

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066  
EXCISE APPEAL BRANCH

Appeal No. E/2864&5320-5321/2004

Date 22/10/2007

Assistant Registrar  
C.E.S.T.A.T. New Delhi

To :  
M/S MALWA COTTON SPG.MILLS LTD.  
VILL-HARIAN KOHARA MAHIWARA ROAD  
LUDHIANA

M/S MALWA COTTON SPG.MILLS LTD.

C.C.E. LUDHIANA

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 520-522/07 dated 04/10/07  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUDHIANA & C.C.E., CHANDIGARH

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,  
LUDHIANA 141001 (PUNJAB)

2. Adv. Consult

SH. K.K. ANAND,

A-5, BASMENT,

LAJPAT NAGAR-III

N. DELHI

3. EDR

4. ICDR

5. Bar association, CESTAT, New Delhi

6. M's. Deeparchi Publications, M-93, marg. 43, saket, New

7. M's Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co. Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

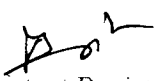
14. Office Copy

15. Guard file

2. M/S. MALWA COTTON SPG. MILLS LTD.

VILL. PATLIAN PAONTA SAHIB

DISTT. SIRMOUR (HP)

  
Assistant Registrar  
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Block No.2, R.K. Puram, New Delhi – 110066  
Principal bench, New Delhi

APPEAL NO. E/2864, 5320-5321/04 - Mum

(Arising out of Order-in-Appeal No. 164/CE/Appl/LDH/2004 dated 28.02.2004 passed by Commissioner (Appeals) Central Excise, Ludhiana & 568-569/CE/CHD/2004 dated 30.07.2004 passed by Commissioner (Appeals) Central Excise, Chandigarh)

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President  
Hon'ble Shri K.K. Agarwal, Member (Technical)

- =====
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 Their Lordships wish to see the fair copy of the Order? : Seen
  4. Whether Order is to be circulated to the Departmental authorities? : Yes

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1) M/s Malwa Cotton Spg. Mills Ltd. Appellant  
2 & 3) Commissioner of Central Excise, Ludhiana

Vs.

1) Commissioner of Central Excise, Chandigarh Respondent  
2 & 3) M/s Malwa Cotton Spg. Mills Ltd.

Appearance:

Shri K.K. Anand Advocate for Appellant

Shri Vinay Choudhary D.R. for Respondent

CORAM:

Hon'ble Ms. Jyoti Balasundaram, Vice President  
Shri K.K. Agarwal, Member (Technical)

Date of Hearing: 04.10.2007

Date of Decision: 04.10.2007

Final ORDER NO. 520 To 522 / 2007 EX

14.

**Per : Shri K.K. Agarwal, Member (Technical)**

These are three appeals, two by revenue and one by the respondent M/s Malwa Cotton Spinning Mills Ltd. Since, the issue involved in the three appeals is the same, they are being decided through a common order.

2. The brief facts of the case are that M/s Malwa Cotton Spinning Mills Ltd. are engaged in the manufacture of cotton yarn and MM yarn and were selling the same through their depots located at different places. Under the new valuation rules, the duty was required to be paid at the price at which the depot was selling the goods. Since, the exact value of the finished goods sold through depot ~~were~~ not known at the time of clearance from the factory gate, the goods were being assessed provisionally and after submission of data regarding value of goods at which goods were actually cleared by depots, assessment were being finalized. They were issued a show cause notice seeking to withdraw the facility of provisional assessment as the CEGAT order on the basis of which, the provisional assessment were being made became inoperative ~~in-capable~~ from the date of introduction of new valuation rules 2000. The appellants submitted details in respect of goods cleared through various depots and debited duty amounting to Rs. 5,84,289.24 for the period January 2002 to March 2002 and Rs. 1,56,516.55 for the period October 2002 to November 2002 and requested for finalization of provisional assessment for the above said period. They also submit <sup>full</sup> details for the period 04/02 to 09/02 and 12/02 to 01/03 along with details of debited amount of differential duty amounting to Rs. 5,83,934.41 and Rs. 1,10,212.45

3. During the scrutiny of the aforesaid final depots sale figures statements submitted by the assessee, it was noticed that they were calculating the differential duty in respect of their goods transferred from the factory to their various depots by comparing the transfer price [declared assessable value at factory gate] with the average price prevailing in the depots at that time or in the nearest time and depositing/debiting the duty voluntarily before submitting the data to the department. As the appellants were transferring their finished goods to their depots for further sale of goods, they were required to pay Central Excise Duty on these finished goods in terms of Rule 7 of the Valuation Rules i.e. on the normal transaction valued prevailing at the depot, at or about the same time or at the time nearest to the time of removal of goods from the factory. If there were sales at different prices on the same day, as per Rule 2(b) of the Central Excise Valuation Rules, 2000, the price on which greatest aggregate quantity was sold was to be adopted as normal transaction value. Since, this was not done, a show cause notice was issued seeking to demand duty on the basis of price at which the greatest aggregate quantity was sold on a particular date instead of the average price adopted by the assessee.

4. Further, it was noticed that during the calculation of differential duty on goods transferred on provisional basis, the assessee was claiming cash discount in respect of cotton yarn and synthetic yarn from their various depots. However, during scrutiny of depot invoices, it was noticed that they have passed on the cash discount in ~~depot~~ <sup>invoices only</sup> in respect of some of the depots and hence <sup>why</sup> ~~required~~ <sup>the appellant were asked</sup> them.

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to pay duty on such cash discount which was not reflected in the invoices of the rest of the depots.

5. The show cause notice was adjudicated by the Deputy Commissioner who confirmed the demand along with interest and imposed penalty. On appeal, the entire duty was set aside except for a small amount. The assessee pleaded before the Commissioner (Appeals) that the adoption of average value has not resulted in short payment as in some cases they have paid more duty on account of the fact that the price on which the aggregate greatest quantity was sold on a particular day was less than the declared price while in other cases, it was more than the aggregate price. Since the assessments were provisional, the excess and shortage were required to be adjusted <sup>such adjustment</sup> will result in nil payment of duty and accordingly the demand is not sustainable. As for the cash discount, it was submitted that they were passing on the cash discount to various buyers, as per the sale policy. The extent of cash discount to various customer depended upon the date of actual payment. Hence, in such transactions, where the cash discount was known at the time of issue of invoice, the same were shown on the invoice itself, however, on other transactions, the cash discount was passed on subsequently by way of credit notes. The department did not consider these credit notes and has raised the demand. ~~The~~ Commissioner (Appeals) agreed with the plea taken by the appellants and held that so far as the payment of duty on average price is concerned, the same was in order upto 01/07/02 as the CEGAT decision, on the basis of which the duty was to be charged at the greatest quantity sold on the <sup>same day</sup> ~~say~~ was effective from 01/07/02, therefore,

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he did not disturb the demand of duty for the period January 2002 to June 2002 but ordered refund of duty amounting Rs. 771.21 for the period July 2002 to September 2002 and confirmed duty amounting to Rs. 3,777.86 for the period October 2002 to January 2003. Revenue is in appeal against the above order of the Commissioner (Appeals) which has decided two appeals filed by the assessee through a common order.

6. In the revenue's appeal, it has been submitted that as per Rule 2 (b) of the Central Excise Valuation rules, normal transaction value is the price at which greatest aggregate quantity of goods is sold and this definition was incorporated in valuation rules, 2000 w.e.f. 01/07/2000. The circular dated 01/07/2002 referred to by the Commissioner (Appeals) only clarifies the rules and therefore the value has to be determined on the basis of greatest aggregate quantity value w.e.f. 01/07/2000 itself and not from 01/07/2002 as held by the Commissioner (Appeals). It has been further contended that Commissioner (Appeals) has allowed adjustment of Rs. 1,25,292.27 and Rs. 1,02,951.31 as claimed by the assessee towards refund arising out of cases when their assessable value was more than the price on which greatest aggregate quantity was sold. However, the assessee neither submitted the details of calculation to the adjudicating authority nor it has been discussed in the order in appeal as to how this figure has been arrived at. Further, Commissioner (Appeals) has allowed the cash discount to the appellant without determining as to whether cash discount has been really passed on to the buyers or not as assessee has not produced any documents/vouchers, debit notes before the adjudicating authority.

There is no evidence to show that credit notes related to cash discounts only. It was also submitted that penalty is imposable on the party as they have tried to evade payment of duty by taking inadmissible deductions in violation of Valuation Rules 2000.

7. The learned advocate for the respondents M/s Malwa Cotton Spinning Mills submitted that so far as the requirement of paying futy at the price of greatest aggregate quantity is concerned, they are agreeing that the same shall be applicable w.e.f.01/07/00 but it is their contention that there are cases where there has been excess payment of duty also and once this excess payment is adjusted, there will not be any requirement of payment of duty. It was submitted that since the assessment are provisional, the excess and shortages are required to be adjusted against each other and once the excesses are ordered to be adjusted against shortages they have no objection if the matter is remanded back to original authority for this purpose.

8. As regards the cash discount, it was submitted that as per the practice followed by them the invoices are issued showing the full value of duty, as they do not know the time period, which the customers will take in making the payment and accordingly the discount availed is not known to them at the time of issue of invoice but customers know about the rate of discount applicable to him and at the time when he finally makes the payment, he reduces the invoice amount to the extent of admissible discount and therefore the net payment received by them is the invoice value minus the discount adjusted by the customer at his end before making any payment. For the purpose of adjusting the entry in the book of accounts, a credit note is issued to the customers,

which is on paper only but the fact remains that discount is availed by the customers before making payment and it is not refunded to them by way of credit notes. Therefore in all cases, where the department has alleged that the discount was not passed on to the customers by some depots, the fact is that though the invoice is issued for the full value, payment was received by adjusting the admissible discount by the customers. They submitted that in an identical matter in their own unit, the above practice was brought to the notice of the Tribunal and Tribunal has vide its order No. 1350-51/06-SM dated 30/08/06 remanded the matter back to the original authority to consider their claim by looking into the book of accounts with liberty to the appellants to produce a certificate from Chartered Accountant in support which may be considered by the adjudicating authority. He, therefore, submitted that the matter <sup>of</sup> for cash discount in the present appeal may also be remanded back to the adjudicating authority.

9. We have considered submissions, we hold that so far as the payment of duty on the goods cleared from the depot is concerned, the respondents M/s Malwa Cotton Spinning Mills are required to pay duty at the price at which the greatest aggregate quantity is sold on a particular date in terms of Valuation Rules 2 (b) of Valuation Rules 2000 which is applicable from 01/07/2000 itself and since the respondents are claiming that there has been excess payment as well as shortages which are yet to be determined, we set aside the order of the Commissioner (Appeals) and remand the matter to the original adjudicating authority with a liberty to the respondents to submit the details of calculation of excess and short payment made by them which

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shall be scrutinized and verified by the revenue to arrive at the final amount of duty, if any liable to be paid or to refund as the case may be. The adjustment already allowed by the Commissioner are also set aside. The amounts have to be arrived afresh after scrutiny and verification by the revenue.

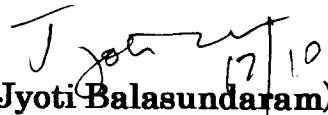
10. As regards, cash discount since it is the appellant's claim that they do not receive full payment against the invoices wherever they have given the cash discount and the amount received from the customer was the invoice value minus the admissible discount, this claim needs to be verified by the department and if found to be correct, the discounts are to be allowed as per Larger Bench decision of the Tribunal in the case of S. Kumars Limited as reported in 2003 (153) E.L.T 217. This matter is therefore remanded back to the original authority to verify the practice followed by the appellants, as per their claim and thereafter decide the admissibility of the cash discount.

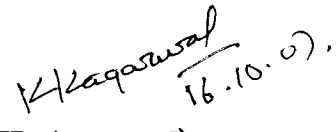
11. As regards appeal No. E/2864/04, FILED BY m/S Malwa Cotton Spinning Mills regarding denial of refund claim on account of unjust enrichment relating to the duty paid by the appellants on the cash discount, since the issue of admissibility of cash discount itself has been remanded back to the original authority, this matter also needs a remand to take a fresh view on the refund claim, Once it is found that cash discounts are admissible the refund claim should be considered accordingly by taking into account the fact that the appellants have actually not recovered the duty first and then passed on the discount by credit notes as the amount received by them was less than the discount

and the credit notes were only to reconcile the entries in their books of accounts.

12. All the three appeals are allowed by way of remand, as per above terms.

(Pronounced in Court)

  
(Ms. Jyoti Balasundaram)  
Vice President

  
(K.K. Agarwal)  
Member (Technical)

Sss/