata Yazaki India Ltd. to M/s.Yazaki India Ltd.; He further stated that from January, 2013, M/s Yazaki India Ltd. was not at all related to M/s Tata Autocomp Systems Ltd. and was an independent company. On being asked about the issue of "Related Party" he Stated that this was a disputed issue and their company didn't agree with the views of the auditors of the department; that from January, 2013 onwards, since their company viz. M/s Yazaki India Ltd. was not at all related to M/s TML. It appeared that the appellant had wrongly adopted the method for the determination of value of the excisable goods as they paid duty on the normal assessable value as per Section 4 of the Central Excise Act, 1944, even though they were related to M/s TML. By not paying duty on the correct value as required under Rule 11 of the Valuation Rules, the appellant had short paid duty to the tune of Rs.46.46,458/- during the 2010-11 (From October-2010), The fact that the price charged was less than 110% of the cost of production in itself leads one to believe that it had been deliberately kept low The appellant had resorted to such modus operandi with intent to evade the payment of duty. .Further, at no point of time the appellant had intimated the department about clearances being made to related persons and about the existence of mutuality of interest. Thus, it appears the material facts had been deliberately suppressed by them with intent to evade

the duty. The act of non-disclosure of relevant information and not following the correct method for assessment were acts of deliberate failure and evidently a case of suppression of facts with malafide intent. thus, the extended period of five years is invokable for demanding duty short paid Rs.46,46,458/- to be recovered along with Interesand penalty .SCN dated 21.08.2015 was issued. Vide above order confirmed the demand and imposed equal penalty on said unit.

3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following main grounds;

i. That the Valuation Rules in Central Excise are in principle akin to Customs Valuation Rules for imports and the interpretation given in the said Customs Valuation itself states that even if the imports are from related party, so as to categorize "related party transaction" and therefore it necessitates clearance of Special Valuation branch (GATT Valuation cell) for Nil loading.

ii. That "points for not having mutual interest" clearly demonstrate the aspect that price is a negotiated one and it is an "arm's length price and it lives up to the test of the key aspects of Section 4(1)(a) price representing "transaction value" on which excise duty to be paid.

iii. that on the said subject of "related party transactions" where decisions have been tendered under the provisions of Central Excise, the "parties being related alone cannot be a singular factor which can said to influence the price but there has to be necessarily "mutuality of interest" which needs to be established by the department, so as to arrive at the conclusion that price is not an "arms length price" under Section 4(1)(a), warranting determination of assessable value under Section 4 (l)(b) ignoring PO price;

iv. That earlier upto January- 2013, M/s. Tata Autocomp Systems Ltd was holding 50% share of M/s Yazaki India Ltd. and in January-2013, M/s Yazaki India Ltd. had purchased all the shares held by M/s Tata Aut'ocomp Systems Ltd. and hence from January, 2013 (w.e.f. 11.01.2013) M/s. Tata Autocomp Systems Ltd. has no share in the business of M/s.Yazaki India Ltd. and the name of the company changed from Yazaki Autocomp Ltd lo M/s. Yazaki India ltd.

v. That TML did not hold any share in M/s Tata Yazaki Autocomp Ltd. either before January 2013 or even afterwards and further that M/s Tata Yazaki Autocomp Ltd or M/s. Yazaki India Ltd. also do not hold any shares in TML.

vi.That it is factual position that none of the directors in M/s Tata Yazaki Autocomp Ltd were from M/s Tata Motors Ltd., nor any of the directors of M/s Tata Yazaki Autocomp Ltd. were in the board of M/s Tata Motors Limited. The dealings between TACO and TML are always on "principal to principal basis" and in this regard TML is treated at par with any other customer to whom goods are supplied

on the basis of the Purchase orders representing the "transaction value" as envisaged in section 4(1)(a) of the Act.

vii. There is no declaration in the appellant's balance sheet that TML is a related Company and it is factually and legally true and in the said situation the question of appellants being treated as related person of TML is incorrect. as the payment of duty is squarely covered by the provisions of Section 4 (1)(a) of CEA, 1944 in the impugned matter. It is clarified by the Central Board of Excise & Customs (CBEC) vide Circular No. 354/81/2000 TRU dated 30.6.2000.

viii. that Tata Motors Ltd (TML) is not a promoter of TACO and the Memorandum of Association clearly reveals that TML was not initial subscriber of shares of TACO when it was incorporated in 1995. That from a perusal of the Memorandum of Association, it is evident that Tata Industries Limited along with certain individuals was the founder members/promoters of TACO. However, during 1997-98. TML first acquired shares of TACO shareholding was 29% and from FY 2008-09 it holds 26% of shares of TACO which is also the position as on date

ix. Further, interest for the above purpose does not means a mere business connection between the two parties, but it has to be one of financial or managerial int erest Hence, sub-Cause (iv) of section 4(3(b) of Act is not at all applicable.

x. That even if it is assumed that our final products are used by the TML for their manufacturing process and that the TML being the manufacturer, the TML becomes eligible to avail credit of excise duty paid on such goods it results in revenue neutral situation, as there is no loss to the Government exchequer; that that in instant case, the TML would have availed the credit of differential excise duty paid. Thus, the whole situation is revenue neutral as there is no loss to the government exchequer.

xii. That nothing in the show cause notice, which really justifies for invoking extended period of demand and there is no positive evidence to substantiate that there has been deliberate and willful attempt to evade excise duty. The extended period of demand cannot be invoked which is the settled position of law. They relied on following case laws:-

- Ispat Industries 2007 (209) ELT 185 (Tri.-LB)
- LLOYDS METALS 6c ENGINEERS LTD. - 2008 (2221 E.L.T. 84 On. - Mumbai
- Hon'ble Supreme Court UOI v. ATIC Industries Ltd.. 1984 H71 E.L.T. 323 (S.C.)
- CONTINENTAL FOUNDATION JT. VENTURE 2007 (216) E.L.T. 177 (S.C')
- PUSHPAM PHARMACEUTICALS COMPANY 1995 (78) E.L.T. 401 (S.C)
- CHEMPHAR DRUGS & LINIMENTS • 1989 (40) E.L.T. 276 (S.C)
- WOCKHARDT LTD - 2009-T10L-1308-CESTAT-MUM)
- RAJASTHAN SPINNING & WEAVING MILLS- 2009 (238) E.L.T. 3 (S.C)

4. The personal hearing in the matter was fixed on 8.11.2017, Shri S. Sryanarayan,Advocate, Anant Bhide and Shri Yogesh Jadeja Dy. Manager (Finance) appeared on behalf of the appellant. He reiterated submissions made in their GOA and plead revenue neutrality and limitation. He makes additional Submissions. I have carefully gone through the case records, facts of the case, OIO, submissions made by the appellant and the case laws cited. The main issue to be decided is whether the appellant is liable to pay Excise duty on the clearance of finish goods inter-connected undertakings in terms of the valuation of excisable goods covered under Section 4 of Central Excise Act. 1944.

5. 1 find that, as per statutory provisions. The valuation of excisable goods is covered under Section 4 of Central Excise Act. 1944. reads as under:-

SECTION [4.] Valuation of excisable goods for purposes of charging of duty of excise — (I) 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 (he assesses, for delivery at the time and place of the removal, the noticee 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 arc not sold, be the value determined in such manner as may be prescribed.

[Explanation — For the removal of doubts it is hereby declared that the price-cum-duty of ,h. excisable goods sold by the noticee shall be the price actually pad to hint for the goods sold and the money value of h. additional consideration if any flowing directly or indirectly from the buyer to the notice in connection with the sal of such goods, on 1 such price-cum-duty. Excluding sales tax and other tuxes, if any Actually paid, shall be deemed to include the duty payable on such goods]

(c) "transaction value " means the price actually paid or payable for the goods, when sold, end includes in addition to the an o in 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 a sale or at any other time, incuding 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]

(d) As per Section 4 *ibid,* the duty of excise is chargeable on excisable goods on their value on each removal and value on which the duty is required to be paid shall. be the value paid/payable at the time and place of removal and as per Section 4(1) (a) *ibid* when the goods are sold at the time and place of removal the transaction value shall be the value for the purpose of payment of central excise duty however the buyer of the excisable goods shall not be related to the assessee.

6. Since, the allegation in the show cause notice that appellant was an 'interconnected undertaking' to the buyer TML, I would like to look into the provisions related to 'inter connected undertaking'. The definition of inter-connected undertaking, given in Rule 2(g) of Monopolies & Restrictive Trade Practice Act, 1969, reads as under:-

"(g) inter-connectcd undertakings" means two cr more undertakings which are inter-connectcd 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 cr more common partners,

[iii) where the undertakings are owned by bodies corporate,—

(a) if one body corporate manages the other body corporate.

(b) if one body corporate is 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) ...

(vj .....

(vi) .....

(viij....

[Explanation I.—for the purposes of this Act, [two bodies corporate,] shall be deemed to be under the same management —

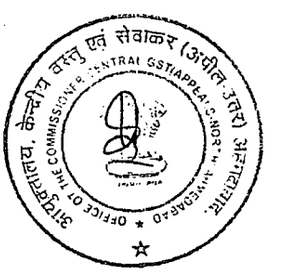
(i) if one such body corporate exercises control over the other or both are under the control of the same group o: *any* of the constituents of the Sana group: or

(ii) if the managing director or manager of one such body corporate is the managing director or manager or 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 24[one-fourth} of the total membership of the Board of directors of the other; or

(iv).....

(v).....(x).....



In the present case, as per clause (iii) to Explanation 1. supra, *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 24[one-fourth} of the total* membership *of the* Board *of directors of the other; or,*. than that body corporate shall be treated as 'interconnected undertaking" for the purpose of valuation under the provisions of Central Excise and valuation shall than be determined in terms of Valuation Rules, 2000.

7. Coming to the facts of case, I find the Tata Autocomp Yazaki India Lid. was a joint venture company of Tata Autocomp Systems (TACO for short) and TACO held 50% shares in the TML till Jan-2013. The demand of differential duty on under valuation pertains to the period prior to January-2013 , After January-2013 Yazaki India Ltd purchased the shares and changed name from M/s Tata Autocomp Yazaki India Ltd. to M /s YAZAKI India Ltd. (from 11-01-2013) hence, till January-2013. They were interconnected undertaking in terms of clause (iii) to Explanation I Supra discussed above.

8. Now, coming to TML & TACO, I find that, Tata Industries Limited along with certain individuals were the founder members of TACO. However, during 1997-98. TML first acquired shares of TACO wherein the percentage of shareholding was 29% and from FY 2008-09 it holds 26% of shares of TACO which is also the position as on date. Hence, TML and TACO were interconnected undertaking in terms of clause (iii) to Explanation 1. Supra discussed above. The illustrations given to clause (G) above helps me conclude that the appellant & TML (the buyer x this case) are interconnected undertakings. The fact that the appellant in related party disclosure declared name of TACO as related party and in its related party disclosure TACO declared name of TML as related party further strengthens the contentions of the revenue that appellant and buyer TML were related as interconnected undertakings. The appellant was operating from the vendor park owned by M/s TML and appellant was directly supplying its finished goods to TML for its final product show mutuality of interest.1 rely on the judgment of Supreme Court RDC Concrete(I) Ltd. v. Commissioner 2016 (337) E.L.T. A205 (S.C) it was held that-

> *it was further held that assessee is related to another company since said company holds 40% shares of assessee company i e. more than 33 1/3% which means that both companies are under the same management and hence both are inter-connected undertakings within the meaning of Section 2(g) of the MRTV Act, 1969. Being inter-connected undertakings both have direct or indirect interest in the business of each other are related in terms of the provisions of Section 4(3)(b) of the Central Excise Act, 1944.*

In the present case, prior to January-2013. TACO held 50% shares in M/s. Tata Autocomp Yazaki India Ltd. and therefore they shall be treated as interconnected undertakings.1 have gone through the case laws on which the appellant has placed reliance, but I find that facts of the cases are different and not applicable to the present case.

9. In view of discussion above, I find that normal transaction value in terms of Section 4 of CEA, 1944 cannot be accepted and fair transaction value shall be determined by resorting to appropriate rule of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (as amended). Having found that the appellant and the buyer TML were interconnected . the appellant was functioning from the factory premises established in the Tata Motors Vendor Park at Sanand and all the infrastructural requirements for setting up and running the manufacturing facility were provided by TML. Therefore, the transactions between the appellant and TML were mutually beneficial. Since final products of the appellant are inputs for TML and there is no further sale of said inputs by TML. So, Rule 8 and 9 is not appropriate in the present case. I find force in contention of the revenue that there exists a special relation between the appellant and the buyer which has influenced the price hence, transaction value cannot be accepted for assessment. Therefore, transaction value needs to be taken as per rule 11 of the Valuation Rules,2000 as amended. The appellant vide letter dated 23-04-2015 submitted CAS-4 statement for the year 2010-11, to 2012-13 along with CAS-4 Certificate .that according to the CAS-4 statement they were required to pay differential duty of Rs.46.46,458/- during the year 2010-11 (From October-2010).

10. 1 find that the appellant willfully, mis-stated the value of finish goods and in turn evaded payment of Central Excise duty. the fact that the appellant has been clearing the finish excisable goods to related party with mutuality of interest has never been disclosed to the department in any manner and the same came to the knowledge of the department only during the course of Audit .The appellant therefore with an intention to evade payment of duty suppressed of facts regarding sale to related party. Further. as discussed above, 1 find that the appellant has short paid Central Excise duty by reasons of suppression of facts and contravention of provisions of CEA1944 and rules made there under, with intent to evade payment of duty .therefore, penalty is mandatorily imposable on the appellant. Since, the extended period itself is invokable in the present case; penalty imposed on the appellant is correct and legal.

11. In view of above discussion and findings, I uphold the impugned order and disallow the appeal filed by the appellant.

12. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Attested

(K.K.Parmar)
Superintendent (Appeals)
Central tax, Ahmedabad.

Date- /01/18

F.NO. V2(85)111/Ahd-II/16-17

By Regd. Post A. D

M/S. Yazaki India I td..
A-4. Tata Motors Vendor Park.
S.No.1, North Kotpura,
Sanand. Viroch Nagar,
Dist-Ahrnedabad,

Copy to-

1. The Chief Commissioner, CGST Central Excise,Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt.Commissioner, CGST C.Ex. Div-III, Ahmedabad- North.
4. The Asstt.Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. Guard file.
6. PA File.