Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 2

Excise Appeal No. 10505 of 2020-DB

(Arising out of OIA-VAD-EXCUS-001-AAP-558-2019-20 Dated 20/03/2020 passed by Commissioner (Appeals), CGST & Central Excise -Vadodara)

NISHANT ORGANIC PVT LTD **.....Appellant**
1002-1003, THE IMPERIA,
OPP. SHASHTRI MAIDAN, LIMBDA CHOWK
RAJKOT, GUJARAT

VERSUS

C.C.E. & S.T.-VADODARA-I **.....Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA, GUJARAT-390007

APPEARANCE:
Shri P V Sheth, Advocate appeared for the Appellant
Shri R R Kurup, Superintendent (AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10248/2026

DATE OF HEARING: 25.11.2025
DATE OF DECISION: 07.04.2026

SATENDRA VIKRAM SINGH

M/s Nishant Organics Private Limited, Vadodara (Appellant) are engaged in manufacturing of Aromatic Chemicals like DI ETHYL PHTHALATE and DI METHYL PHTHALATE. W.e.f. 01.09.2016, M/s Lakshya Enterprises Private Ltd, Vadodara also merged with M/s Nishant Organics.

1.1 During audit of their records, the officers observed that the appellant has charged and collected certain amounts towards Freight and Insurance from their customers on account of delivery of finished goods at the buyer's place but they have not included the said charges in the value of the goods for payment of Central Excise duty. As per the records, appellant had responsibility of the finished goods till these were handed over at the buyer's place. Considering the buyer's destination as place of removal, the appellant

had paid the service tax on freight /transportation charges collected from the buyers and also availed the Cenvat credit of the same in their factory.

1.2 After conducting the investigation and collection of details of freight and insurance charges, Revenue issued a show cause notice dated 21.08.2019 to the appellant for demanding Central Excise duty of Rs.2,69,101/- (including Education Cess and Secondary & Higher Education Cess) under Section 11A(4) of the Central Excise Act,1944 along with interest under Section 11AA and penalty under Section 11AC of the said Act read with Rule 25 of the Central Excise Rules,2002. The show cause notice was adjudicated by the Assistant Commissioner vide order dated 20th December,2019, wherein he held that transportation and insurance charges so collected by the appellant from their buyers in respect of door delivery of goods are includable in the assessable value of the finished goods for payment of central Excise duty. He confirmed the above demand along with interest and also imposed penalty of equal amount under Section 11AC(1)(e) of the Central Excise Act,1944 read with Section 174 of the CGST Act,2017.

1.3 Aggrieved with this order, the appellant filed appeal before the learned Commissioner (Appeals) who vide impugned order dated 28th March,2020 rejected appeal of the party and upheld the decision of the lower authority. Hence, the present appeal before this Tribunal.

2. In their appeal, the appellant took the following grounds:-

- The Appellate Authority has erred in confirming the demand without considering the decisions of Hon'ble Supreme Court as referred to in their submissions made as also the decision of CESTAT. The department on one hand has confirmed the demand of duty while rejecting their claim to avail credit of service tax on transportation charges. While rejecting their Cenvat credit claim, the department has concluded that

transactions are not on FOR basis. Therefore, in both the cases, conclusion drawn by the departmental officers are contradictory.

- The Appellate Authority also erred by ignoring Rule 5 of the Central Excise Valuation Rules, 2000, as per which the said income is not includable in the value. He also upheld invocation of extended period of limitation in this case ignoring the fact that the department had knowledge of such activity. Likewise, imposition of equal penalty is also not justified on them as the demand itself is not sustainable.
- They also rely on the decision of Hon'ble Supreme Court in the case of Escorts JCB Ltd Vs. Commissioner of Central Excise, Delhi-II reported at 2002 (146) ELT 31 (SC), wherein it was held that when goods sold at Ex-factory price for delivery at Ex-works, freight and insurance charges during transit of goods are not includable in the value of finished goods. The Apex Court held that in some cases, transportation of goods and transit insurance is arranged by the assesses but charged from the buyer whereas in some cases, buyer arranges for transportation of goods and transit insurances themselves. Terms and conditions between the buyers and the assess will establish sale at ex-factory price and delivery at factory gate. Ownership of goods has no relevance, in so far as, transit insurance of goods is concerned. Delivery to the carrier at factory gate is delivery to the buyer and element of freight and transit insurance not includable in the assessable value.
- The appellant relies upon the following decisions:-

  (i) Classic Polytubes Pvt. Ltd. Vs CCE, Lucknow- 2016 (336) E.L.T. 180 (Tri. - All.)

  (ii) CCE, Pondy Vs Wipro Acer Ltd.- 2015 (323) E.L. T. 158 (Tri. - Chennai). [Also upheld by Hon'ble Supreme Court as reported at 2016 (331) E.L.T. A37 (S.C.)]

  (iii) GSC Toughened Glass (P) Ltd, Vs CCE, Jammu & Kashmir- 2015 (329) E.L.T. 835 (Tri. - Del.)

  (iv) CCE, Noida Vs Accurate Meters Ltd.- 2009 (235) E.L.T. 581 (S.C.)

(v) CCE, Raipur Vs Jaiswal steels enterprises Pvt. Ltd. -2016(338) E.L.T. 309

(vi) Sanjivani SSK Ltd. Vs. CCE, Aurangabad-2016 (333) E.L.T. 363

(vii) Sterlite Optical Technologies Ltd. Vs C.C.E. & C. Aurangabad-2015 (329) E.L.T. 341

(viii) CCE, Nagpur Vs Mainmood Enterprises + Consultant- 2014 (303) E.L.T. 279

(ix) CCE, Nashik Vs Garware Enterprises Ltd. -2014 (301) E.L.T. 341

In view of above, the appellant prayed for allowing their appeal and set aside the impugned order.

3. During hearing, learned Advocate mentioned that the amount of freight collected from the buyer is nothing but reimbursement of freight which is paid by them on behalf of the buyer. Similar is the situation for insurance charges. The transactions entered into do not establish appellant's responsibility till delivery of goods to the customer. Rather, transactions could be considered as factory gate delivery. He also pleaded that the show cause notice in this case was issued on 21.08.2019 for demanding duty for the period from January,2015 to June,2017 and hence, it is barred by limitation. He argues that otherwise also, the issue relates to interpretation of the provisions and therefore, there could be no intention on their part to evade payment of duty. On this ground, he submits that the penalty under Section 11AC is liable to set aside or else the benefits of provisions of Section 11AC(1)(e) of the Central Excise Act, 1944 may be extended. He relied on the following cases, in addition to those mentioned in their appeal.

- Hind Rectifiers Ltd. reported in 2015 (322) ELT 191 (SC)
- Roofit Industries Ltd. reported in 2015 (319) ELT 221 (SC)
- Chamundi Explosives Pvt Ltd. reported in 2014 (308) ELT 132 (Tri.)
- Associated Stripes Ltd. reported in 2002 (143) ELT 131 (Tri. Del)
- Uniworth Textile Ltd. reported in 2013 (288) ELT 161 (SC)

4. Opposing the prayer, learned AR mentioned that the invoices issued by the appellant in this case clearly mention "door delivery" or "godown delivery" which indicates that the place of delivery of goods was the buyer's

premises. The appellant charged and collected freight and insurance amount separately from their customers which is established from the sales invoices and therefor, these charges were includable in the value for payment of Central Excise duty. He pleads that sale of goods was effected at the buyer's destination as per the terms of delivery and therefore, "place of removal" shifted from the factory gate to the buyer's premises. Consequently, all costs incurred upto that point is to form part of the transaction value under Section 4 of the Central Excise Act, 1944. He relies on the following decisions to substantiate Revenue's case: -

- CCE, Aurangabad Vs. M/s Roofit Industries ltd reported at 2015 (319) ELT 221 (SC),
- CCE, Mumbai -III Vs. EMCO Ltd reported at 2015 (322) ELT 394 (SC)
- Transformers & Electricals Kerala Ltd Vs. CCE, Kochi- 2025 (392) ELT 747 (Ker.)
- CCE, Chandigarh Vs. Punjab Tractors Ltd – 2010 (259) ELT 123 (Tri.)

In view of the above, he pleads to sustain the order of the Appellate Authority by setting aside the appeal of the party.

5. We have heard the rival submissions. Before proceeding further, relevant provisions of Section 4 of the Central Excise Act, 1944, and 'place of removal' are as under:-

- *"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."

- "Place of removal" as defined under Section 4(3)(c) means: -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed;

- As per explanation-2 to Rule 5 of the Central Excise Valuation Rules, 2000:-, "*For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods.*"

Above provisions clearly indicate that when excisable goods are not sold at the factory gate but the sale actually happens at any other place (which in this case is the customer's premises), the cost of transportation shall be included in the value for the purpose of charging excise duty.

5.1 We find that the invoices issued by the appellant in the present case clearly mention that the goods are to be delivered at the customer's door. The relevant "terms and condition" as appearing in invoice No. 465 dated 15th March,2015, are as under:-

Terms & Conditions.
Terms of payment: 60 days
Terms of delivery: Door Delivery
Goods Quantity: 20300 Kgs
Rate: Rs. 86.00 per Kgs
Total Assessable Value: Rs. 17,45,800.00
Excise Duty @ 12.5% : Rs. 2,18,002.00
CST Output @2%: Rs. 39,280.00
Insurance Charges : Rs. 1576.00
Total Amount: Rs. 20,04,881.00

Same is the position in other invoices viz invioce No. 36 dated 11.04.2016, invoice No.101 dated 06.10.2016, invoice No. 625 dated 15.03.2017 and invoice No. 37 dated 08.04.2017, etc. perusal of which shows that as per

agreement/understanding with their buyers, the appellant has agreed for delivery of finished goods at the buyer's place with responsibility of transit insurance. The invoices also show charging of freight and insurance separately from the customers without these being included in the assessable value of the goods for payment of central excise duty.

5.2 (i) The appellant has relied on the decision of the Apex Court in the case of Hind Rectifiers Ltd (cited supra) and Accurate Meters Ltd. (cited supra). In Hind Rectifiers Ltd case, insurance policy for transportation of finished goods was taken by the assessee on behalf of the purchaser as was clear from the purchaser's letter dated 06.12.2001 addressed to the assessee. In Accurate Meters Ltd case, the buyer had entered into two separate contracts, i.e. one for sale of meter and the other one for transportation and transit insurance thereof. The transportation charges were on equalised freight basis. In both the cases, Hon'ble Apex Court held that freight and insurance charges do not constitute a part of value of the goods for charging Central Excise duty.

(ii) In the case of Chamundi Explosives Pvt Ltd (cited supra), as relied upon by the appellant, the assessee was clearing goods at the factory gate and at the request of the customer, paying and insurance premium by separately mentioning in the invoice(s). On that reasoning, the Tribunal held that these charges are not includable in the value of finished goods.

(iii) In the case of Associated Strips Ltd as relied upon by the appellant, we find that the party was supplying Steel Tubular Poles, Rectangular Poles and Pipes to Electricity Boards and Government departments who were floating tenders for inviting offer of supply of above-mentioned materials. The tenders clearly indicated that the price of the goods should be ex-works and the amount of freight and insurance is separately payable and that taxes are not payable on freight, forwarding and insurance charges. Two separate purchase orders were issued; one for the ex-works price of the goods and

another, for the expenditure towards freight, insurance, handling charges, etc. As per the terms of the "purchase order", the goods manufactured were required to be inspected by the representative of the buyer and thereafter, the appellant had to mark the name of the buyer on the poles before handing over to the transporter. In this case, it was held that once marking on the pole was done by the party in their factory, it was as good as sale of goods to the buyer. Therefore, Tribunal held that freight and insurance charges are not includable in the value for charging of excise duty.

5.3 We find that facts in the present case are entirely different from the facts in relied upon cases as in those cases either a contract or a letter was in existence indicating that delivery of finished goods was at the factory gate and additional responsibility of arranging transportation and transit insurance was discharged by the appellant as per contract/letter by the buyer. These charges paid on behalf of the buyer, were collected separately from them. Under these facts, it was held that the amount so collected against freight and insurance, is not to be included in the value of excisable goods and accordingly, the demand was dropped.

5.4 We find that Hon'ble Supreme Court in the case of CCE, Aurangabad Vs. Roofit Industries Ltd. (cites supra) held that transit damages/breakage on assessee implied that till goods reached the destination, ownership therein remained with assessee. Intent of purchase order was to transfer property in goods to the buyer at the premises of the buyer when goods were delivered and by virtue of Section 9 of the Sale of Goods Act, 1930, property in goods was transferred at that time. Sale of goods was at the place of buyer on delivery of goods, and not at the factory gate of the assessee. Hence, cost of transportation, loading, transit risk, unloading charges, etc. are includable in the value of goods. Relevant para 12,13 &14 of the said decision are reproduced below:-

"12. *The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules.*

13. *In the present case, we find that most of the orders placed with the respondent assessee were by the various Government authorities. One such order, i.e., order dated 24-6-1996 placed by Kerala Water Authority is on record. On going through the terms and conditions of the said order, it becomes clear that the goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, Central Excise duty, loading, transportation, transit risk and unloading charges, etc. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier namely the assessee. As per the 'terms of payment' clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.*

14. *The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under :*

> *"19. Property passed when intended to pass. - (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

5.5 In the case in hand, it is not in dispute from the copy of invoices that as per terms of delivery, goods were to be handed over to the customer at his premises i.e. "door delivery". The payment terms "60 days" also indicates that price of the goods was to be paid after delivery of the goods at the Customer's premises. Appellant has shown insurance amount in their invoices and also charged freight from the buyer. There is nothing on record to show that the appellant was under obligation by way of any separate agreement/contract or a letter from the buyer for arranging transportation and transit insurance on their behalf. In absence of any such evidence/ document, we have no doubt that the finished goods were delivered at the customer's premises as indicated in invoices and therefore, the amount of freight and insurance charges collected by the appellant from their buyers is includable in the assessable value for charging the excise duty.

5.6 The appellant also contended that there was no intention on their part to evade payment of duty and hence, show cause notice is barred by limitation. They pleaded that the demand is time barred and no penalty is imposable on them under Section 11AC. We find that the learned Commissioner (Appeals) in para 17.1 and 17.2 has justified invocation of extended period in the case for demanding duty for the larger period and imposition of penalty. He has clearly discussed that non-inclusion of freight and insurance charges in the value were discovered during audit of their records viz. sales invoices, financial records, etc. as these details are not reflected in monthly ER-1 returns filed by the appellant with the department. During hearing, learned Advocate could not bring any additional evidence

to show that extended period is not invokable in this case. We are satisfied with the reasoning advanced by the learned Commissioner (Appeals) and hold that extended period of limitation is invokable in this case. On the same ground, we also uphold penalty imposed on the appellant under Section 11AC of the Central Excise Act, 1944. However, as pleaded by the learned Advocate during hearing, an option to pay 25% of the penalty under Section 11AC (1)(e) of the Central excise Act, 1944 is being extended to them in case they pay the duty amount, interest thereon and such reduced penalty amount within one month from the date of this order. Accordingly, we dismiss appeal of the party and uphold the impugned order.

6. The appeal dismissed.

(Pronounced in the open court on 07.04.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha