# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

## EXCISE APPEAL NO. 50600 OF 2019

(Arising out of Order-in-Original No. 06 to 11/COMMR/CEX/UJN/2018-19 dated 26.11.2018 passed by the Commissioner CGST & Central Excise, Ujjain)

**M/s. National Steel and Agro Industries Ltd.** **.....Appellant**
Mhow-Neemuch Road,
Village Sejwaya, Ghatabillod,
District Dhar (M.P.) - 454773

**VERSUS**

**Commissioner, CGST & Central Excise, Ujjain** **.....Respondent**
29, Bharatpuri Administrative Area,
Ujjain (M.P.) - 456010

**WITH**

## EXCISE APPEAL NO. 50598 OF 2019

(Arising out of Order-in-Original No. 06 to 11/COMMR/CEX/UJN/2018-19 dated 26.11.2018 passed by the Commissioner CGST & Central Excise, Ujjain)

**Shri Mukesh Sharma,** **.....Appellant**
**Former General Manager (Marketing),**
**M/s. National Steel and Agro Industries Ltd.**
Mhow-Neemuch Road,
Village Sejwaya, Ghatabillod,
District Dhar (M.P.) - 454773

**VERSUS**

**Commissioner, CGST & Central Excise, Ujjain** **.....Respondent**
29, Bharatpuri Administrative Area,
Ujjain (M.P.) - 456010

**AND**

## EXCISE APPEAL NO. 50599 OF 2019

(Arising out of Order-in-Original No. 06 to 11/COMMR/CEX/UJN/2018-19 dated 26.11.2018 passed by the Commissioner CGST & Central Excise, Ujjain)

**Shri Nirmal Uday,** **.....Appellant**
**Former Executive Vice President,**
**M/s. National Steel and Agro Industries Ltd.**
Mhow-Neemuch Road,
Village Sejwaya, Ghatabillod,
District Dhar (M.P.) - 454773

**VERSUS**

**Commissioner, CGST & Central Excise, Ujjain** .....Respondent
29, Bharatpuri Administrative Area,
Ujjain (M.P.) - 456010

**APPEARANCE:**

Shri Amit Jain, Advocate for the Appellant

Shri S.K. Ray, Authorized Representative for the Department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING: 03.06.2025**
**DATE OF DECISION: 28.11.2025**

**FINAL ORDER NO's. 51807-51809/2025**

**JUSTICE DILIP GUPTA:**

**Excise Appeal No. 50600 of 2019** has been filed by M/s. National Steel and Agro Industries Ltd.[1] to assail the order dated 26.11.2018 passed by the Commissioner, CGST and Central Excise, Ujjain[2], that rejects the value declared in the invoices of the appellant at the time of clearance of the goods from the factory of the appellant to its depots and determines the value shown in the Price List as the assessable value. The order, therefore, confirms the short paid duty with interest and penalty.

2. **Customs Appeal No. 50598 of 2019** has been filed by Mukesh Sharma, former General Manager (Marketing) of the appellant, to assail that portion of the order dated 26.11.2018 passed by the Commissioner that imposes penalty upon him.

3. **Customs Appeal No. 50599 of 2019** has been filed by Nirmal Uday, former Executive Vice President of the appellant, to assail that part of the order dated 26.11.2018 imposes penalty upon him.

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**1. the appellant**
**2. the Commissioner**

4. The appellant was engaged in the manufacture of CR galvanized/colour coated coils/sheets, falling under Chapter 72 of the Central Excise Tariff. The goods were manufactured and cleared in different sizes and thicknesses, as per the requirement of the customers or market demand. Such goods were sold to customers from the factory gate of the appellant as well as from the stock transferred to various depots. In case of goods sold at the factory gate, duty was paid on the transaction value and there is no dispute with regard to these goods. In respect of the goods stock transferred to depots, since transaction values of goods to be sold was not ascertainable, the appellant paid excise duty on the assessable value which was determined by its Head Office taking into account various factors, such as quality and category of goods, outward freight, past market trends, price trends of raw material, manufacturing cost and activities of the competitor.

5. For sale of the goods at depots, the appellant had provided price lists giving indicative prices at which depots may sell the goods. The appellant claims that such pricing of the goods was very dynamic and could vary from day to day, customer to customer, and even from transaction to transaction within the day. It is for this reason that the appellant claims that the actual sale price of the goods sold from depots could be higher or lower than the indicative price specified in the price lists. In cases, where the price of the goods sold at the depots was higher than the assessable value adopted at the time of clearance of the goods, the appellant worked out and paid the differential duty on its own, on monthly basis and reflected the same in ER-1 returns.

6. A show cause notice dated 08.10.2014 was issued to the appellant covering the period from June, 2009 to December, 2013, invoking the extended period of limitation, alleging, inter alia, that the goods cleared by

the appellant to the depots were undervalued and duty on such goods was required to be paid on the basis of the depot Price List in terms of rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000[3]. Periodical show cause notices dated 08.10.2014, 05.02.2015 and 28.04.2015 were issued for subsequent periods. Thus, the period covering the demand was from June, 2009 to December, 2014. These show cause notices were adjudicated by order dated 28.01.2016.

7. Against the order dated 28.01.2016, Excise Appeal No's 51190 and 51195 of 2016 were filed by the appellant and Nirmal Uday before the Tribunal. By an order dated 17.10.2017, the Tribunal remanded the matter to the adjudicating authority and the relevant portions of the order of the Tribunal are reproduced below:

> "5. We have heard both the sides and perused the appeal record. On the first issue regarding quantification of duty in the face of the claims made by the appellant, we note that the Original Authority did call for a detailed verification report from the Jurisdictional officer. During the course of arguments, the learned Counsel submitted a copy of such report given by the Jurisdictional officer. We have perused the finding recorded in the impugned order on this aspect. We note while the Original Authority accepted the calculations and verifications made by the Jurisdictional officer alongwith the certificate of Chartered Accountant submitted by the appellant for three years. For the remaining three years he upheld the demand of differential duty. The reason recorded is that the data is taken from the appellant's record and admitted as correct by the representative of the appellant. On this, the learned Counsel submitted that the data based on sale invoice running into more than 200 pages were shown to the representative who admitted these are invoice data. This will not lead to the conclusion that the differential duty calculation is admitted as

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**3. the 2000 Valuation Rules**

sustainable. In any case, we note that the facts are to be found from the records and the verification report by the Jurisdictional officer which is based on statutory ER - 1 returns of every month filed by the appellant during the material time cannot be disputed. **We note the Original Authority did not give any acceptable reason for not accepting the verification report and the details available in ER-1 returns supported by certificate of Chartered Accountant submitted by the appellant. We find no reason to selectively reject the verification report. On this ground, we note that claim of the appellants that they have discharged much higher duty than the amount now demanded has force and requires re-verification in line of the above observation.**

6. **Since, the claim of the appellant is that they have deposited higher duty than what is demanded, we are not going into the other aspects regarding the applicability of specific rule for valuation etc. Here, we have to note that the appellants did follow a procedure for discharging duty by tracking each consignment and indicating the differential payment in their statutory returns. Without commenting on the correctness of such procedure, it can be said that the case does not call for a imposition of penalties. As such, the question of issue demand for extended period requires/examination by the Original Authority who, as already noted has been directed to examine the quantification with reference to claim of the appellant of duty demand already made. We also note that a small portion of the demand is claimed to be beyond even 5 years.**

7. In view of the above discussion and analysis, we find that the matter has to go back to the Original Authority for requantification of duty in line with the observation made above. Adequate opportunity shall be provided to the appellant in this regard. The appeals are allowed by way of remand."

**(emphasis supplied)**

8. In the meantime, three more show cause notice dated 27.01.2016, 04.07.2017 and 11.07.2018, covering demand for the period from January, 2015 to June, 2017, were issued and all the six show cause notices have been adjudicated by the Commissioner by an order dated 26.11.2018 confirming the demand with interest and imposing penalties on the appellant, Mukesh Sharma and Nirmal Uday.

9. It is against this order, the present appeals have been filed.

10. Shri Amit Jain, learned counsel for the appellant made the following submissions:

**(i)** The findings recorded in the impugned order are unsustainable being beyond the proposal contained in the show cause notices. The show cause notices proposed valuation under rule 7 of the 2000 Valuation Rules, but the order has confirmed the demand under rule 11 of the 2000 Valuation Rules. Thus, by confirming the demand under rule 11, reliance on rule 7 as proposed in the show cause notices has been abandoned by the department itself and, therefore, the demand confirmed is unsustainable in law. In support of this contention reliance has been placed upon the following judgments of the Supreme Court:

**(a)** **Commissioner of C. Ex., Nagpur** vs. **Ballarpur Industries Ltd.**[4];

**(b)** **Commissioner of Central Excise** vs. **Gas Authority of India Ltd**[5];

**(c)** **Godrej Industries Ltd.** vs. **Commissioner of C. Ex., Mumbai**[6];

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**4. 2007 (215) E.L.T. 489 (S.C.)**
**5. 2008 (232) E.L.T. 7 (S.C.)**
**6. 2008 (229) E.L.T. 484 (S.C.)**

**(ii)** The depot price list gave indicative prices and could not have formed the basis for valuation either under rule 7 or under rule 11 of the 2000 Valuation Rules. The pricing of the goods being dynamic, actual sale could be at a price higher or lower than the price in the Price List. In cases where the goods were sold at prices higher than the prices adopted at the time of clearance of the goods from the factory, the appellant worked out and paid the differential duty on its own and reflected the same in their ER-1 returns filed every month;

**(iii)** The appellant had paid duty in excess of the demand under the show cause notices. Excess duty paid during one period is liable to be adjusted against the duty allegedly short paid during the other periods. There was, therefore, no shortfall in payment of duty. In this connection, reliance has been placed on the following judgments:

**(a)** **Pr. Commr. of CGST & C. Ex. Headquarters, Bhopal** vs. **Godrej Consumer Products Ltd.**[7];

**(b)** **Apex Auto Ltd.** vs. **Commissioner of Central Excise, Jamshedpur**[8];

**(c)** **Sail, Alloy Steel Plant** vs. **Commissioner of Central Excise, Bolpur**[9];

**(d)** **BSNL** vs. **Commissioner of Central Excise, Kol-V**[10];

**(iv)** The invocation of extended period of limitation is not sustainable. In respect of the show cause notice dated 08.10.2014, the impugned order has upheld the invocation of extended period of limitation on the ground that the appellant did not disclose to the department the pattern of valuation

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**7. 2019 (367) E.L.T. 985 (M.P.)**
**8. Excise Appeal No. 125 of 2012 decided on 13.06.2023 (Tri.-Kol.)**
**9. Excise Appeal No. 329 of 2009 decided on 12.05.2023 (Tri.-Kol.)**
**10. Excise Appeal No. 354 of 2009 decided on 19.12.2019 (Tri.-Kol.)**

adopted by them and the Price Lists and wifully evaded duty by undervaluation. The said finding is unsustainable as during the relevant period there was no requirement prescribed by law to disclose these details to the department;

**(v)** Further, during the period covered by the show cause notice dated 08.10.2014, the appellant had on its own paid differential duty of Rs. 16,65,35,816/- as against the differential duty payable of Rs. 13,02,67,932/- worked out in the show cause notice, resulting into excess payment of Rs. 3,62,67,884/-. Thus, when admittedly excess duty was paid by the appellant, there could have been any intention to evade duty by resorting to undervaluation;

**(vi)** Further, in the order dated 17.10.2017, the Tribunal clearly held that the case does not call for imposition of penalties. The ingredients for invoking extended period of limitation being the same, the same analogy is applicable for determining invocation of extended period of limitation also;

**(vii)** The impugned order confirms the demand of Rs. 4,31,593/- plus interest amounting to Rs. 3,05,408/- pertaining to the period from June, 2009 to August, 2009. The said demand, though already paid by the appellant, is beyond the period of five years invoked in the first show cause notice dated 08.10.2014;

**(viii)** The impugned order imposes penalties equal to 50% of the demand confirmed upon the appellant under section 11AC of the Central Excise Act. The Tribunal, in the order dated 17.10.2017, while remanding the matter held that the case does not call for imposition of penalties. In the absence of any

appeal by the department, the said finding has attained finality; and

**(ix)** Penalties could also not have been imposed on Mukesh Sharma and Nirmal Uday.

11. Shri S.K. Ray, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

**(i)** The Commissioner held that duty was payable on Price List values as these were consistent with rule 11 of the 2000 Valuation Rules and section 4(1) of the Central Excise Act, 1944[11] reflecting the best reasonable price for goods removed from the factory;

**(ii)** The department discovered the undervaluation during searches on 19.12.2013. Thus, this is the date of knowledge to be completed for the extended five years limitation period. The show cause notice dated 08.10.2014 was within the five year limit from 19.12.2013;

**(iii)** Failure on the part of the appellant to inform the department about additional amount collected from depot sales constituted willful suppression with intent to evade duty;

**(iv)** The core issue is whether invoice values of the appellant for depot transfers were valid or the Price List values should apply. Reliance on rule 11 of the 2000 Valuation Rules. Price Lists were a reasonable proxy for depot sale prices and so reliance on rule 11 of the 2000 Valuation Rules is justified; and

**(v)** The finding of willful suppression is justified as there was non-disclosure of additional amount collected from depot sales by the appellant which fact was uncovered during searches.

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**11. the Central Excise Act**

12. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

13. The appellant is a manufacture of CR galvanized/colour coated coils/sheets. The goods that are manufactured by the appellant are in different sizes and thicknesses, as per the requirement of the customers or the market demand. These goods are sold to the customers not only from the factory of the appellant but also from out of the stock transferred by the appellant to its depots. The appellant claims that in the case of goods sold at the factory gate duty is paid on the transaction value. There is no dispute in this appeal on this issue.

14. The issue is with regard to the transaction value of the goods sold from the depots of the appellant. According to the appellant, the transaction value of the goods sold from the depots at or about the time when they are sold cannot be ascertained in advance and, therefore, the appellant paid excise duty on the assessable value determined by the Head Office, taking into account various factors. According to the appellant, it had provided a Price List to the depots giving indicative prices at which the depot may sell the goods but as the pricing of the goods are dynamic and varies from day to day, the actual sale price of the goods from the depots may be higher or lower than the indicative prices specified in the Price List. The appellant further claims that where the sale price of the goods at the depot was higher than the assessable value adopted at the time of clearance of the goods from the factory, the appellant paid the differential duty on its own on a monthly basis and reflected it in the ER-1 returns.

15. However, a show cause notice dated 08.10.2014 was issued to the appellant for the period from June, 2009 to December, 2013, invoking the extended period of limitation alleging that the goods cleared by the appellant from the factory to the depots were undervalued and duty on such goods was required to be paid on the basis of the Price List in terms of rule 7 of the 2000 Valuation Rules. This show cause notice along with two other periodical show cause notices dated 05.02.2015 and 28.04.2015 covering the period from June, 2009 to December, 2014 were adjudicated by the order dated 28.01.2016.

16. It is against this order that the appellant and Nirmal Uday filed two appeals before the Tribunal. The Tribunal found that the contention of the appellant that they had discharged much higher duty than the amount determined had force and, therefore, required re-verification. The Tribunal also recorded a specific finding that the matter did not require imposition of penalties. The Tribunal also observed that the issue of demand for the extended period requires examination by the adjudicating authority. The Tribunal also noted that the small portion of the demand was even beyond five years.

17. Before the matter was decided by the Tribunal, three more show cause notices were issued to the appellant making the same allegations. All the six notices were decided by the Commissioner by the order dated 26.11.2018 that has been impugned in these appeals. The Commissioner in paragraph 38 of the order has noticed that though the show cause notice alleged that the transaction value has to determine under rule 7 of the 2000 Valuation Rules, but the appellant had in the reply stated that it should be determined in accordance with rule 11 of the 2000 Valuation Rules. The Commissioner

also examined whether the Price List could form the basis of the assessment in respect of depot sales and observed as follows:

> "44. **The next question to be decided by me is as to whether the price list prevailing at the depot can form the basis of assessment, in respect of the depot sales.** The concept of Section 4(1) of the Central Excise Act 1944 is fully based on the transaction value. The Noticee No. 1 has questioned the adoption of the prices mentioned in the price list for the basis of assessment, on the ground that Rule 7 of CEVR, 2000 no where provide such prices to be the basis of assessment and such prices are merely indicative in nature and did not represent the transaction value. **I find that the marketing in charge of the Noticee No. 1 and Noticee No. 2 in their statements had categorically admitted that the prices of the goods were determined according to the Price Lists only and in case of any deviation the approval was required from the Head office of the Noticee. As per the said statements and the conditions mentioned in the Price Lists the Price of particular goods at depot was ascertainable at the time of removal of the same from factory and the duty was required to be paid on that price.** However, the Noticee had not paid the duty on the said Price but paid duty always on a lower price. In most of the consignment the value adopted for payment of duty was even lower to the purchase value of the principal raw material. This also strengthens the fact that the goods were removed at substantial lower price to capture the market. Therefore the judgment if the Hon'ble Supreme Court in case of FIAT India Ltd. will also be relevant here.
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> *****
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> 46. *****
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> **Since the prices shown in the Price lists were payable at the time of removal, the same would be the best price for assessment of the goods for payment of duty in terms of Rule 11 of**

**the CEVR and Section 4 of the Central Excise Act, 1944.**"

**(emphasis supplied)**

18. The contention of the learned counsel for the appellant is that the Price List that was issued to the depots only gave indicative prices for sale of goods. The sale could be at a price higher or lower than the price mentioned in the Price List. In cases where the goods were sold at higher prices than the assessable value adopted at the time of clearance of the goods from the factory, the appellant paid the differential duty and reflected the same in the ER-1 returns filed every month. This fact also emerges from the ER-1 returns that have been filed by the appellant.

19. Rule 7 of the 2000 Valuation Rules is reproduced below:

> "**RULE 7.** Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

20. Rule 11 of the 2000 Valuation Rules is reproduced below:

> "**RULE 11.** If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act."

21. The Commissioner has applied rule 11 of the 2000 Valuation Rules. It provides that if the value of the excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Central Excise Act.

22. Rule 7 of the 2000 Valuation Rules provides that the value shall be the normal transaction value of such goods sold from the depot at or about the same time or at the time nearest to the time of removal of the goods. The purpose of rule 7 is that if the actual transaction value is not available as there were no sale at the time of removal of the goods from the factory, value of contemporaneous sale of goods from the depot can be used as assessable value. Thus, the methodology adopted by the appellant for payment of differential duty in case where the goods were sold from the depots at prices higher than that declared at the time of clearance of the goods from the factory, was closer to the valuation of the goods under rule 7 of the 2000 Valuation Rules.

23. The case of the appellant that the Price List was only indicative is clear from the fact that the goods were sold at times at price lower than the price mentioned in the Price List and at times at a price higher than the price mentioned in the Price List and whenever the goods were sold at a price higher than assessable value adopted at the time of clearance of the goods from the factory, the differential duty was paid by the appellant which is also reflected in the ER-1 returns. Thus, the transaction value could not have been determined on the basis of the prices mentioned in the Price List.

24. The valuation of the goods could not have been determined under rule 11 of the 2000 Valuation Rules on the basis of the prices mentioned in the Price List.

25. It also transpires from the chart referred to by the Commissioner in paragraph 51.2 of the order that for the period from September, 2009 to December, 2013, as against the differential duty payable of Rs. 13,02,67,932/-, the appellant paid an amount of Rs. 16,65,35,816/- which resulted into excess payment of Rs. 3,62,67,884/-.

26. The appellant has also worked out the duty from January, 2014 to June, 2017, which is supported by the Chartered Accountant Certificate. As against the differential duty payable of Rs. 5,98,21,607/- the appellant paid an amount of Rs. 6,80,62,960/-.

27. The show cause notice dated 08.10.2014 has invoked the extended period of limitation on the ground that the appellant did not disclose to the department the pattern of valuation adopted and the Price List and wilfully evaded duty by undervaluation.

28. The appellant had filed the ER-1 returns for the period covered by the show cause notice dated 08.10.2014 and on its own paid the differential duty of Rs. 16,65,35,816/- as against the differential duty payable of Rs. 13,02,67,932/-. Thus, when excess duty was paid, it cannot be said that there was any intention to evade duty by resorting to undervaluation. The appellant had been regularly filing the ER-1 returns and the ER-1 returns reflected the differential duty paid.

29. This apart, mere mis-declaration or suppression is not sufficient. There has to be some positive act and unless there is an intent to evade payment of duty, the extended period could not be invoked. The department had not only to allege but also substantiate by evidence that suppression was with an intent to evade payment of duty.

30. The extended period of limitation, therefore, could not have been invoked in the facts and circumstances of the case.

31. The demand for the period from June, 2009 to August, 2009, is even beyond the period of five years and this period of five years cannot be counted from the date the department acquired the knowledge. This is clearly contrary to what has been provided in the definition of "relevant date" contained in Explanation 1(b) to section 11A of the Central Excise Act.

32. The imposition of penalties upon the appellant, Mukesh Sharma and Nirmal Uday cannot also be sustained for the simple reason that the Tribunal in its earlier order dated 17.10.2017 had made it clear that penalties could not be imposed.

33. Thus, for all the reasons stated above, the impugned order dated 26.11.2018 passed by the Commissioner cannot be sustained and is set aside. All the three appeals are, accordingly, allowed.

(Order Pronounced on **28.11.2025**)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P.V. SUBBA RAO)**
**MEMBER (TECHNICAL)**

Shreya