: : आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GSTBhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी. द्वारा :- DIN-20220964SX000000BEDF

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	V2/500/RAJ/2021	03/D/DC/2021-22	09-08-2021

ख अपील आदेश संख्या(Order-In-Appeal No.):

RAJ-EXCUS-000-APP-341-2022

आदेश का दिनांक / Date of Order:	26.09.2022	जारी करने की तारीख / Date of issue:	28.09.2022

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name & Address of the **Appellant** & Respondent :-

M/s. P.M. Diesel Pvt. Ltd., Unit I, 80 Feet Road, Aji Industrial Estate, Bedipapa,Rajkot

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को अपेक्षन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
– बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना 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-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जैहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 –/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

ORDER-IN-APPEAL

M/s P. M. Diesel Pvt. Ltd, Unit-I, 80 Feet Ring Road, Aji Industrial Estate, Bedipura, Rajkot-360 003 (*hereinafter referred to as* 'Appellant') has filed Appeal No. V2/500/RAJ/2021 against Order-in-Original No. 03/D/DC/2021-22 dated 09.08.2021 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, CGST Division-I, Rajkot (*hereinafter referred to as* 'adjudicating authority').

2. Briefly stated, the facts of the case are that the Appellant was manufacturer of excisable goods viz. IC engine, P.D. Pump set etc. and held Central Excise Registration No. AABCP2871NXM001. During the course of audit of the records of the Appellant, it was observed that two buyers of the appellant, namely, M/s Arvind Industries and M/s P.M. Trading, were declared as 'related person' in their statutory audit report. It appeared that the appellant had not determined and paid Central Excise duty on the goods cleared to these related persons as provided under Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. It was also observed during the course of audit that the appellant had recovered cost of advertisement from some of their customers/buyers. It appeared that the amount recovered from the buyers against cost of advertisement to be over and above the price shown/charged in the corresponding sale invoices as 'transaction value/assessable value' of the goods in terms of Section 4(3)(d) of Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, but the appellant had not considered the same in the assessable value for levying and paying Central Excise duty at the time of removal of the goods, which had resulted in short payment of duty.

2.1 Based on audit observations, Show Cause Notice No. VI(a)/8-201/Circle-I/AG-03/2018-19 dated 31.01.2020 was issued to the Appellant calling them to show cause as to why Central Excise duty amount of Rs. 1,21,226/- should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA and proposing imposition of penalty under Section 11AC of the Central Excise Act, 1944.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order by which the demand of Central Excise duty amount of Rs.1,21,226/- was confirmed under Section 11A(4) of the Central Excise Act,1944 along with interest under Section 11AA and penalty of Rs.1,21,226/- was imposed under Section 11AC of the Central Excise Act,1944.

3. Being aggrieved, the Appellant has filed the present appeal contending, *inter alia*, as below:-

(i) The adjudicating authority has erred in confirming the demand without considering the fact that the sale to so called related party is at the market price and is not influenced with any extra circumstances and therefore the addition in the value is not proper and justified. The sale to so called related person was at the normal price the transaction are covered under the provisions of Section 4(1)(a) of the Central Excise Act, 1944.

(ii) The adjudicating authority has erred in confirming the demand ignoring the certificate given by the respective dealer, clarifying the nature of payment for advertisement in sale promotion material. Merely because the respective dealer has paid some amount it was not liable to be considered as additional consideration.

(iii) On the above grounds, the imposition of penalty and charging of interest is required to be set aside.

4. Personal hearing in the matter was conducted on 19.09.2022. Shri Paresh Sheth, Advocate, appeared on behalf of the Appellant. He reiterated the submission made in Appeal Memorandum. He submitted copies of invoices (sample) and some judicial pronouncements during hearing. He stated that he would make written submissions based on which case may be decided.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum and oral as well as written submissions made by the Appellant. The issues to be decided in the present case are (i) whether the goods cleared by the appellant to the parties whose names are declared as 'related person' in their statutory audit report are to be assessed under Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; and (ii) whether the amount recovered from the buyers against cost of advertisement to be over and above the price shown/charged in the corresponding sale invoices to be included under 'transaction value/assessable value' of the goods in terms of Section 4(3)(d) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation

(Determination of Price of Excisable Goods) Rules, 2000 or otherwise.

6. Regarding the first issue, I find that the root cause of the issue that culminated into issuance of show cause notice and impugned order is the audit of the records of the appellant conducted by the departmental officers, when it was noticed that two buyers of the appellant, namely, M/s Arvind Industries and M/s P.M. Trading, were declared as 'related person' in their statutory audit report. While the demand was made applying provisions of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the appellant contended before the adjudicating authority that none of the conditions prescribed under Section 4(1)(b) is fulfilled in their case and hence the demand is not sustainable. They contended that the prime condition for the application of the said rule is that the goods are sold through a related person covered under sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section 3 of Section 4 of the Central Excise Act, 1944. In this regard, I find that, the adjudicating authority has not given any findings in the impugned order with regard to the specific contention raised by the appellant about the definition of related person covered under sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section 3 of Section 4 of the Central Excise Act, 1944.

7. I find that rule 9 is applicable only if the goods are sold 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. Rule 9 of the Valuation Rules reads as under:

> ***RULE 9.*** *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 :*
> ***Provided*** *that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.*

8. It is observed that neither the audit report nor the impugned order has brought out anything as to how M/s Arvind Industries and M/s P.M. Trading have become related persons of the appellant. The concept of 'related person' as per Income Tax Act and Central Excise Act are entirely different. Rule 9 of the Valuation Rules comes to play only if the buyer is related in terms of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act.

9. As per Section 4(3)(b), the person 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.

For better understanding of the statutory provisions, Section 4 of the Central Excise Act, 1944 is reproduced 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.

*[**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 tax 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 -*

[(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 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 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 (1 of 1956);

10. In order to attract Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, it should be proved that the seller and buyer are 'related persons' as defined under Section 4(3)(b) (ii), (iii) and (iv) of the Central Excise Act, 1944, according to which (i) the seller and buyer should be relatives, (ii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or (ii) they are so associated that they have interest, directly or indirectly, in the business of each other.

11. I find that the adjudicating authority has not given any findings as to how the appellant and M/s Arvind Industries and M/s P.M. Trading have fulfilled the conditions stipulated under Section 4(3)(b) (ii),(iii) and (iv) of the Central Excise Act, 1944 so as to consider them as 'related persons' and to make the provisions of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 applicable. Without first giving a clear finding in this regard, especially when the appellant had challenged the applicability of the same before him, the adjudicating authority ought not to have proceeded to determine the Central Excise duty liability by applying the provisions of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The appellant also had not adduced any evidence before me to prove that they are not related in terms of Section 4(3)(b) of Central Excise Act, 1944, especially when it was alleged in the audit report as well as in the show cause

notice that the mentioned two parties are declared a 'related' in their statutory audit report.

12. In view of the above circumstances, I find it proper to set aside the demand to the extent of Rs. 86,792/- and remand back the case to the adjudicating authority to give a clear findings as to how the appellant and M/s Arvind Industries and M/s P.M. Trading are 'related persons' under Section 4(3)(b) (ii),(iii) and (iv) of the Central Excise Act, 1944 so as to make the provisions of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 applicable in the instant case.

13. Now, coming to the second issue, whether the amount recovered from the buyers against cost of advertisement to be over and above the price shown/charged in the corresponding sale invoices to be included as 'transaction value/assessable value' of the goods in terms of Section 4(3)(d) of Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, I find it relevant to refer to the definition of transaction value defined under Section 4(3)(d) which is as under:

> *(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.]*

Plain reading of the above definition of 'transaction value' would reveal that transaction value is the price actually paid or payable for the goods, when sold. The said definition has an inclusive clause which states that certain charges in or in connection with the sale any amount charged for like advertising, marketing and selling expenses etc. actually paid or actually payable on such goods. The expression 'any amount that the buyer is liable to pay to' is of significance. This expression shows that, apart from the price of the goods, the buyer should also be liable to pay an additional amount to the manufacturer/seller. In other words, the sale of the goods would not be made unless the buyer is also to pay an additional amount to the manufacturer, apart from the price of the goods. This is also supported by use of expression 'by reason or' or 'in connection with the sale of the goods'. The expression 'in connection with the sale of the goods' would only mean that but for the payment of the additional amount, the sale of the goods would not take place.

14. In the present case, I observe, neither the audit report nor the show cause notice has brought out anything on record that suggested that the buyer was obligated to pay the amount of advertisement charges. On the contrary, the appellant has produced letters from the buyers from whom advertisement charges were recovered to the effect that the appellant company was supplying 50 calendars free of cost and on additional requirement, they were ready to pay 50% of the cost where the name of their firms are mentioned. For example, M/s Ramakrishna & Co., Vijayawada in their letter dated 29.09.2015 has requested the appellant to mention the name of their firm in the calendar and requested to supply additional 158 numbers. Similarly, M/s Fieldmarshal Agencies, Ahmedabad in their letter dated 25.10.2015 has requested for additional 1214 calendars for the year 2016 and expressed their willingness to bear 50% cost. From these letters, it transpires that the amount recovered is towards cost of calendars with the name of their firm printed and not towards any cost of advertisement that was required to be borne by the said buyers. The audit report at Revenue Para-2 stated that the assessee had been recovering cost of advertisement from some of their customers/buyers though partially. While demanding the Central Excise duty on such amount, no evidence has been adduced as to how the same are related to sale of goods by the appellant. The definition of 'transaction value' as explained in the foregoing paragraph clearly stipulates that the additional amount should be in connection with sale of goods. In the present case, from the perusal of the letters produced by the appellant, I am of the considered view that by mentioning the name of the buyer/dealer in the calendar, the appellant has only promoted the name of the firm and hence the cost recovered from the buyers/customers are not forming part of transaction value. In this regard, I find support in the case of ***Maruti Suzuki India Ltd-2008 (232) E.L.T. 566 (Tri. - Del.)*** wherein the Tribunal has made the following observations:

> *9. A perusal of the various judgments relied upon, on behalf of appellants, leads as to the following conclusion on the points of law. The advertisement for any product manufactured may fall under Rule 3 broad categories. First category is the advertisement done by the manufacturer on their own and at their own expenses. Such advertisements make the product visible and known to the prospective buyers. Such advertisement not only benefits the manufacturer but also the dealers. As such advertisements make the job of selling relatively easier. There are also advertisements which may be done exclusively by the dealer in their area out of margins received by them. Even such advertisements benefit both the dealers and to some extent the manufacturer. The joint advertisements are, therefore, can be considered to benefit both the dealers and the manufacturer. Such joint advertisement arises out of legitimate business consideration; this arises out of the mutual interest in maximizing the sale of products. Sharing of expenses on the joint advertisement, campaign is normal. The issue to be considered is whether the dealer's share of expenses can be considered as consideration/additional*

consideration for sale and added to the assessable value. When the contract envisages such incurring of expenses by the dealer and failure to incur such expenses give a right to the manufacturer to get the advertisement done on their own and recover the expenses from the dealer, such an arrangement cannot be considered as an option. Such expenses by the dealers would be payment basically on behalf of the manufacturer and requires to be added to the assessable value.

10. *In the present case, relating to M/s. Maruti Suzuki India Limited, we find it has been claimed that the advertisements are not done by all the dealers; and even in respect of dealers undertaking such advertisements, the extent of expenses does not get linked to or proportionate to number of vehicles sold by them; it was claimed that the dealers have incurred expenses varying from 0.0070% to 0.2333% of total sale value. In view of the above, it appears that these advertisements cannot be held to have been carried out by the buyers on behalf of the manufacturer; that the assessee has no enforceable legal right to insist on incurring such advertisement expenditure. The contention of the Department that there is no option available to the dealers does not stand proved. The stand of the department that the failure on the part of the dealer may lead to the cancellation of dealership and therefore there is a enforceable legal right is acceptable. Such cancellation cannot enable recovery of dealer's share of cost of advertisements. Therefore, this case is squarely covered by the decisions of the Hon'ble Supreme Court in the cases of Philips India Ltd. v. CCE, Pune reported in 1997 (91) E.L.T. 540 (S.C.) and the decision of Surat Textile Mills [2004 (167) E.L.T. 379 (S.C)] cited supra wherein it has been held that "the advertisement expenditure incurred by a manufacturers' customer can be added to the sale price for determining the assessable value, only if the manufacturer has an enforceable legal right against the customer to insist of the incurring of such advertisement expenses by the customer".*

15. Similarly in the case of ***Ford India Pvt Ltd-2017 (6) G.S.T.L. 273 (Tri. - Chennai)*** Hon' Tribunal has held as under:

7. *In consequence, we have no hesitation in holding that impugned advertisement expenses cannot be termed as "extraneous consideration" to the price charged by the appellants which would require inclusion in their assessable value for the purpose of Section 4 or after 1-7-2000. So also, we hold that these expenses are not in the nature of any amount that the dealer is "liable to pay to, or on behalf" of the manufacturer by reason or in connection with the sale of motor vehicles.*

8. *In arriving at this conclusion, we draw sustenance from the ratio of the following decisions/judgments :*

(i) *Philips India Ltd.* v. *CCE, Pune* - 1997 (91) E.L.T. 540 (S.C.)

The issue that came up before the Hon'ble Supreme Court concerned advertisement and free After Sales Service (ASS) during warranty period provided by dealers to the products of Philips. The Hon'ble Apex Court observed that such agreement was at arm's length; Manufacturer was sharing half and half advertisement expenses since advertisement benefited both. Deduction of trade discount by the Central Excise authorities was uncalled for. The relevant portions of the judgment reproduced below, makes for very illuminating reading :

"5. It seems to us clear that the advertisement which the dealer was required to make at its own cost benefited in equal degree the appellant and the dealer and that for this reason the cost of such advertisement was borne half and half by the appellant and the dealer. Making a deduction out of the trade discount on this account was, therefore, uncalled for.

6. As to the after sales service that the dealer was required under the agreement to provide, it did of course enhance in the eyes of intending purchasers the value of the appellant's product, but such enhancement of value enured not only for the benefit of the appellant; it also enured for the benefit of the dealer for, by reason thereof, the dealer got to sell more and earn a larger profit. The guarantee attached to the appellant's products specified that they could be repaired during the guarantee period by the appellant's dealers anywhere in the country. Thus, though one dealer might have to repair goods sold by another dealer and incur costs in that regard, he also had the benefit of having the goods he sold reparable throughout the country. The provision as to after sales service, therefore, benefited not only the appellant; it was a provision of mutual benefit to the appellant and the dealer."

(ii) *CCE, Mysore* v. *TVS Motors Co. Ltd.* - 2016 (331) E.L.T. 3 (S.C.)

Hon'ble Supreme Court in this case dealt with question of inclusion of pre-Delivery Inspection (PDI) and After Sales Service (ASS) charges reimbursed by manufacturer to the dealers whether to be includible in assessable value. Hon'ble Apex Court held in favour of the assessee. The relevant paragraphs of this judgment are worthy of reproduction as under :

"10. The position in respect of unamended provision, thus, is very clear. Coming to the amendment in Section 4 of the Act, in the year 2000, it may be noted in the first instance that definition of 'transaction value' as per Section 4(3)(d) is exhaustive and covers within its purview, the price of goods and various other amounts charged by the assessee by reason of sale or in connection with sale. This provision reads as follows :

"(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."

11. The expression 'any amount that the buyer is liable to pay to' is of significance. This expression shows that, apart from the price of the goods, the buyer should also be liable to pay an additional amount to the manufacturer/seller. In other words, the sale of the goods would not be made unless the buyer is also to pay an additional amount to the manufacturer, apart from the price of the goods. This is also supported by use of expression 'by reason or' or 'in connection with the sale of the goods'. The expression 'in connection with the sale of the goods' would only mean that but for the payment of the additional amount, the sale of the goods would not take place. When we keep in mind the aforesaid legal position, we find no error in the view taken by the Tribunal giving benefit to the assessee. Both the sides were in unison in accepting the position that no major change had been incorporated w.e.f. 1-7-2000 with emphasis on the 'different transaction value' from the 'assessable value', the essence of valuation principles had not undergone major change and the decisions delivered by this Court with regard to unamended provision on the principle of valuation were still applicable in determining the transaction value under the new provisions of Section 4 of the Act read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In fact, the Order-in-Original in M/s. TVS Motors Company Ltd. or in other cases itself proceeds on that basis."

(iii) *CCE, Baroda* v. *Besta Cosmetics Ltd.* - 2005 (183) E.L.T. 122 (S.C.)

In this matter involving advertisement expenses incurred by marketing agency of the assessee, the Hon'ble Apex Court relying upon its own judgment in the case of *Commissioner* v. *Surat Textile Mills* [2004 (167) E.L.T. 379 (S.C.)], dismissed the appeal of department on the ground that there was no legally enforceable right. The relevant portion of the judgment is reproduced as under :

"3. The appellant has sought to rely upon the decision of this Court in Commissioner of Central Excise, Surat v. Surat Textile Mills Ltd. - (2004) 5 SCC 201. In that decision the Court appears to have upheld the view that where the advertisement cost is incurred by the manufacturers/customers compulsorily or mandatorily, and where the manufacturer has an enforceable legal right against the customers to insist on incurring of such advertisement expenditure by the customers, the advertisement cost would be includible in the assessable value. Without in any fashion affirming the view taken therein it is clear even on the basis of the judgment that the clause in question gave the manufacturers/marketing agent, the discretion whether or not to advertise the assessee's products. There was no 'enforceable legal right' with the assessee to insist on the advertisement under the agreement.

4. The appeal is, accordingly, dismissed."

16. From the above cases laws, it can be concluded that when there is no legal right with the appellant to insist on the advertisement under an agreement, the cost of advertisement charges, if any, incurred by the buyer cannot be added to the transaction value for the purpose of assessment of Central Excise duty. Therefore, I hold that the demand of Central Excise duty to the extent of Rs.34,433/- is not legally sustainable.

17. In view of the above discussion and findings, I set aside the impugned order and remand back the matter, so far as it is related to sale of goods to related persons, for *de novo* consideration as discussed at Paragraphs 11 and 12. The demand in respect of inclusion of advertisement cost in transaction value is set aside along with interest and penalty.

१८. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

18. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested

Superintendent
Central GST (Appeals)
Rajkot

(AKHILESH KUMAR)
Commissioner (Appeals)

26th September, 2022.

By R.P.A.D.

To M/s P.M. Diesel Pvt. Ltd, Unit-I, 80 Feet Ring Road, Aji Industrial Estate, Bedipura, Rajkot-360 003	सेवा में, मे॰ पी एम डीजल प्राइवेट लिमिटेड, यूनिट-I ८० फीट रिंग रोड, अजी इंडस्ट्रियल इस्टेट बेदिपुरा,, राजकोट-३६० ००३

प्रतिलिपि:-

1) मुख्य आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
2) आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-I मंडल, राजकोट आयुक्तालय, को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।