

**CBEC Circular related to valuation of goods sold to independent and related parties is not violative of central excise laws**

The Supreme Court of India (“**the Supreme Court**”) in the case of *Commissioner of Central Excise & Service Tax v. Merino Panel Product Ltd [Civil Appeal No. 6891 OF 2018 dated December 5, 2022]* held that the Circular No. 643/34/2002-CX (“**Circular**”) dated July 1, 2002, issued by the Central Board of Excise and Customs (“**CBEC**”) clarifying the doubts regarding Valuation Rules with respect to goods when sold partly to related persons and partly to independent buyers, is not violative of the Central Excise Act 1994 (“**CEA**”) and the Central Excise Valuation Rules 2000 (“**CEVR**”).

**Facts:**

The Merino Panel Product Ltd (“**the Respondent**”) is a manufacturer of decorative laminates and other like materials (“**the Goods**”) which falls under the chapter 48 of the Central Excise Tariff Act, 1985 (“**CETA**”). Since the goods were excisable goods, the value at which the Respondent was selling them, would be the determinant for the amount of tax recoverable by the Revenue department (“**the Appellant**”).

The goods were sold to both independent parties and to related parties . Some discrepancies were found in the prices at which they were sold to independent parties and related parties as defined under Section 4 (3)(b)(i) of the CEA read with Section 2 (g) of Monopolies and Restrictive Trade Practices Act, 1969 (“**the MRTP Act**”). The goods sold to the related parties were undervalued in comparison to the goods sold to non related parties. The lower valuation of the goods lead to the shortfall in collection of excise duty.

Since, there was not provision prescribing any methodology to discover the assessable value of goods, sold at different prices, the Appellant issued the Show Cause Notice (“**SCN**”) invoking Rule 11 of CEVR stating that the valuation shall be determined using reasonable means

consistent with the principles and general provisions under Section 4(1) of CEA. Under SCN, invoking Rule 11 of CEVR, the Appellant stated the value of goods to unrelated parties would be the value for goods sold to related parties.

The Respondent contended the SCN on the ground that the Appellant wrongly invoked Rule 11 of CEVR and the method of valuation adopted is wrong because Appellant has itself issued the Circular dated July 1, 2002 which clarify the manner in which valuations was to be done when sales are made to both independent and related parties.

The Commissioner (“**Adjudicating Authority**”) rejected the argument of the Respondent stating that there is no inconsistency between the Rule 11 of CEVR and the Circular and confirmed the demand.

The CESTAT (“**the Tribunal**”) set aside the Order passed by the Adjudicating Authority and allowed the Respondent Appeal on the ground Circular clarified the methodology to be adopted for determining the value and Section 4 (1) (a) of CEA is not applicable as it referred to sales made exclusively to independent buyers.

**Issue:**

1. Whether the Circular dated July 1, 2002 is binding on the Revenue Department ?
2. Whether Circular dated July 1, 2002 is in conflict with the provisions of CEVR?.

**Held:**

The Supreme Court held as under:

- A Department is bound by the Circulars issued by it, while Courts and Tribunals are not.
- There is no conflict between the Circular dated July 1, 2002 is in conflict with the provisions of CEVR

- In a case where the price itself is the sole consideration to determine the transaction value, then the said price can be transposed onto the related party purchases as well, to arrive at the assessable value.

Hence, the Civil Appeal filed by the Appellant was allowed.

**Relevant Provisions:**

**Central Excise Act, 1944**

*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.*

*Explanation- For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales taxes and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.*

*(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.*

*(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.*

*1(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,--*

*(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 subclauses.*

*Explanation I.-- 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 any body 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;

(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 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;

### **Central Excise Valuation Rules, 2000**

#### **Rule 11: Best Judgement**

*If the 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.*

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