

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg, CIVIL LINES, ALLAHABAD

Dated: 29/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70122-70123/2015 & MO/70054-70856/2015 dated 16/12/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar / SPS

Application	Appeal	Name and Address of Appellant
E/50263/15 & 55882/2014		UFLEX LTD
E/MISC/51530 & 70090/2015		A-1, SECTOR-60 NOIDA(UP)-201301

Name and Address of Respondent
CCE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SHI ARVIND ARORA ADV
H.NO432, SECTOR 16-A
FARIDABAD(HARYANA))

- 4 Bar Association, CESTAT, Delhi
- 5 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Phamah Marg, New Delhi-3
- 7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram Street, T. Nagar, Chennai-17
- 8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
- 9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iconic Mall, Satellite Road, Ahmedabad-15
- 10 LAWCRUX Advisors Pvt. Ltd., LAW House, F-8, Sector-10, Faridabad 121003 (Haryana)
- 11 TaxJudiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
- 13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad-500082
- 14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar / SPS
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

**MA (EH)-51530 & 70090/15
& Ex. Appeal Nos.50263/15 & 55882/14**

Arising out of O/O Nos.29/Commissioner/Noida/2014-15 dt.
29/30.09.2014 & 27/Commissioner/Noida/2014-15 dt. 27.08.2014,
both passed by Commr. of Central Excise, Customs & Service Tax,
Noida

For approval and signature:

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)**

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1. Whether Press Reporters may be allowed to see
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982? : No
 2. Whether it should be released under Rule 27 of the
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not? : Yes
 3. Whether His Lordship wishes to see the fair copy
of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental
Authorities? : Yes
-

M/s Uflex Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & S. Tax, Noida
RESPONDENT (S)

APPEARANCE

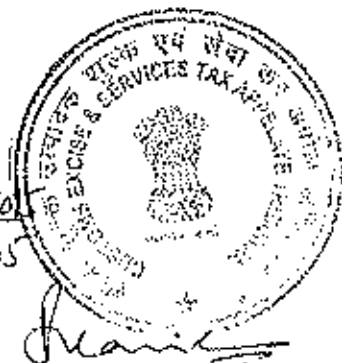
Shri Arvind Arora, Adv. for the Appellant (s)
Shri M. K. Sarangi, Joint.Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 16.12.2015

Final. ORDER NO. 70122-70123/2015
MISC ORDER No. 70054-70055/2015



Per Mr. B.Ravichandran :

These two appeals against orders dated 27.08.2014 and 29/30.09.2014 are taken up together as the issue covered is same. The appellants are engaged in the manufacture of polyester film, shim, BOPP and articles of plastics liable to Central Excise duty. They are availing cenvat credit on various inputs, capital goods and input services. Proceedings were initiated against the appellant for demanding differential duty on captively consumed "hard copy shim" used in the manufacture of exempted final product hologram. Revenue felt that the valuation of the said shim was not proper under Rule 8 of Central Excise Valuation Rules, 2000. The main thrust of allegation by Revenue is that shim manufactured and consumed captively by the appellant are not properly valued because the technical expertise which goes into the product is indeterminable by the present method of CAS-4. In other words that 110% of cost of production is not applicable or reliable in the present case. The intangible cost not capable of being booked in the books of accounts and has been recovered by the sale of finished goods is not getting added in the CAS-4 valuation adopted by the appellant. Accordingly, the Revenue proceeded to arrive at the value of the impugned goods by applying principles under Rule 11 of Central Excise Valuation Rules, 2000. The Revenue evolved a formula as :

Value of shim = value of holograms (-) value of stamping foil and release paper. The manufacturing, selling and other related expenses attributable to the sale value of holograms and depreciation of fixed assets were allowed as deductions.



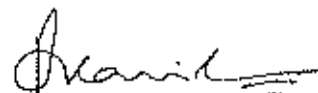
2. The show-cause cum demands were adjudicated by the original authority confirming the demands and imposing equal penalties. Aggrieved by these orders, the appellant is before us.

3. The Id.Counsel for the appellant, Shri Arvind Arora, submitted that the whole proceedings against the appellants were mis-conceived without any authority of any provisions of law. His main contentions are :

(a) There are factual errors in reasoning given by original authority. The hard copy shim, now under consideration, is not at all comparable to soft shim, which is manufactured by them on job work basis. Hard copy shim, has a small printing area of 150 mm x 150 mm, whereas soft shim has a printing area of 1205 mm x 305 mm and is more than twice in thickness and 16 times in area. They never sold hard copy shim during relevant period ;

(b) Hard copy shim is classifiable under CTH 84425010. These are manufactured and captively consumed in the manufacture of exempted holograms. Rule 8 of Valuation Rules is clearly attracted in such situation. The costing has been done as per CAS-4 standards. The mind/expertise/technology have all been duly factored in by the appellants in their books of accounts. No extra external expenditure was ever alleged or proved by Revenue ;

(c) There is absolutely no authority or sanction under law to follow deductive method of valuation - starting from finished final product cleared on sale to arrive at cost of intermediate product captively used in the manufacture of such finished goods ;

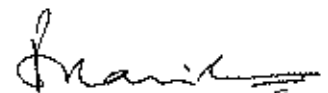


(d) The appellants are eligible for exemption under Notification No.67/95-CE dated 16.03.1995 as the hard copy shim falling under Chapter 84 is indisputably a "capital goods" manufactured by them for captive use. The proviso to the said Notification is applicable only to "inputs" as a bar for exemption in the case of use for exempted final products.

The Id.Counsel also submitted copies of various case laws in support of his above contentions. These are examined later in the discussion.

4. The Id.A.R., Shri M. K. Sarangi, reiterated the findings in the impugned order. He submitted that the CAS-4 standard adopted by the appellant for arriving at 110% of the cost for Central Excise duty did not reflect the true value. Regarding claim of the appellant for exemption under Notification No.67/95, he reiterated the findings of the Id.Commissioner regarding harmonious reading of the said notification with provisions of Rule 6 (4) of Cenvat Credit Rules, 2004.

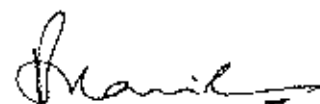
5. We have heard both the sides and examined appeal records. The points for decision are (a) whether or not the appellant are correct in following Rule 8 and CAS-4 standard to arrive at the value of captively consumed hard copy shim and (b) eligibility of the appellant for exemption under Notification No.67/95-CE dated 16.03.1995 for captively consumed hard copy shim as 'capital goods.' On the first point, we find that hard copy shim is an excisable product manufactured and fully put to captive use by the appellant. For arriving at the value for Central Excise purpose, the appellant followed provisions of Rule 8 and general principles of costings as per CAS-4 standards. This is also in terms of Board's Circular dated 13.02.2003.



Now, we find that the value adopted by the appellant was sought to be rejected by the Revenue without any valid legal grounds. The following points are relevant :

- (a) The correctness of CAS-4 calculation itself has not been questioned with supporting evidence by Revenue ;
- (b) No extra expenditure on supposed complex security feature of the impugned goods has been alleged ;
- (c) The Revenue did not initiate action independently to ascertain by another Cost Accountant whether the CAS-4 calculation by appellant is correct or not ;
- (d) The additional cost of "mind/technology" is not to be presumed and Imported as a concept outside the perimeters of Valuation Rules and costing standards ;
- (e) There are no allegation or evidence that the manufacture of hard copy shim will involve additional cost not reflected in the books of accounts.

Apart from the above, we find that the Revenue adopted highly arbitrary and imaginative methodology to arrive at the value of these impugned goods. The value of shim is arrived at from the value of final product - hologram - by deductive method. This is not supported by any provisions of law or approved standards of accounting/costing. The best judgement under Rule 11 of Valuation Rules does not permit such arbitrariness and imaginative valuation. The case laws relied on by Revenue has no bearing or relevance to the issue in hand. In Steel Complex Case : 2004 (171) ELT 255 (Tri.-Bang.), the Tribunal held that Rule 8 would be unreliable in case the manufacturer is incurring



huge losses. The ratio of this decision will not support the view that in present case because of huge profit, the CAS-4 standard should be discarded. It will result in a situation that the percentage of profit earned on final product will be added to the cost of intermediate product also. No legal sanction is available for such preposition.

6. We find that the principles laid down by the Hon'ble Supreme Court in the case of Cadbury India Ltd. : 2006 (200) ELT 353 (SC) are applicable to the present case. The Hon'ble Supreme Court held that the Department is also bound by the Circular dated 13.02.2003.

7. Regarding the second point for decision, we find that the impugned goods are admittedly "capital goods" falling under Chapter 84 of CET. The provisions of exemption Notification No.67/95-CE dated 16.03.1995 is clearly applicable to the impugned goods as they are used captively within the factory of production. The exclusion provided in the proviso of the said notification shall apply only to inputs not capital goods. We find the reasoning given by the original authority to deny the said exemption as totally misconceived. Rule 6 (4) of Cenvat Credit Rules, 2004, has no application to decide the eligibility of above said exemption. The said Rule is for non-eligibility of credit on capital goods used exclusively in the manufacture of exempted goods. In the present case, the appellant is not claiming any credit on capital goods. In fact, the appellant is manufacturing the capital goods and is claiming exemption under Notification No.67/95-CE dated 16.03.1995. Here, we find that the Id.Commissioner's finding is absolutely without basis and is erroneous. Reliance can also be placed on the decision of Tribunal in Hero Cycles

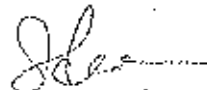


Ltd. : 2004 (165) ELT 540 (Tri.-Del.) and Siemens Ltd. : 2004 (176) ELT 299 (Tri.-Mum.). The Hon'ble Supreme Court in Novopan India Ltd. : 1994 (73) ELT 769 (SC) observed that a notification has to be interpreted in the light of the words employed by it and not on any other basis. The exemption is to be applied by the language and plain terms of the notification.

8. In view of the above discussion and findings, we hold that the appellant will succeed on both the grounds viz. : valuation adopted in terms of Rules and CAS-4 standards and eligibility for exemption under Notification No.67/95-CE dated 16.03.1995. Accordingly, the appeals are allowed. The Miscellaneous Applications are also disposed off.

(Operative part of the Order was pronounced in the open Court)


(B. RAVICHANDRAN)
MEMBER (TECHNICAL)


(A. CHOUDHARY)
MEMBER (JUDICIAL)

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