

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 22542 of 2014

(Arising out of Order-in-Original No. 25/2014 dated 03.05.2014
passed by the Commissioner of Central Excise, Bangalore I
Commissionerate, Bangalore.)

M/s. Onco Therapies Pvt. Ltd.,

Plot No. 284/B,
BJLR Industrial Area,
Jigani Hobli, Anekal Taluk,
Bangalore – 562 103.....

Appellant(s)

VERSUS

Commissioner of Central Excise, Bangalore-I,

C.R. Building,
Queen's Road,

Bangalore – 560 001.....

Respondent(s)

WITH

**(1). Central Excise Appeal No. 20754 of 2016
(M/s. Mylan Laboratories Ltd. (Formerly known as
M/s. Onco Therapies Ltd.)**

(Arising out of Order-in-Original No. BLR-EXCUS-001-
PRCOM-MVK-30-15-16 dated 22.02.2016 passed by the
Commissioner of Central Excise, Bengaluru.)

**(2). Central Excise Appeal No. 21634 of 2016
(M/s. Mylan Laboratories Ltd.-OTL(Formerly M/s.
Onco Therapies Ltd.)**

(Arising out of Order-in-Appeal No. 88/2016-CE dated
26.07.2016 passed by the Commissioner of Central Excise
(Appeals-I), Bangalore.)

**(3). Central Excise Appeal No. 21635 of 2016
(M/s. Mylan Laboratories Ltd.-BLD.(Formerly M/s.
Agila Specialities Pvt. Ltd.)**

(Arising out of Order-in-Appeal No. 89-92/2016-CE dated
26.07.2016 passed by the Commissioner of Central Excise
(Appeals-I), Bengaluru.)

**(4). Central Excise Appeal No. 21636 of 2016
(M/s. Mylan Laboratories Ltd.-BLD.(Formerly M/s.
Agila Specialities Pvt. Ltd.)**

(Arising out of Order-in-Appeal No. 82-85/2016-CE dated 22.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

**(5). Central Excise Appeal No. 21637 of 2016
(M/s. Mylan Laboratories Ltd.-SPD(Formally M/s. Agila Specialities Pvt. Ltd.))**

(Arising out of Order-in-Appeal No. 82-85/2016-CE dated 22.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

**(6). Central Excise Appeal No. 21638 of 2016
(M/s. Mylan Laboratories Ltd.-SPD(Formally M/s. Agila Specialities Pvt. Ltd.))**

(Arising out of Order-in-Appeal No. 82-85/2016-CE dated 22.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

**(7). Central Excise Appeal No. 21639 of 2016
(M/s. Mylan Laboratories Ltd.-BLD.(Formally M/s. Agila Specialities Pvt. Ltd.))**

(Arising out of Order-in-Appeal No. 82-85/2016-CE dated 22.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

**(8). Central Excise Appeal No. 21640 of 2016
(M/s. Mylan Laboratories Ltd.-SPD(Formally M/s. Agila Specialities Pvt. Ltd.))**

Arising out of Order-in-Appeal No. 89-92/2016-CE dated 26.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bengaluru.)

**(9). Central Excise Appeal No. 21641 of 2016
(M/s. Mylan Laboratories Ltd.-SPD(Formally M/s. Agila Specialities Pvt. Ltd.))**

Arising out of Order-in-Appeal No. 89-92/2016-CE dated 26.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bengaluru.)

**(10). Central Excise Appeal No. 21642 of 2016
(M/s. Mylan Laboratories Ltd.-SFF(Formally M/s. Agila Specialities Pvt. Ltd.))**

(Arising out of Order-in-Appeal No. 89-92/2016-CE dated 26.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Bengaluru.)

APPEARANCE:

Mr. Ravikumar Yanamandra, Company Employee for the Appellant
Mr. M. Sreekanth, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order Nos. 20035 to 20045 /2026

DATE OF HEARING: 21.07.2025

DATE OF DECISION: 20.01.2026

DR. D.M. MISRA

These appeals are filed against the respective Orders-in-Original/Orders-in-Appeal passed by the Commissioner of Central Excise / Commissioner of Central Excise (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant an 100% EOU, is engaged in the manufacture and clearance of P&P medicaments falling under Chapter 30 of the Central Excise Tariff Act, 1985. During the course of Audit, it came to the notice of the officers that the appellant had made clearance into the Domestic Tariff Area (DTA) between 2010-2011 and 2011-12 to one M/s. Strides Arcolab Limited, who is their holding company. Initially, the assessable value for payment of Basic Customs Duty (BCD) and Countervailing Duty (CVD) has been computed on the basis of Maximum Retail Price (MRP) of the goods. However, from February 2012, the appellant had changed the method of assessment by discharging BCD on the transaction value at which goods are sold to their holding company M/s. Strides Arcolab Limited and adopted the MRP based assessment for calculation of CVD. The Department alleged that since the value at which the goods were sold by the appellant to their holding company, being a related person, the transaction value adopted by the appellant for payment of BCD cannot be accepted; and in absence of any documentary evidences with regard to the method adopted by the appellant for arriving at the transaction value for calculation of BCD on clearances of goods to their holding company, demand notices were issued demanding differential duty adopting the MRP less abatement

as the value for assessment. On adjudication, the demands have been confirmed with interest and penalty. Aggrieved by the orders wherever the adjudicating authority is not Commissioner, appeals were filed before the learned Commissioner (Appeals), who in turn rejected the Appeals. Hence the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant is an 100% EOU engaged in manufacturing and exporting pharmaceutical products; 80% of their production are being exported and balance 20% sold in DTA. In making clearances to DTA, they discharge excise duty in terms of proviso to Section 3(1) of Central Excise Act, 1944 (CEA, 1944) considering such clearances as if imported into India and duties of customs leviable thereon read with Notification No.23/2003-CE was paid. They have been paying BCD and CVD applicable on the DTA clearances during 2010-11 and 2011-12 on MRP minus abatement basis. However, as held by the Hon'ble Supreme Court in the case of CCE, Nagpur Vs. Morarjee Brembana Ltd. [2015-TIOL-62-SC-CX], valuation for EOU clearances in DTA are to be made in terms of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Customs Valuation Rules, 2007, for short); accordingly, they discharged BCD on the transaction value i.e. price paid or payable on the goods as reflected in the invoice. He has submitted that there is no concept of discharging BCD arriving on the value of MRP minus abatement. He has submitted that earlier they were following a method of determination of valuation which is contrary to the law and hence cannot be made as the yardstick for computing the assessable value adopting the MRP which they have changed to invoice value / transaction value and discharged BCD accordingly on the said

value. Therefore, there is no suppression of fact and hence, extended period of limitation cannot be invoked.

3.2. Further, he has submitted that BCD cannot be computed on the basis of MRP less abatement as per Section 4A of the Central Excise Act, 1944; hence, determination of value by taking the abatement from MRP in discharging BCD is not correct. Such methodology cannot be adopted under Rule 9 of the Customs Valuation Rules, 2007. Learned advocate has further submitted that what cannot be done directly also not permitted to be done indirectly. In support, he has referred to the judgment in the case of Institution of Mechanical Engineers Vs. State of Punjab [AIR 2019 SC 3882]. Further, they have submitted that following various judgments of the Supreme Court, the Tribunal in a series of cases held that BCD for clearances of goods by a 100% EOU into DTA cannot be determined on the basis of MRP minus abatement. In support, they referred the judgment in the case of Maneesh Export Vs. CCGST&CE, Belapur [2024(4) TMI 224].

4. *Per contra*, the learned Authorised Representative (AR) for the Revenue, reiterating the findings of the learned Commissioner / Commissioner (Appeals) has submitted that the appellant had cleared the goods to their holding company which are related as per Rule 2(2) of the Customs Valuation Rules, 2007; hence the transaction value has to be in conformity with the provisions of Customs Valuation Rules, 2007. They had failed to provide any data of import of similar goods as comparable value; therefore, the value of the imported goods had to be determined in accordance with Rule 9 of the Customs Valuation Rules, 2007. Referring to Rule 3(b) of the Customs Valuation Rules, 2007, he has submitted that the transaction value between related parties can be accepted if it is demonstrated by the importer that the value is

in conformity with the value of similar goods imported. It is submitted that the value adopted by the appellant is transfer price and not a sale price. Further, referring to the Board's Circular No.933/23/2010-CX dated 16.08.2010, he has submitted that the procedure for determining the value of the goods cleared from an EOU for sale in DTA rests on various decisions of this Tribunal, which lay down that Custom Valuation Rules, 2007 are to be followed sequentially in determining the value of clearances by a 100% EOU into DTA. Further, he has submitted that the changeover of the assessment practice was to reduce the tax liability substantially which is arbitrary and with an intention to evade payment of duty. In support, he has referred to the judgment of the Hon'ble Supreme Court in the case of Kitply Industries [2011(264) ELT 481 (SC)] and Tech Mahindra Ltd. Vs. CCE, Pune [2015(38) STR 1200 (Tri. Mumbai)]

5. Heard both sides and perused the records.

6. The limited issue involved in the present appeal for consideration is whether the assessable value for DTA clearance for computing Basic Customs Duty (BCD) be determined taking into consideration the MRP less abatement or the transaction value at which the manufactured goods are sold by the appellant to their holding company.

7. Undisputed facts of the case are that the appellant an 100% EOU engaged in the manufacture of pharmaceutical products; cleared 20% of their production to their sister concern discharging both BCD and CVD on the value determined taking into consideration the MRP less admissible abatement as notified under section 4A of CEA, 1944 up to February 2012. Thereafter, they altered the method of valuation, discharged BCD on the transaction value and continued to pay CVD on the MRP less abatement.

8. Revenue objected to the method of determination of assessable value in discharging BCD i.e. on the transaction value. It is proposed in the notice and also confirmed by the adjudicating authority to continue to adopt MRP less abatement as applied for computation of CVD, on the ground that the transaction between the appellant and the buyer, their holding company, being a related transaction, hence in absence of any other comparable value or documentary evidences, the transaction value to be rejected.

9. The objection of the Revenue arose from an audit objection whereunder it is pointed out that on a comparison of the invoices prior to February 2012 and thereafter, it was noticed that there was drastic reduction in the invoice price. Explaining the price difference, it has been stated by the appellant that earlier, the value adopted by them was MRP based value from which the abatement was reduced to arrive at the assessable value on which the BCD as well as CVD had been calculated and discharged accordingly; but post-2012 realising that the BCD paid by them was in excess, accordingly they declared the transaction value and paid duty and continued to pay CVD on MRP less abatement. The Revenue's argument on the other hand is that since the parties to the transactions are related and in absence of any comparable price, the assessable value should be determined resorting to Rule 9 of the Customs Valuation Rules, 2007 in making adjustment of their comparable declared MRP price less abatement applied for determination of CVD. Further, it is the grievance of the Revenue that the appellant had not produced any document in support of the transaction value demonstrating that the price charged to the related party is not influenced by the relationship. No doubt, we agree with the contention of the appellant that MRP less abatement

cannot be the basis for determination of assessable value for the purpose of computation of BCD as held by this Tribunal in the case of Maneesh Export Vs. CCGST & CE, Belapur [Final Order dated 05.04.2024 in Central Excise Appeal No. 86022 of 2015-CESTAT, Mumbai]. However, it is equally true that the claim of the appellant that the comparable price be that of the FOB value of same or similar goods cleared for export be considered to ascertain the transaction value cannot be adopted in view of the judgment of the Hon'ble Supreme Court in the case of CCE, Nagpur Vs. Morarjee Brembana Ltd. [2015-TIOL-62-SC-CX]. In the said case, endorsing the view adopted by the Tribunal that the sale price charged to customer in India of the goods under assessment cannot be considered as a price in the course of international trade, the matter was remanded to the Tribunal to determine the assessable value in accordance with the provisions of Customs Valuation Rules, 2007. Their Lordships observed as follows:-

9. Mr. Radhakrishnan has, however questioned the aforesaid view of the Tribunal and argued that since the respondent is hundred per cent export oriented unit, any sale or clearance of cotton fabric by the respondent to DTP should be treated as transaction sale and therefore Rule 4 would be applicable. However, this argument has to be rejected in view of proviso to Section 3 of the Central Excise Act, 1944 which reads as under :

“Section 3. Duties specified in the [Schedule to the Central Excise Tariff Act, 1985] to be levied. –

(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985 :

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured, --

(i) In a free trade zone and brought to any other place in India; or

(ii) By a hundred per cent export-oriented undertaking and allowed to be sold in India; shall be an amount equal

to the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962), on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).”

10. As is clear from the bare reading of the aforesaid proviso, in those cases where excisable goods are produced or manufactured by hundred per cent export oriented undertaking are allowed to be sold in India, the duty of excise has to be the amount equal to the aggregate of the duties of customs which would be leviable under Section 12 of the Customs Act, on like goods produced or manufactured outside India if imported into India and where the said duties of custom are chargeable by reference to their value, the value of such excisable goods shall be determined, in accordance with the provisions of the Customs Act and Customs Tariff Act, 1975.

11. Keeping in view the aforesaid proviso to Section 3 of the Central Excise Act, in our opinion the Tribunal has rightly held that the sale price charged to customer in India of the goods under assessment cannot be considered as a price in the course of International trade. To this extent we do not find fault with the view taken by the Tribunal.

12. As pointed out above, if Rule 4 is not applicable, the valuation of the goods has to be arrived at by applying Rules 5 and 8 in sequential order. It is here, as noted above, the Tribunal fell in error as applicability of Rules 5 and 6 depended on certain factual aspects which had to be gone into. The Tribunal has made certain observations on facts but without any material before it.

13. The appropriate course of action for the Tribunal, in such a given situation was to remit the case back to the Commissioner to decide the issue after allowing the appellant to produce evidence in this behalf.

14. We, therefore, set aside that portion of the order whereby the Tribunal has held that Rule 7 of the Valuation Rules shall be applicable to arrive at the transaction value. The matter to this limited extent is remitted back to the Commissioner who shall decide as to which Rule of the Valuation Rules, 1988 shall be applicable, after giving opportunity of hearing to the respondent and also to produce whatever material it wants to produce in support of its contention that Rule 7 is applicable. The appeals are disposed of in the aforesaid terms.

10. Therefore, in the present case, the determination of assessable value applying the MRP less abatement cannot be

acceptable; however, the assessable value be determined by applying Rule 4 to 8 of Customs Valuation Rules, 2007 in absence of evidence / documents to show the transaction value is the genuine one in view of the relationship between the appellant and the purchasers. In the result, the impugned orders are set aside and the appeals are remanded to the adjudicating authority for *de novo* consideration. Appeals are disposed of by way of remand.

(Order pronounced in Open Court on 20.01.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...