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

Appeal No. E/4768/2004-4769/2004 Date 19/06/2008

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

To :
M/S SPEEDWAYS RUBBER COMPANY
SUCHI PIND, G.T. ROAD, BYE PASS, JALANDHAR
M/S SPEEDWAYS RUBBER COMPANY Appellant
Vs
C.C.E. ~~CHANDIGARH~~ JALANDHAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 344-345/2008 Excise dated 04-6-08

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. ~~CHANDIGARH~~ JALANDHAR
   ~~PLOT NO 19, SEC 17-C, CHANDIGARH~~
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

1 M/S SENIOR RUBBER FACTORY
LAMBA PIND, G.T. ROAD, BYE PASS, JALANDHAR

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI, COURT NO.1

EXCISE APPEAL NOS.4768-4769 OF 2004

Date of Hearing/Decision: 4.6.2008

[Arising out of order-in-appeal Nos.312-314/CE/APPL/JAL/2004 dated 30.6.2004 passed by the Commissioner (Appeals), Central Excise, Jallandhar (Hqr. at Chandigarh]

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	:	NO
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

Speedways Rubber
Senior Rubber Factory

Appellant
[Rep. by: Shri Sudhir Malhotra, DR]

Versus

CCE, Jallandhar

Respondent
[Rep. Shri V.Chaudhry, Jt.CDR]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL **ORDER** 344-345/08-EX

Per M. Veeraiyan:

These two appeals arise from the same order-in-appeal and involve a common issue and therefore, are being dealt with by a common order.

2. Heard both the sides.

3. (I) The appellants are manufacturers of tread rubber falling under Chapter 40 of the Schedule to Central Excise Tariff. They have sold part of the goods to independent dealers/parties and about 60% through their sister concerns who are held to be related persons.

(II) The Department has adopted the price at which thread rubber was sold to independent dealers/parties as assessable value in respect of clearances made to related parties as well. The duty demanded from Speedways Rubber Company is Rs.19,657/- and from Senior Rubber Factory is Rs.30,282.16.

(III) The contention of the appellants is that they were selling substantially higher quantity to the tune of about 60% to the related persons and therefore, they were granting a discount of 4.6% to the said related persons. He submitted that their sister concerns who are lifting such huge quantity should be treated as a separate class of buyers and in view of the bulk sales involved the discount of 4.6% should be allowed.

4. The learned advocate relies on the decision of the Hon'ble Supreme Court in the case of **Metal Box India Ltd.** cited in 1995(75) ELT 449(SC) in support of his contention that bulk buyers are entitled to special discount as a distinct class.

5. We have carefully considered the submissions. The dispute relates to the period prior to 1.7.2000. The appellants were selling part of the goods through non-related persons. As a result, normal price under Section 4(1) (a), as it stood at the relevant time, was available. The sister concerns which were buying the tread rubber were not selling but were using for the

purpose of retreading of tyres. The decision in the case of **Metal Box Ltd.** does not relate to a situation where the class of buyers are related persons. Under these circumstances, the Department's adoption of normal price which was available for transactions made to non-related parties cannot be assailed. It is also noticed that there is a clear finding that the appellants have neither disclosed the quantum of sales of the previous year to the related buyers nor did they furnish any data relating to individual sales to independent buyers and that they did not produce evidence that the discount was available to all buyers who are lifting quantity in excess of specified limit. In the light of the above, we do not find any reason to interfere with the order of the Commissioner (Appeals).

6. The appeals are rejected.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

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