Guard

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. V.87/15-192/OA/2020 DIN : 20220164WT000000D423

आदेश की तारीख़ / Date of Order : 28.12.2021

जारी करने की तारीख़ / Date of Issue : 06.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–46/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(As per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice no. TECH/SCN/ST /24/2020- TECH and LEGAL-O/O COMMR-CGST-VADT-AHMEDABAD /1403 DTT. 03.11.2020 issued to M/s Suzuki Motor Gujarat Pvt Ltd, Block No 334/335, Survey No 293, Hansalpur, Near Becharaji, Taluka: Mandal, District: Ahmedabad 382 130

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 46 /2021-22

M/s Suzuki Motor Gujarat Pvt Ltd, Block No 334/335, Survey No 293, Hansalpur, Near Becharaji, Taluka: Mandal, District: Ahmedabad 382 130 were issued the Show Cause Notice No. TECH/SCN/ST/24/2020 –TECH and LEGAL-O/O COMMR-CGST-ADT-AHMEDABAD/ 1403 Dated 03.11.2020 by the Commissioner, Central Tax, Audit Commissionerate, Ahmedabad- 380054.

BRIEF FACTS OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

1 M/s Suzuki Motor Gujarat Pvt Ltd. ('assessee') were having a Central Excise Registration No AAUCS5797DEM001 and a Service Tax Registration No AAUCS5797DSD003.They were engaged in the manufacture of motor cars and other motor vehicles principally designed for the transport of persons.

2 Audit of the records of the assessee covering the period from April 2016 to June 2017 was carried out, and during the course of audit, the following observation was raised.

Short payment of Central Excise duty on clearance of excisable goods

3. It appeared that the assessee had a contract manufacturing agreement (**"CMA"**) dated 17.12.2015 with M/s Maruti Suzuki India Limited (" **M/s. Maruti"** or **"MSIL"**) for exclusive supply of the excisable goods manufactured by them. The assessee was a wholly owned subsidiary of Suzuki Motor Corporation, Japan which had 56.21% of the issued, subscribed and paid-up share capital of Maruti. On verification of tax invoices issued by the assessee to M/s. Maruti for the clearance of their goods, it was noticed that they had paid the duty of excise on an amount which was shown by them as the assessable value in their invoices. However, it was observed that they had received amounts over and above the value shown in their invoice, from M/s. Maruti. It, therefore, appeared that they had short paid the duty of excise for the period from February 2017 to June 2017 on the differential amounts received by them from M/s. Maruti.

4 The following paras of the contract agreement dated 17.12.2015 between the assessee and Maruti, related to the subject issue were found to mention/say as under:

- Para 2.1 -The assessee shall, during the term of this agreement, manufacture the products and supply the same on an exclusive basis to M/s. Maruti in accordance with the terms and conditions as specified under this agreement.

Para 2.2 – The assessee shall manufacture and sell the products to M/s. Maruti in consideration for the price of the products in accordance with the order(s) from M/s. Maruti.

Para 2.3 - The assessee shall be responsible for manufacturing the products for the purposes of selling the same to M/s. Maruti, under this agreement and for the purposes of the aforesaid manufacturing of the products; the assessee shall purchase and/or import the requisite parts.

- Para 22.2 - M/s. Maruti shall pay to the assessee, the consideration of the products along with the central excise duty and CST/VAT or Goods and Service Tax (when introduced) applicable on the sale of the products. The assessee shall manufacture and sell the products to M/s. Maruti in consideration for the price of the products in accordance with the order(s) from M/s. Maruti.

5 It appeared from the clauses of the agreement that the assessee would manufacture the products on an exclusive basis for M/s. Maruti. M/s. Maruti, in turn would pay a consideration alongwith the duty of excise and other applicable duties to the assessee.

6 One sample invoice numbered BAR4CL400 PA D1002849 dated 8.3.2017, issued by the assessee to M/s. Maruti was analysed. On going through the invoice, it was seen that the Net Basic amount had been shown as Rs 6,30,744.68 whereas the assessable value on which the duty of excise had been paid by the assessee was shown as Rs 5,07,427.10. The assessee had received a total amount of Rs 6,30,744.68+ taxes which was is not in dispute. However, they had paid the duty of excise only on the assessable value of Rs 5,07,427.10, as calculated in the invoice dated 8.3.2017.The assessee under their letter dated 19.8.2019 provided the sample copy of invoices referred above alongwith a worksheet providing the details of the amounts received and the assessable value shown on which the duty of excise was paid by them, for the period from February 2017 to June 2017. The summary of transactions where the assessee had received amounts over and above the assessable value for the period from February 2017 to June 2017 is tabulated below:

Table-I

(Rupees in actual)

Calculation of Differential Value & Duties from Feb'17 to Jun'17 - Cases where Assessable value is less than Net Basic								
Month	No. of Cars	Net Basic (Amount actually received)	Assessable Value (Amount on which the duty was paid)	Cenvat Paid	NCCD Paid	CESS Paid	INFRA CESS paid	Difference Value (Net Basic-Assessable Value)
Feb-17	1,002	533,626,343	452,645,471	56,580,680	4,526,451	565,803	4,526,451	80,980,872
Mar-17	9,447	5,270,863,282	4,272,082,732	534,010,298	42,720,789	5,340,065	42,720,789	998,780,551
Apr-17	4,683	1,958,673,491	1,928,753,737	241,094,197	19,287,519	2,410,924	19,287,519	29,919,754
May-17	4,899	2,117,081,153	2,080,484,133	260,060,496	20,804,821	2,600,585	20,804,821	36,597,020
Jun-17	2,610	1,080,860,201	1,063,798,935	132,974,856	10,637,978	1,329,739	10,637,978	17,061,266
Total	22,641	10,961,104,471	9,797,765,008	1,224,720,526	97,977,558	12,247,117	97,977,558	1,163,339,463

Table-II

Difference Value (Net Basic-Assessable Value)	BED - Diff	NCCD - Diff	Cess - Diff	Infra Cess - Diff	Total duty to be paid on the difference value
80,980,872	10,122,609	809,809	101,226	809,809	11,843,453
998,780,551	124,847,569	9,987,806	1,248,476	9,987,806	146,071,657
29,919,754	3,739,969	299,198	37,400	299,198	4,375,765
36,597,020	4,574,628	365,970	45,746	365,970	5,352,314
17,061,266	2,132,658	170,613	21,327	170,613	2,495,211
1,163,339,464	145,417,433	11,633,395	1,454,174	11,633,395	170,138,397

7 Section 4 of the Central Excise Act, 1944 ('Act') reads as under:

"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"**

8 The Explanation to Section 4(1) of the Act is a common explanation applicable equally to Sections 4(1)(a) and 4(1)(b) of the Act. From the Explanation to Section 4(1) of the Act, it appeared that the value would be the price received for the goods cleared by an assessee, and it would include any additional amount flowing from the buyer to the seller in connection with the sale of the excisable goods. It appeared from the invoices issued for the period from February 2017 to June 2017 that the assessee had received amounts over and above the value on which they had paid the duty of excise for the clearances of excisable goods to M/s. Maruti. As per Explanation to Section 4(1) of the Act, the price received by the assessee from M/s. Maruti was to be the value for the purpose of discharging the duty of excise. It was seen that the price received by the assessee from M/s. Maruti was explicitly shown in the invoice which was higher than the value shown in the same invoice on which the duty had been discharged. Therefore, it appeared that the assessee had to pay the duty of excise on the total price paid by M/s. Maruti and received by them, in terms of the Explanation to Section 4(1) of the Act. As this was in the nature of an additional consideration received by the assessee from M/s. Maruti, the same was required to be loaded to the value for determining the actual value on which the duty of excise had to be discharged. It appeared that though they were related persons, the assessee was required to pay the duty of excise on the total price paid by M/s. Maruti and received by them, in terms of the Explanation to Section 4(1) of the Act. The Explanation is common for both Sections 4(1)(a) and 4(1)(b) of the Act. It, therefore, appeared that there was a short payment of the duty of excise on the differential amounts received by the assessee, as tabulated above.

9 Query memos were sent to the assessee on 8.8.2019 and 26.8.2019. The assessee under their replies dated 30.8.2019and 11.3.2020 did not agree to the objection, wherein they have stated that that they are related to M/s. Maruti in terms of Section 4(3)(b)(i) and (iv) of the Act. Accordingly, the provisions of Section 4(1)(a) of the Act were not applicable as the duty cannot be paid on the transaction value at which the goods were cleared from the factory. It appeared that there was no dispute that they were related to M/s. Maruti and paying duty as

per the provisions of Rule 9 of the Central Excise Determination (Determination of Price of Excisable Goods) Rules, 2000 ('Valuation Rules'). However, it appeared that the issue pertained to receipt of additional consideration of money from M/s. Maruti to the assessee, over and above the value on which the duty of excise was discharged by the assessee. The assessee had paid the duty of excise on the value mentioned in their invoice while they had received higher amounts from M/s. Maruti. It appeared that as per the Explanation to Section 4(1) of the Act the duty was to be paid on the amounts received by the assessee. It therefore that appeared that though they were related persons and were paying duty as per the provisions of Rule 9 of the Valuation Rules, the money value of the additional consideration, if any, was required to be added to the value on which the duty of excise was paid by the assessee. It appeared that the assessee did not provide any logical or reasoned explanation for the receipt of higher amounts from M/s. Maruti. It appeared that they had not explained as to why the additional consideration of money value was not includible and as to why the Explanation 1 to Section 4(1) of the Act as not applicable to their case. Accordingly, it appeared that the contention of the assessee was not correct, legal and proper.

10 Therefore, it appeared that the assessee had contravened the provisions of:

- Explanation to Section 4(1) of the Act as they failed to add the money value of the additional consideration and discharge the duty of excise on the added value received by them from M/s. Maruti;
- Rule 4(1) of the Central Excise Rules, 1944 ('Rules') read with Rule 8(1) of the Rules as they failed to pay the appropriate duty on the removal of goods for the period from February 2017 to June 2017
- Rule 6 of the Rules as they failed to assess their duty liability correctly
- Rule 12 of the Rules as they failed to file proper returns for their duty liability

11 It, therefore appeared that the assessee had suppressed the material facts from the department and had not assessed their goods appropriately by not adding the money value of the additional consideration received from M/s. Maruti. The receipts of additional consideration was not shown in their ER1 returns filed with the department for the period from February 2017 to June 2017. It appeared that they had not paid duty on the amounts received by them from M/s. Maruti. Accordingly, it appeared that the extended period of time for issuance of the notice in this case was invokable. It, therefore, appeared that the duty not paid amounting to Rs. 17,01,38,397/- for the period from February 2017 to June 2017 was required to be demanded and recovered under the provisions of Section 11A(4) of the Act, by invoking the extended period of five years. Interest also appeared payable by the assessee under the provisions of Section 11AA of the Act. It appeared that by the act of not adding the money value of the additional consideration received by them, in terms of the Explanation to Section of the Act, they had suppressed the material facts with an intention to evade the payment of central excise duty, as discussed above. Therefore, the assessee appeared to have rendered themselves liable for penal action under the provisions of Sections 11AC(1)(c) of the Act read with Rule 25 of the Rules.

12 It appeared that the rulings cited by the assessee were only on the issue of related person but the issue involved in those cases was not receipt of additional consideration of money from the buyer of the goods. Accordingly, it appeared that the issue involved in the present case was on a different footing than the rulings cited by the assessee. Accordingly, the rulings cited by them were distinguishable and the same appeared to be not applicable to the facts of the subject case.

13 A pre SCN consultation discussion was held in virtual mode on 25.9.2020, and the same was attended by Mr. Anand Nanavati, Advocate and Mr. Pramod Gupta, Head of Finance & Mr. Rajesh Meharchandani, Senior Manager (Indirect Taxation), both from the assessee firm. The objection made by Audit was not accepted by the above mentioned representatives of the Assessee.

14 Therefore, M/s Suzuki Motor Gujarat Pvt Ltd, were called upon to show cause in writing to the Principal Commissioner/Commissioner of Central Tax, Ahmedabad North Commissionerate, Ahmedabad them as to why:

i. the duty of excise amounting to Rs. 17,01,38,397/- (Rupees Seventeen crores one lakh thirty eight thousand three hundred ninety seven only), should not be demanded and recovered from them, under the provisions to Section 11A(4) of the Act;
ii. Penalty should not be imposed on them under the provisions of Section 11AC(1)(c) of the Act on the duty demanded at (i) above;
iii. Penalty should not be imposed on them, under the provisions of Rule 25 of the Rules on the duty demanded at (i) above; and
iv. Interest should not be charged and recovered from them under the provisions of Section 11AA of the Act on the duty demanded at (i) above.

DEFENCE REPLY

15. The Assessee forwarded their defence reply vide letter dated 08.10.2021 (filed with the office on 14.10.2021), wherein they interalia stated that:

- They are a 100% subsidiary of M/s Suzuki Motor Corporation, Japan(hereinafter referred to as "SMC Japan"). Maruti Suzuki India Limited (MSIL) is also a subsidiary of SMC Japan since SMC Japan holds more than 50% of the paid-up share capital of MSIL. In short, the seller i.e. the assessee and the buyer i.e. MSIL, are both subsidiaries of a common parent company;

- As per the definition of 'related' persons under Section 4(3)(b) of the Central Excise Act, 1944, (since SMC Japan holds a controlling stake in both the SMG and MSIL) they are "inter-connected undertakings" in terms of clause (i) of Section 4(3)(b). Further, since they are manufacturing motor vehicles on an exclusive basis for MSIL, they are also mutually interested in the business of each other and covered by clause (iv) of Section 4(3)(b).Thus, they and MSIL are related persons in terms of clause (i) and (iv) of Section4(3)(b) of the Central Excise Act, 1944.Therefore they were required to value such excisable goods as

per Section 4(1)(b) of the Central Excise Act, 1944 which states that the assessable value shall be determined in such manner as may be prescribed. The Central Excise(Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as "the Valuation Rules") have been prescribed for this purpose.

- Since they and MSIL were related in terms of clause (i) as well as clause (iv) of Section 4(3)(b) of Central Excise Act, 1944, the assessable value was determined in terms of Rule 10(a) read with Rule 9 of the Valuation Rules. As per Rule 10 (a) read with Rule 9, the assessable value for such goods sold exclusively to related persons i.e. MSIL, shall be the transaction value of the goods when further sold by the related person i.e. MSIL to its unrelated buyers or such related buyers who sell the goods in retail i.e. dealers of the motor vehicles.

- Therefore, they, in compliance of Section 4(1)(b) of the Central Excise Act, 1944 read with Rules 9 and 10 of the Valuation Rules, have discharged Central Excise duty on the price at which the motor vehicles are further sold by MSIL to its dealers, irrespective of the price at which the motor vehicles are sold by them to MSIL.

- For some invoices raised by them on MSIL, the amount is lower compared to the invoices raised by MSIL on its dealers and for some invoices raised by them on MSIL, the amount is higher compared to the invoices raised by MSIL to its dealers. In the months of February 2017 to March 2017, in respect of all supplies, the price of goods from them to MSIL was higher than the price of the goods from MSIL to dealers. Irrespective of which of the prices were lower or higher, excise duty was uniformly discharged by them on the price at which goods were sold by the related buyer i.e. MSIL to its further buyer dealers, in terms of Rule 9 read with Rule 10 of the Valuation Rules.

- They denied all the allegations contained in the show cause notice as incorrect and legally unsustainable.

- They stated that the show cause notice is vague and perverse and liable to be dropped on this ground.

- They stated that SCN alleges that they have received "additional consideration" in terms of money value from MSIL. At Para 12, the show cause notice even dismisses the judgments relied upon by them in their reply to the audit objection by stating that the judgments relied upon by them are on the issue of related person whereas the present show cause notice pertains to receipt of additional consideration of money.

- They stated that the SCN has not disputed that they and MSIL were related persons in terms of Section 4(3)(b) of the Central Excise Act, 1944. It was also not in dispute that, the SCN pertained exclusively to motor vehicles sold by them to MSIL.

- They stated that it was not disputed that they and MSIL were related persons in terms of Section 4(3)(b) of the Central Excise Act, 1944. It was also not in dispute that the present show cause notice pertains exclusively to motor vehicles sold by them to this related

person i.e. MSIL. It is the valuation of these motor vehicles sold to MSIL that was disputed in the present show cause notice. Thus, there cannot be any doubt that the show cause notice directly pertains to the issue of valuation of excisable goods cleared to related persons under the relevant provisions of the Central Excise Act, 1944 read with the Valuation Rules. The show cause notice blatantly ignored the above facts and proceeds to dismiss the judgments relied upon by them, which were squarely applicable to the facts of the present case.

- They stated that the allegation that they had not included any additional monetary consideration received from MSIL in their assessable value was highly misleading. It was not the case that they have received any additional monetary consideration from MSIL. The show cause notice intends to allege that since the value of goods when sold to MSIL was higher compared to the value of same goods when sold further by MSIL to its dealers, they had allegedly not paid excise duty on the actual consideration received by them from MSIL. They have always discharged Central Excise duty on the transaction value of the 2nd leg of the sale i.e. from MSIL to its dealers which is the real commercial sale price of that vehicle. This is because they and MSIL were 'related persons' and the price charged by them from MSIL cannot be taken as the transaction value as per Section 4 of the CEA, 1944. The show cause notice has singled out only those cases where the price charged by MSIL from its dealers is lower than the price charged by them from MSIL

- They also stated that since they and the buyer (MSIL) were related, the transaction value of motor vehicles sold by MSIL to its dealers become the relevant transaction value for payment of Central Excise duty.

- They further stated that it was not the case that they had received any amount from MSIL over and above the value mentioned in the invoice raised by them on MSIL. The only allegation in the show cause notice was that in some cases when the motor vehicles are further sold by MSIL to its dealers, the price charged by MSIL from its dealers was lower than the price charged by them from MSIL for the same motor vehicle and in such cases, they have discharged excise duty on the price charged by MSIL from its dealers instead of taking the higher price charged by them from MSIL.

- They stated that Valuation Rules clearly state that whenever goods are sold to a related person then the transaction value of such goods shall be the transaction value of the goods when further sold by the related person to an unrelated person or to a buyer who sells it further in retail sale. The relevant provisions of valuation rules do not state that the assessee shall pay excise duty on the higher of the 2 transaction values. The said rules clearly state that in such cases, the price at which the goods are further sold by the related person to an unrelated buyer or buyer who sells the goods in retail, has to be taken as the transaction value for payment of excise duty by the assessee.

The show cause notice also conveniently ignores those transactions where the price charged by them from MSIL is lower than the price charged by MSIL from its dealers and

they have paid excise duty on the price charged by MSIL from its dealers only, in compliance of Valuation Rules.

- They submitted that the whole proceedings get vitiated for want of proper show cause notice. In the case of **CCE v. Brindavan Beverages (P) Ltd.** reported at **2007 (213) E.L.T. 487 (S.C.)**, the Hon'ble Supreme Court held that the show cause notice is a foundation on which the Department has to build up its case. If allegations in the show cause notice are arbitrary and contrary to existing provisions of the Central Excise Act, 1944 read with the Valuation Rules, the show cause notice is liable to be dropped for these reasons alone.

- **Since they and MSIL were 'related persons', excise duty had been correctly discharged on the price at which motor vehicles were sold by MSIL to its dealers. The transaction value adopted by them was in compliance of Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 9 and 10(a) of the Valuation Rules.**

- They stated that, in view of Section 4(1) of the Central Excise Act, 1944 read with Rules 9 and 10(a) of the Valuation Rules, the relevant transaction value for the purpose of assessment was the transaction value at which the goods were sold by MSIL to its dealers and not the transaction value at which the goods were sold by them to MSIL.

- They further stated that once the provisions of Rule 9 of Valuation Rules read with Section 4(1)(b) of the Central Excise Act, 1944 are invoked, the relevant transaction value is the transaction value at which goods are sold by MSIL to its dealers and each and every consideration received by MSIL from its dealers towards the price of the goods is subject to Central Excise duty at the hands of manufacturer-assessee. The transaction value at which goods have been cleared by them to MSIL becomes irrelevant since they and MSIL are related persons.

- They stated that as per the CMA entered into between them, they operate on "no loss no profit" principle. That means they would sell the vehicles to MSIL at its cost. They started its commercial production in February 2017 at its factory at Becharaji. Since 2016-17 was the first year of operation, their manufacturing cost was high due to one-time pre-operative expenditure relating to setting up of the factory and higher depreciation (as this being a new plant and initially plant was not operating at full capacity) and same was amortized in the cost of the motor vehicles cleared during the initial months. Further, the motor vehicles manufactured by the company have multiple variants with fluctuating prices and the prices of some variants may also increase. Thus, the difference in value of motor vehicles from them to MSIL and MSIL to its dealers is on account of *bonafide* business and commercial reasons.

- They stated that, in any case, once the provisions of Rule 9 of the Valuation Rules are found to be invokable, there is no question of adopting any other value for payment of excise duty than the value prescribed in terms of Rule 9. In the present case, that value is the price at which MSIL has sold the goods to its dealers. It is not the case of the Department that any consideration received by MSIL from its dealers has not been included

in this transaction value. Simply because in some transactions the value of goods from them to MSIL is higher than the value from MSIL to dealers, the assessable value adopted in compliance of Rule 9 of the Valuation Rules cannot be rejected by the Department.

- They relied upon the decision in the case of **M/s. Chennai Petroleum Corporation Ltd. v. C.C.E., Tiruchirapalli - 2017 (11) TMI 1246 - CESTAT CHENNAI** and stated that as held by the tribunal in this case, the department has no legal sanction to reject the transaction value adopted by them in compliance of Rule 9 of the Valuation Rules read with Section 4(1)(b) of the Central Excise Act, 1944.

- **Real commercial price of the vehicle is the price at which vehicle is sold by MSIL to an unrelated Buyer (i.e. Dealer) and on which Excise Duty has already been appropriately paid by them.**

- They stated that as per the CMA entered by them with MSIL, they operate on "no loss no profit" principle. That means they would sell the vehicles to MSIL at its cost. So, the amount which they are is recovering from MSIL is not the real commercial price of that vehicle when sold to an unrelated buyer (i.e. Dealer). Further MSIL sells these vehicles to unrelated Buyers (i.e. Dealers) at a price which is the real commercial price of that vehicle.

- there is no un-intended or extra benefit or additional consideration to them or to MSIL and there is no lower excise duty payment by them due to Valuation Rules as has been alleged in the show cause notice.

- **They contended that Reliance placed by the show cause notice on Explanation to Section 4(1) of the Central Excise Act, 1944 is irrelevant and not applicable to the present case.**

- They stated that as per illustrative invoices Annexure-11 of their reply, which illustrate where price charged by them from MSIL is higher than the price of same goods further supplied by MSIL to its dealers; and as per illustrative invoices Annexure-12 which illustrate where price charged by them from MSIL was lower than price of same goods further supplied by MSIL to its dealers.

- They further stated that the amounts shown in the invoice and alleged to be received over and above the value on which excise duty is paid by them, refers to the difference between the 2 transaction values i.e. transaction value from them with MSIL and transaction value from MSIL to its dealers. As discussed in the Paras supra, since they and MSIL are related persons in terms of Section 4(3)(b) of the Central Excise Act, 1944, the transaction value from them to MSIL cannot be adopted as the assessable value for payment of excise duty. As per Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 9 of the Valuation Rules, the transaction value from MSIL to its dealers is required to be adopted as the assessable value. Therefore, in some cases, where the price charged by them from MSIL is higher than the price at which the goods are sold by MSIL to its dealers, the excise duty would be payable on the lower price i.e. MSIL to dealers instead of their to MSIL. At the same time, in other transactions where the price charged by them from MSIL is lower and

the price charged by MSIL to its dealers is higher, then the excise duty would be payable on the higher price i.e. MSIL to dealers only. The provisions of Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 9 of the Valuation Rules, mandate that the price charged by MSIL to its dealers be treated as the transaction value for them to discharge excise duty on the good.

- They stated that it is not in dispute that the above Explanation is applicable to both the sub-clauses of Section 4(1) of the Central Excise Act, 1944. They further stated that it has to be appreciated that the said Explanation is not a method of valuation in itself and only seeks to clarify as to what would be included in the price of the goods. Therefore, whenever price charged for the goods is required to be determined, either under Section 4(1)(a) or under the Valuation Rules prescribed under the Section 4(1)(b), reference can be made to the above Explanation. At the same time, the above Explanation cannot be relied upon to reject one transaction value when there are two transaction values available i.e. first transaction value from the manufacturer-assessee to the related buyer and second transaction value from the related buyer to its unrelated buyer and when the relevant rules prescribe that the second transaction value has to be adopted as the transaction value of the manufacturer-assessee by way of creating a deeming fiction.

- They stated that the interpretation of Explanation to Section 4(1) of the Central Excise Act, 1944, in the show cause notice, is also contrary to the intention of the legislature. If the same is held to be true then the distinction drawn between the method of valuation under clause (a) and clause (b) of Section 4(1) as well as the entire Valuation Rules would serve no purpose as excise duty would simply be payable on all amounts received by the manufacturer-assessee from the buyer towards the sale of goods, irrespective of whether the delivery is at the time and place of removal or whether the manufacturer-assessee and the buyer are related persons.

- **They stated that the Department cannot pick and choose only favorable data for the same type of transactions. Method of valuation adopted by them in terms of Section 4(1)(b) read with Rule 9 and 10 of the Central Excise Valuation Rules, 2000 is not in dispute. The Department has only contested the valuation where the valuation suits the case of the Department.**

- the Department has only taken cognizance of the transactions where price at which they had sold the goods to MSIL was higher than the price at which MSIL sold the goods to its dealers. There were numerous sales where the price at which they had sold the goods to MSIL was lower than the price at which MSIL sold the goods to its dealers.

They further stated that In respect of cases where the price of goods sold by them to MSIL is lower than price of same goods sold by MSIL to dealers, the difference between the two values is Rs.26.21 crores. This represents the difference between (i) price of goods sold by them to MSIL - Rs.548.19 crores and (ii) the price at which MSIL sold vehicles to un-related buyers (i.e. Dealers) and which is also the assessable value on which they have already paid excise duty- Rs.574.40 crores. The department, for issuance of show cause

notice, has conveniently chosen only that set of data where price of goods sold by them to MSIL was higher than the price of same goods sold by MSIL to un-related buyers (i.e. Dealers) which has been computed at Rs.116.33 crores and on which differential Excise Duty of Rs.17.01 crores has been proposed.

- They submitted without prejudice to their submission on merits and without admitting, that even if the department's stand is to be accepted and excise duty is held to be payable on price received by them from MSIL, then it should be done for all transactions. If that is done, then the differential value for excise duty calculation should be taken at Rs.90.12 crores (i.e. Rs. 116.33 crores less Rs.26.21 crores). In such a scenario, the differential demand of Excise Duty proposed in the present show cause notice would reduce from Rs.17.01 crores to Rs.13.16 crores, as per detailed calculation sheet enclosed with their reply.

  - They relied upon the following decisions of the tribunal :
  - Subhnen Decor P. Ltd. v. CCE, Vapi-2010 (251) ELT 105 (Tri. Ahd.)
  - Bechtel International Inc. v. Commissioner of Customs, Pune - 2014 (299) ELT 356

- **They requested, without prejudice to the other submissions, if duty demand is held to be sustainable, the price charged is liable to be treated as price-cum-duty.**

- They relied on the judgment of Hon'ble Supreme Court in MSIL's own case reported at CCE v. Maruti Udyog Ltd., 2002 (141) ELT 3 (SC).

- They also placed reliance on the following judgement of Supreme Court/ High Court/ Tribunal:

  - ACCE v. Bata India Ltd., 1996 (84) ELT 164 (SC)
  - CCE, Jaipur v. Dugar Tetenal India Ltd., 2008 (224) ELT 180 (SC)
  - Srichakra Tyres Ltd. v. CCE, Madras, 1999 (108) ELT 361 (Tri.) affirmed by the Hon'ble Supreme Court as reported at 2002 (142) ELT A279 (SC)
  - Roy Francis v. CCE, Cochin, 2002 (142) ELT 112 (Tri.) maintained by the Hon'ble Supreme Court as reported at 2008 (232) ELT A27 (SC)
  - CCE & C, Daman v. Poonam Plastics Industries, 2011 (271) ELT 12 (Guj.)

- They added without admitting, that if department stand is to be accepted that excise duty should be paid on price received by them from MSIL, then it should be done for all transactions. If that is done, then the differential value for excise duty calculation should be taken at Rs.90.12 crores (i.e. 116.33 crores less Rs.26.21 crores). The effective duty rate in the period under dispute was 14.625% (i.e.12.5% Basic Excise + 1 % NCCD + 0.125% Cess + 1% Infrastructure Cess). In case cum duty benefit is considered on the differential value of Rs.90.12 crores, the Excise Duty demand should be Rs.11.50 crores as against Rs.17.01 crores mentioned in SCN.

Extended period of limitation is not invokable in the present case. Entire demand is liable to be dropped on following ground

The assessee submitted that there is no short payment of excise duty by them in view of the submission made, or any intention to evade payment of excise duty. There is no question of any suppression in the present case. They have provided all the information required to be provided in terms of ER-1 returns. The said returns were filed based on self-

assessment and it was the responsibility of the Department to scrutinize the assessments made by them and verify the correctness of the same, in terms of Rule 12(3) of the Central Excise Rules, 2002.

- They stated that It is settled law that information not supplied if not required to be supplied under law does not amount to suppression. They have relied on the following decisions:
  - Apex Electricals Pvt. Ltd. v. UOI 1992 (61) ELT 413 (Guj)
  - Unique Resin Industries v. CCE 1995 (75) ELT 861 (T)
  - Cadila Pharmaceutical Ltd. v. CCE 2017 (349) ELT 694 (Guj.)

- They stated with respect to those clearances where the price charged by MSIL to its dealers was higher than the price charged by them from MSIL that these facts were known to the department. It is now well settled by the following decisions of the Hon'ble Supreme Court that when relevant facts are known to both the parties, allegation of suppression of facts with intent to evade payment of duty cannot be sustained. They have placed reliance on the following decisions:
  - Pushpam Pharmaceuticals Company v. CCE 1995 (78) ELT 401 (SC)
  - Anand Nishikawa Co. Ltd. v. CCE 2005 (188) ELT 149 (SC)
  - Continental Foundation Jt. Venture v. CCE 2007 (216) ELT 177 (S.C)

  MSIL is a Listed company on BSE and NSE Stock Exchanges- The information that they and MSIL are related and that under CMA, they will operate on "no loss, no profit" principle is in public domain- Therefore any allegation of suppression of facts is not justified. Further, entering into CMA with MSIL was in public domain, therefore, the allegation of suppression of facts on them on this account is not justified and on this ground itself, the SCN deserves to be dropped.

- They stated without admitting that even in the case of omission on their part, the same would not amount to suppression of facts with intent to evade payment of excise duty. Reliance is placed on the following decisions.
  - CCE v. Pioneer Scientific Glass Works 2006 (197) ELT 308 (S.C)
  - Continental Foundation Jt. Venture v. CCE 2007 (216) ELT 177 (S.C)
  - Padmini Products v. CCE 1989 (43) ELT 195 (SC)

- They stated that they are under bonafide belief that the goods sold to MSIL are correctly valued by them. In presence of such bona fide belief, no suppression or willful misstatement can be alleged against them. In support of the submissions, they have relied upon the following decisions:
  - NRC Ltd. v. CCE -2007 (5) STR 308 (T).
  - Secretary, Town Hall Committee v. Commissioner - 2007 (8) STR 170 (T)
  - Binlas Suplux Limited v. CCE -2007 (7) STR 561 (T)

Moreover, there being no positive act on their part to suppress any fact from the department and there being no evidence for such allegation, they submitted that the invocation of extended period is not correct. They have relied upon the decision of the Hon'ble Supreme Court in the case of Continental Foundation v. CCE-2007 (216) ELT 177 (SC).

They stated that omission to inform the department cannot be equated with suppression of facts, as has been held in the case of M/s. Padmini Products v. CCE - 1988 (35) ELT 543 (T)

- They have also relied upon the following decisions of the Supreme Court/ High Court/ Tribunal:
  - M/s. Padmini Products -1989 (43) ELT 195 (SC)
  - CCE v. Chemphar Drugs - 1989 (40) ELT 276 (SC).
  - Jai Prakash Industries Limited v. CCE - 2002 (146) ELT 481 (SC)
  - Pahwa Chemicals v. CCE-2005 (189) ELT 257 (SC).

- They have further submitted that it is settled law that the extended period of limitation cannot be invoked when the demand arises from the audit of the records maintained by them and when the audit has been done from time to time. In this regard they have relied upon the following decisions:
  - CCE v. Pragathi Concrete Products (P) Ltd. 2015 (322) ELT 819 (SC)
  - Monarch Catalyst Pvt. Ltd. v. CCE 2016 (41) STR 904 (T)
  - Maruti Udyog Ltd. v. CCE- 2002 (147) ELT 881 (T)
  - ITO v. Lakhmani Mewal Das -1996 (103) ITR 437 (SC).

- **Penalty is not imposable on them under Section 11AC(1)(c) of the Central Excise Act, 1944.**

- They stated that the ingredients required for imposing penalty under Section 11 AC of the Act are the same as those required for invoking extended period of limitation under Section 11A(4) of the Act i.e. penalty under Section 11AC is not imposable when the extended period of limitation cannot be invoked. They have placed reliance on the Apex Court's ruling in the case of UOI v. Rajasthan Spinning and Weaving Mills Ltd. - 2009 (238) ELT 3 (SC).

- **Penalty under Rule 25 of Central Excise Rules, 2002 is subject to penalty under Section 11AC of the Central Excise Act, 1944. Since penalty is not imposable under Section 11AC of the Central Excise Act, 1944, penalty can also not be imposed under Rule 25 as held by** the Hon'ble High Court of Gujarat in the case of CCE v. Saurashtra Cement Ltd. - 2010 (260) ELT 71 (Guj.), which was maintained by the Supreme Court reported at 2013 (292) E.L.T. A98 (S.C.). They have also relied upon the decision of the high court of the Gujarat in the case of CCE v. Harish Silk Industries - 2013 (288) ELT 74 (Guj.).

- They stated that Penalty is not imposable in the absence of mention of specific clause of Rule 25(1) under which penalty is sought to be imposed as held by the Apex court in the case of Amrit Foods v. Commissioner of Central Excise -- 2005 (190) ELT 433 (SC).

- They have also contended that the penalty is not imposable on them as they had acted in good faith; they have cited the following decisions in their support:
  - Hindustan Steel Ltd. v. State of Orissa -AIR 1970 (SC) 253,
  - Kellner Pharmaceuticals Ltd. v. CCE - 1985 (20) ELT 80
  - Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax - 1980 (6) ELT 295 (SC)

- They have also contended that Penalty is not imposable in cases involving interpretation of statutory provisions; they have cited the following decisions in their support:
  - Auro Textile v. CCE, Chandigarh 2010 (253) ELT 35 (Tri.-Del.)
  - Hindustan Lever Ltd. v. CCE, Lucknow 2010 (250) ELT 251 (Tri.-Del.)
  - Prem Fabricators v. CCE, Ahmedabad-II 2010 (250) ELT 260 (Tri.-Ahmd.)
  - Whiteline Chemicals v. CCE, Surat 2009 (229) ELT 95 (Tri.-Ahmd.)

- Delphi Automotive Systems v. CCE, Noida 2004 (163) ELT 47 (Tri.-Del.)

- They submitted without prejudice to the submissions that no penalty can be imposed, if penalty is held to be imposable, penalty cannot exceed 50% of the duty demand. In terms of Section 11AC(1)(b) of the Central Excise Act, 1944 even if there was fraud, suppression, willful misstatement etc. but transactions were recorded in the specified records, penalty will be equal to 50% of the duty demanded.
- Lastly they requested to drop the demand.

PERSONAL HEARING:

16. Personal Hearing was granted to the assessee on 22.09.2021, 14.10.2021, 22.11.2021, but the assessee had sought extension of the date of PH for various reasons. Therefore, a fresh personal hearing was granted and fixed on 10.12.2021. Shri Anand Nanavati, Advocate, Shri Ishan Bhatt, Advocate and Shri Rajesh Maherchandani, Sr. GM appeared for personal hearing. They referred to their earlier written submission dated 08.10.2021 and also submitted the same duly paginated and a compilation of case laws to buttress/ augment their say. Lastly, they requested to decide the case on the basis of facts, legal precedents and on merits.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 08.10.2021, documents submitted and oral submission made by the assessee during the personal hearing.

18. On going through the SCN, I find that the SCN proposes demanding and recovery of Central Excise of Rs. 17,01,38,397/- short paid by the assessee. The issue involved in the SCN, briefly stated is that the assessee had entered into Contract Manufacturing Agreement (**"CMA"**) dated 17.12.2015 with M/s Maruti Suzuki India Limited (**"Maruti"** or **"MSIL"**) for exclusive supply of the excisable goods manufactured by them. Further, the assessee was a wholly owned subsidiary of M/s. Suzuki Motor Corporation, Japan (**"SMC"**), who also held 56.21% of the issued, subscribed and paid-up share capital of MSIL. The subject SCN, which has been issued on the basis of audit observation, alleges that the assessee had received amounts over and above the assessable value shown in their invoice to MSIL during the period from Feb 2017 to Jun 2017, the assessable values shown in the invoices were lower than the net basic value shown in the invoices issued to MSIL during Feb 2017 to June 2017. I find that the SCN states that as per the Explanation appended to Section 4(1) of Central Excise Act, 1944 ("the Act"), which is applicable to Section 4(1)(a) and 4(1)(b) of the Act, the additional amount received from MSIL was required to be included in the assessable value for discharging of central excise duty by the assessee. The SCN also states that though they i.e. the assessee and MSIL were related persons, and the Explanation which was common to Section 4(1), the same was applicable to the instant case, and therefore, the additional amount received by the assessee was required to be included for payment of central excise duty; whereby short payment of Central Excise duty of Rs. 17,01,38,397/- by the assessee had happened.

19. I find that the assessee vide their defence reply dated 08.10.2021 have contended that they had discharged the central excise duty in terms of Rule 10 of Valuation Rules read with Rule 9 of the Valuation Rules, they had resorted to the Valuation Rules as they and MSIL were "Related" persons in terms of Section 4(3)(b) of the Central Excise Act, 1944. Since SMC (Suzuki Motor Corporation, Japan) holds a controlling stake in both the SMG and MSIL, they are "inter-connected undertakings" in terms of clause (i) of Section 4(3)(b) of the Act. Further, since they are manufacturing motor vehicles on an exclusive basis for Maruti, they are also mutually interested in the business of each other and covered by clause (iv) of Section 4(3)(b) of the Act. Thus, they and MSIL were related persons in terms of clause (i) and (iv) of Section 4(3)(b) of the Central Excise Act, 1944. Therefore they were required to value such excisable goods as per Section 4(1)(b) of the Central Excise Act, 1944 which states that the assessable value shall be determined in such manner as may be prescribed. i.e to be determined under Valuation Rules. Accordingly they had determined the assessable value in terms of Rule 10(a) read with Rule 9 of the Valuation Rules. They had discharged Central Excise duty on the price at which the motor vehicles were further sold by MSIL to its dealers as required under valuation rules, irrespective of the price at which the motor vehicles were sold by them to MSIL. They further tendered arguments that, in any case, once the provisions of Rule 9 of the Valuation Rules are found to be invokable, there is no question of adopting any other value for payment of excise duty than the value prescribed in terms of Rule 9 of valuation Rules. They have also stated that the Explanation appended to Section 4(1) is not applicable to their case.

20. I find that the SCN and Final Audit Report do not mention/ discuss the applicability of Rule 9 and 10 of Valuation Rules. They seek to demand the duty on additional amount received by the assessee, only on the basis of the Explanation appended to section 4(1) of the Act. I also find that assessee, after issuance of the Final Audit Report dated 23.12.2019, had submitted the reply dated 11.03.2020 to the audit objection wherein they stated that they had adopted valuation of goods under Rule 10 read with Rule 9 of the valuation Rules. Even in earlier reply dated 30.08.2019 submitted by the assessee, they have stated their say about the adoption of valuation under Section 4(1)(b) only. Under such factual position, the issues to be determined by me are as follows: (i) whether the transaction between the assessee and MSIL attracts the Valuation Rules 9 and 10 of valuation rules and (ii) whether the additional amount received by the assessee is includible in the assessable value as determined by the assessee or otherwise.

21. Since whole issue involves the valuation of goods cleared by the assessee to MSIL, the legal position relevant to the instant case is reproduced hereinunder for ready reference:

Section 4 of the Central Excise Act, 1944 ('Act') reads as under:

Section 4 . Valuation of excisable goods for purposes of charging of duty of excise. — *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) .....

(3) For the purpose of this section,-

(a) ....

(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.** — .....*

.....

The meaning of "Transaction Value" as provided under Section 4(3)(d) of the Act, reads 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."*

The Rule 9 and 10 of the Valuation Rule read 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.*

RULE 10. [Where whole or part of the excisable goods are sold by the assessee to or through an inter-connected undertaking, the value of such goods shall be determined in the following manner,

namely :-]

(a) If the undertakings are so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9.

***Explanation.** - In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956).*

(b) in any other case, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4."

22. I find that the assessee has contended that they and MSIL are "inter-connected undertakings" in terms of Section 4(3)(b)(i); they are also mutually interested in the business of each other since they are manufacturing motor vehicles on an exclusive basis for MSIL, therefore they are covered by clause (iv) of Section 4(3)(b) of the Act. Accordingly, they are "Related" persons under section 4(3)(b) of the Act. I find that Section 4(3)(b) stipulates that the persons shall be deemed to be related if any one of the four criteria, as laid down thereunder, is satisfied. I find that the SCN seeks the inclusion of additional amount in terms of explanation appended to section 4 of the Act, even if the assessee and MSIL are related person. I find that the SCN has not mentioned as to how they are related persons. For understanding the relations between the assessee and MSIL, the Contract Manufacturing Agreement appears very important in the case. On perusal of the Contract Manufacturing Agreement (**CMA**) dated 17.12.2015 (RUD 2), which was entered by the assessee with MSIL (Maruti Suzuki India Limited), it is seen that Suzuki Motor Corporation, Japan (SMC) hold approximately 56.21 % of the issued, subscribed and paid-up share capital of MSIL, India. And Suzuki Motor Gujarat Private Limited (the assessee) is wholly owned subsidiary of Suzuki Motor Corporation, Japan. Therefore, I find that the assessee Company and MSIL are under control of Suzuki Motor Corporation, Japan. Therefore, the assessee company and MSIL are under the same management, thereby they are "inter connected undertakings" in terms of 4(3)(b)(i) of the Act, and thus they are related persons as per Section 4(3)(b) of the Act.

23. As regards assessee's claim for being related persons in terms of Section 4(3)(b)(iv) of the Act, I find that they can be said to be related under Section 4(3)(b)(iv) only if *"they are so associated that they have interest, directly or indirectly, in the business of each other"*. For determining the issue, I again take the support of Contract Manufacturing Agreement dated 17.12.2015, some relevant para are reproduced hereinunder:

- *"Para 2.1 – SMG shall, during the term of this agreement, manufacture the products and supply the same on an exclusive basis to MSIL in accordance with the terms and conditions as specified under this agreement.*

Para 2.2 – SMG shall manufacture and sell the products to MSIL in consideration for the price of the products in accordance with the order(s) from MSIL.

Para 2.3 – SMG shall not directly supply or assign the products to any other third party in any manner.

- *Para 2.4 – The Parties further acknowledge and agree that all transactions, arrangement and other agreements between the Parties pursuant to this agreement shall be made, in accordance with then Applicable Laws, on the basis the SMG shall operate on a no-profit and no-loss principle in accordance with Clause 8.*
- *Para 5.1- SMG shall be responsible for manufacturing the products for the purposes of selling the same to MSIL, under this agreement and for the purposes of the aforesaid manufacturing of the products; the assessee shall purchase and/or import the requisite parts.*
- *Para 5.2—Any arrangements, transactions or agreements in relation to procurement of the requisite parts by SMG from (i) SMC and/ or (ii) any other related parties of SMG with the exception of MSIL, shall require the prior approval of MSIL. The Parties shall discuss the manufacturing of SMG's parts and the procurement of the Requisite Parts to ensure that the costs to manufacture, assemble and package the products are minimized, to the extent commercially and reasonably practicable.*
- *Para 9.3—MSIL and SMG shall discuss the procurement of the Capital Assets required to manufacture, assemble and package the Products, such that the costs to manufacture, assemble and package the Products can be minimized, it is agreed between the Parties that any arrangement in relation to procurement of Capital Assets by SMG from (i) SMC, and/or (ii) other related parties of SMG, with the exception of MSIL, shall require the prior approval of MSIL.*
- *Para 22.2 -MSIL shall pay to SMG, the consideration of the products along with the central excise duty and CST/VAT or Goods and Service Tax (when introduced) applicable on the sale of the products."*

23.1. It is evident from the above that the assessee is engaged in manufacturing the products and supplying the same on exclusive basis to MSIL. The products are being sold by the assessee on principle to principle basis as well as on no-profit and no-loss basis. Here in the instant case the products are sold and not transferred to Maruti as per the said agreement. It is also evident that the agreement is only limited to manufacture and supply /sale of the products to Maruti exclusively. I find that the expression "in the business of each other" under sub-clause (iv) of Section 4(3)(b) of the Act, clearly denotes the interest of the two persons have to be mutual. The expression "each other" signify the element of mutuality. It is very essential that both the parties have interest in business of each other whether direct or indirect, there is no room for one way interest. Mutuality of interests is prerequisite in Section 4(3)(b)(iv) of the Act. In this regard, I rely on the decision of the Apex Court in the case of M/s. Atic Industries reported at 1984 (17) E.L.T. 323 (S.C.), while dealing with similar provision existed before amendment to Section 4 w.e.f 01.07.2000, has categorically held that there should be mutuality of interest in the business of each other. After referring to the definition, the apex Court has elaborated the definition in the following manner (para 5) :

"What the first part of the definition requires is that the person who is sought to be branded as a related person" must be a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other. It is not enough that the assessee has an interest, direct or indirect, in the business of the person alleged to be a related person nor is it enough that the person

alleged to be a related person has an interest, direct or indirect, in the business of the assessee. It is essential to attract the applicability of the first part of the definition that the assessee and the person alleged to be a related person must have interest, direct or indirect, in the business of each other. Each of them must have a direct or indirect interest in the business of the other. The equality and degree of interest which each has in the business of the other may be different; the interest of one in the business of the other may be direct, while the interest of the latter in the business of the former may be indirect. That would not make any difference, so long as each has got some interest, direct or indirect, in the business of the other. Now, in the present case, Atul Products Limited has undoubtedly interest in the business of the assessee, since Atul Products Limited holds 50 per cent of the share capital of the assessee and has interest as share holder in the business carried on by the assessee. But it is not possible to say that the assessee has any interest in the business of Atul Products Limited. There are two points of view from which the relationship between the assessee and Atul Products Limited may be considered. First, it may be noted that Atul Products Limited is a shareholder of the assessee to the extent of 50 per cent of the share capital. But we fail to see how it can be said that a limited company has any interest, direct or indirect, in the business carried on by one of its shareholders, even though the shareholding of such shareholder may be 50 per cent. Secondly, Atul Products Limited is a wholesale buyer of the dyes manufactured by the assessee but even then, since the transactions between them are as principal to principal, it is difficult to appreciate how the assessee could be said by virtue of that circumstance to have any interest, direct or indirect, in the business of Atul Products Limited. Atul Products Limited buys dyes from the assessee in wholesale on principal to principal basis and then sells such dyes in the market. The assessee is not concerned whether Atul Products Limited sells or does not sell the dyes purchased by it from the assessee nor is it concerned whether Atul Products Limited sells such dyes at a profit or at a loss. It is impossible to contend that the assessee has any direct or indirect interest in the business of a wholesale dealer who purchases dyes from it on principal to principal basis.

23.2. I also find the Hon'ble Apex Court has also taken similar view in the case of Goodyear South Asia Tyres Pvt Ltd. Reported at 2015 (322) E.L.T. 389 (S.C.), wherein the Apex Court held that "There was one way interest in business, whereas prerequisite mutual interest stipulated in Section 4(4)(c) of Central Excise Act, 1944 required two way traffic"

23.4. I find that Hon'ble Apex Court in the case of M/s. TVS Motors Ltd reported at 2016 (331) E.L.T. 3 (S.C.), had observed that *"the Section 4 of the Act was amended w.e.f 01.07.2000, which emphasised on 'different transaction value' instead of 'assessable value' used earlier. However with this amendment, essence of valuation principles had not undergone major change. Hence judicial decisions delivered under unamended provisions were applicable for determining transaction value under new provisions of Section 4 ibid read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000".*

23.5. It is evident from agreement that the assessee is working on no-profit no-loss basis. It is also evident that the assessee is not concerned whether MSIL sells or does not sell the products purchased by it from the assessee nor is it concerned whether MSIL sells such products at a profit or at a loss. Therefore, I find that the assessee is not concerned with business of MSIL, directly or indirectly. On the contrary, MSIL is sole buyer of the products of the assessee, and it further sells the same in the retail market, has interest in the business of the assessee. Further, I find that the assessee has not adduced any evidence suggesting their interest in the business of MSIL. From the above facts, discussion and legal precedents, I discern that the requirement of "mutual interest in the business of each other" is not satisfied. I

therefore find that the assessee and MSIL are not related persons in terms of Section 4(3)(b)(iv) of the Act.

23.6 I find that from the provisions of Rule 9 of the valuation Rules is invokable only if the buyer of the goods 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. In the instant case, the clause (ii) and (iii) are not subject issue here, and as discussed in forgoing para, the assessee and Maruti are not related person in terms of sub clause (iv) of Section 4(3)(b) of the Act. Similarly, the Rule 10(a) is also not invokable for the same reasons. Hence, I find that, Rule 9 read with Rule 10(a) is not invokable. Therefore, as per the provisions of Rule 10(b), *the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4.* Therefore, considering the assessee and MSIL are not related persons for the purpose of sub-section (1) of Section 4, the value is required to be determined. I find that the subject issue is appropriately covered under the Rule 6 of Valuation Rules. The same is re-produced for ready reference.

"RULE 6. Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

*[**Provided** that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.]*

[Explanation 1]" .....

23.7 In the subject issue, the persons are to be treated as unrelated and price is not sole consideration, therefore, the subject issue is covered by the Rule 6. Therefore, I find that the valuation of goods cleared by the assessee was required to valued under Rule -6 instead of Rule -9. Evidently, I find that the assessee has received the additional amount from MSIL, the same was also confirmed by the assessee, however the assessee stated that the cost of manufacturing and preoperative expenses was amortized in the cost of vehicles cleared by the assessee. Accordingly, I find the additional amount flowing from MSIL, by whatever name, is required to be added to the value on which the assessee had paid the central excise duty.

24. The assessee has highly relied upon the tribunal's decision in the case of M/s. Chennai Petroleum Corporation Ltd. v. C.C.E., Tiruchirapalli - 2017 (11) TMI 1246 - CESTAT CHENNAI. Having gone through the said decision, I find that the issue was to determine the valuation of the goods under Rule 10(a) and Rule 9 of the Valuation Rule. Rule 9 and 10 are invokable only if the buyer of the goods 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 or the buyer is a holding company or subsidiary company of the assessee. In the instant case, Related Person in terms of the sub-clause (iv) of Section 4(3)(b) of the Act was the subject issue. I find that, as discussed in forgoing para, the assessee and MSIL are not related person in terms of sub clause (iv) of Section 4(3)(b) of the Act. The case law cited by the assessee is distinguished by these facts. The precedents followed is also required to be shown fit to the facts of case on hand. The small difference in facts may lead to different conclusion between the cases. I rely on the decision of Hon'ble Apex Court in the case of *Alnoori Tobacco Products* [2004 (170) E.L.T. 135 (S.C.)],

wherein the Hon'ble Apex Court has held that *"a precedent followed had to be shown to fit factual situation of a given case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases".*

25. The assessee has sought adjustment of the duty paid on clearance of products where the assessable value was higher than the value of clearance of products when cleared further by MSIL, in case contrary view was to be taken by the department. The assessee has claimed, without supporting any evidence/documents that they have paid excise duty on higher value amounting to Rs. 26.21 crore. I find that the assessee has collected the duty from their buyer, thus, the request of adjustment can not be acceded to.

26. I find that the assessee has also requested, if the demand is to be sustained, to treat the price charged to be price-cum-duty. They have cited various case laws in support of their request / arguments. In this regard, explanation appended to Section 4 of the Act, declares / considers the money value of the additional consideration flowing directly or indirectly from the buyer to the assessee in connection with the sale of goods, inclusive of duty payable on such goods. Therefore, I find that the request of the assessee is genuine and thus liable to be accepted. I find that the SCN has pointed out the receipt of additional amount/consideration amounting to Rs.1,16,33,39,464/- , hence, by treating the said amount inclusive of the central excise duty, the duty involved, is worked out to be Rs. 14,84,30,444/- at the rate of 14.625% (i.e.12.5% Basic Excise + 1 % NCCD + 0.125% Cess + 1% Infrastructure Cess).

27. In view of the above factual position and discussions, I hold that the assessee and MSIL are "Inter Connected undertakings" and thus, "related person" in terms of Section 4(3)(b)(i) of the Act, however, they are not related persons in terms of section 4(3)(b)(iv) of the Act, in absence of existence of "Mutuality of Interest in business of each other". Therefore, the Rule 9 read with Rules 10(a) is not invokable in the instant case. As discussed in foregoing paras, the additional amount charged by the assessee over and above, is held liable to be included in the value on which the duty has been discharged. I hold that the assessee is liable to pay central excise duty of Rs. 14,84,30,444/- on such additional amount of Rs. Rs.1,16,33,39,464/-, considering it to be the cum-duty price. I also find that Section 11AA of Central Excise Act, 1944 mandates levy of interest alongwith the Central Excise duty not paid on additional consideration. Therefore, I hold that the assessee is also liable to pay interest on the Central Excuse duty of Rs. 14,84,30,444/- Section 11AA of Central Excise Act, 1944. I find that the assessee has contravened the provisions of Section 4(1), Explanation appended to it, and Valuation Rules in as much as they have failed to include the additional consideration/ amount in the assessable value for discharging of Central excise duty; they have also contravened provisions of Rule 4(1) and Rules 8(1) of Central Excise Rules 2002, in as much as they have failed to pay the appropriate duty on the removal of goods for the period from February 2017 to June 2017; they have contravened the provisions of Rule 6 and 12 of Central Excise Rules, in as much as they failed to assess the duty liability correctly and failed to file proper returns.

28. From the facts and discussion aforementioned, I find that the assessee had received the additional amount of consideration from MSIL in connection with the sale of vehicles to them. The additional amount was recovered over and above the value at which the duty was

paid by the assessee. They ought to have paid the Central excise duty on such additional amount / consideration by adding to the value on which duty was paid by them, but they had not paid the duty payable on it. The assessee has never disclosed this facts of recovering the additional amount by them to the department. They have never disclosed the facts that they were clearing the goods under Rule 9 /10 of the Valuation Rules. The assessee has knowingly and intentionally not paid the duty on additional amount so received by them. Had the department not carried out the audit, the fact of such non payment of duty by the assessee, would not have been revealed. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessees are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise law. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such facts of contravention of provisions of Section 4 (1) of Central Excise Act, 1944 and Valuation Rules by not paying central excise duty on additional consideration/ amount, as discussed earlier, on the part of the assessee came to the notice of the department only when the department inquired into the matter. I find that in the case *of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241 (Tri-Mumbai),* it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2010 (17) STR 370 (Tri-Chennai), *in case of Lalit Enterprises v CST Chennai,* it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, the bonafide intention is not substantiated, accordingly, the citation relied upon the case are not applicable. Therefore, I find that all essential ingredients exist in this case to invoke the extended period of Five years under Section 11A(4) of the Central Excise Act, 1944. Thus, by invoking the extended period of time of 5 years, the Central Excise duty amounting to Rs. 14,84,30,444/- not paid by them on additional consideration received by them, is required to be recovered under Section 11A(4) of the Central Excise Act, 1944, and for the same reasons, all ingredients for imposing penalty under Section 11AC(1)(C) of Central Excise Act, 1944 read with Rule 25 Central Excise Rules, 2002, exist in the subject matter, therefore, the assessee is also liable for penal action under the provisions of Section 11AC(1)(C). As regards, imposition of Penalty under Rule 25 of Central Excise Rules 2002 separately for non payment of the duty, I find that as the said Rule is subject to Section 11AC of the Central Excise Act, 1944, Separate penalty can not be imposed.

In view of the above discussion and findings, I hereby pass the following order:

ORDER

i. I confirm the demand of the duty of excise amounting to Rs. 14,84,30,444/- (Rupees Fourteen crores Eighty Four lakh thirty thousand four hundred forty four only)

considering the additional consideration to be cum-duty price as per para 26, and order the same to be recovered from the assessee under the provisions to Section 11A(4) of the Act;

ii. I impose the Penalty of 14,84,30,444/- (Rupees Fourteen crores Eighty Four lakh thirty thousand four hundred forty four only) on the assessee under the provisions of Section 11AC(1)(c) of the Act read with Rule 25 of Central excise Rules 2002, on the duty demand at (i) above;

iii. I refrain from the imposing separate penalty under Rule 25 as per para 28, on the duty demand at (i) above; and

iv. I order to charge Interest under the provisions of Section 11AA of the Act on the duty demand at (i) above.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Speed Post

F.No. V.87/15-192/OA/2020

Date: .12.2021

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Block No 334/335
Survey No 293, Hansalpur
Near Becharaji, Taluka: Mandal
District: Ahmedabad 382 130

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