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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/2665/2007-2667/2007 Date 08/07/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

SH. MANAN AGGARWAL ,DIRECTOR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 418-420/08- **Excise** dated 4-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
SH. MANAN AGGARWAL ,DIRECTOR
M/S ACCORD DISTRIBUTORS (P) LTD. (FORMERLY M/S HIM GEARS (P) LTD. ,203, SEC-6, PANCHKULA, (HARYANA)
2. Adv. / Consult SH. RAVI RAGHVAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI - 29
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)

P.T.O.

1, SH. HIM TEKNOFORGE LTD.
VILLAGE BILLANWALAI, INDUSTRIAL AREA, BADDI, DISTT. SOLAN
2 SH. RAJIV AGGARWAL DIRECTOR
M/S HIM TEKNOFORGE LTD. VILLAGE BILLANWALAI, INDUSTRIAL AREA, BADDI, DISTT. SOLAN

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K Puram, New Delhi-110066

COURT-III

Date of hearing:30.6 .2008

Central Excise Appeal Nos.2665 -2667 of 2007

Arising out of the order in appeal No.226-228/CE/CHD/2007 dated 6.7.07 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M.Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 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

Appellant		Respondents
C.C.E., Chandigarh	vs.	1. Shri Manan Agarwal, Director of M/s Accord Distributors (P) Ltd. [Formerly M/s Him Gears (P) Ltd.] 2. M/s Him Teknoforge Ltd. 3. Sh. Rajiv Agarwal, Director

Appearance:

Shri V.K. Agarwal, Authorized Departmental Representative (DR) for the Revenue and Shri Ravi Raghvan, Advocate for the respondents

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 418-420/08-Ex

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has preferred the present appeals. We have heard Shri V.K. Agarwal, learned SDR appearing for the Revenue and Shri Ravi Raghvan, learned Advocate appearing for the respondents.

2. The dispute relates to valuation of the goods manufactured by M/s Him Teknoforge Ltd. and sold by them to M/s Him Gears (P) Ltd.. It was the Revenue's case in the show cause notice dated 31.7.06 that M/s Him Gears (P) Ltd. are related persons to M/s Teknoforge Ltd. As such, the value of the goods sold by them to M/s Him Gears (P) Ltd. should be on the basis of the selling price of Him Gears (P) Ltd. The original adjudicating authority confirmed the demand and imposed penalty which was set aside by the Commissioner (Appeals) vide his impugned order.

3. There is a clear finding by the appellate authority that the entire goods are not being sold by the respondents to M/s Him Gears (P) Ltd. and there is sufficient sales to the other independent buyers. He has also given a categorical finding that after comparing the prices of various models cleared to M/s Him Gears and as also to independent parties to show that either the prices were more or less the same or in some cases , the same are below the normal price. or ~~Sales~~ in some cases, ~~to M/s Him Gears (P) Ltd.~~, the same were above normal price. For better appreciation, we reproduce para 49:

"49. I further note that the charge of 'related persons' made out in this case is based upon the observations that S/Sh. Manan Agarwal Director of HIM and Rajeev Agarwal (Director of appellant) are relatives to each other. The other observation is that the goods sold by the appellant to M/s HIM are directly consigned to the buyers of HIM by making sales in transit. It is also imputed that the prices charged by HIM from their buyers through their invoices wree about 30 – 40% higher than the prices at which the appellant were selling their goods. The charge of 'related person' by alleging HIM as the inter-connected undertaking of the appellant under Section 4(3)(b) has been discussed above and found to be not proved. As regards the sale in transit made by the appellant to HIM when the goods are directly consigned to the buyers of HIM, I note that such sales are permitted under Section 6A of CST Act, 1956 and the appellant as well as HIM had given endorsement on the body of the invoices certifying that the sale has been done in transit by endorsing the documents under Section 6A of CST Act, 1956 under E-1 form. The transit sales are permitted legally under CST Act, 1956 and as such, nothing adverse can be noticed from such transactions. The appellant and HIM having been held to be not 'related persons', the sales made by the dealers of HIM no longer remain as the wholesales but are retail sales. In this case, the demand of duty has been worked out by taking out the prices charged by dealers of HIM as the wholesale prices which is not correct in view of the above position. In any case, if the prices charged by the dealers of HIM are to be taken for assessment purpose then those have to be first converted from the retail price to the wholesale price since the assessment under Section 4 is on wholesale price. There are a number of judgments which provide straightway abatement of 25% from the retail sale price to work out the wholesale price. In addition to that, other permissible deductions have also to be taken into account while computing the assessable value. Following this, the wholesale price so arrived at shall be near to the wholesale price charged by the appellant from their other dealers. The appellants have submitted charts showing the comparative wholesale prices charged by them from their dealers as well as from HIM. On perusal of these charts it is found that the prices charged by the appellants from their dealers are more or less the same as charged from HIM. However, there are instances where the price charged from HIM is lower than the price charged from the other dealers. But there are also instances where the price charged form HIM is higher than charged from the dealers briefly the chart is given below:

.. ..

So it is observed that it is not the case that the prices charges by the appellant from HIM are always lower than the prices chargd from the other dealers. This shows that the appellants are not resorting to any undervaluation of the goods sold to the buyers of HIM. Therefore, no case of any undervaluation against the appellant is made out. The valuation adopted by the appellant under Section 4(1)(a) is held to be correct in the case of HIM and the Valuation Rules as alleged in the case are not applicable in the given facts and legal position of the issue involved."

4. The Revenue in their memo. of appeals have again reiterated the grounds as regards the valuation since the respondents M/s Him Gears (P) Ltd. have to be treated as related persons, inasmuch as, the Directors in both the cases being uncle and nephew. We find that the two units are Limited companies having independent existence and the ~~some~~ sales made by one cannot be held to be same sale to their related persons. Apart from the above, we do not find an effective rebuttal to the finding of the Commissioner (Appeals) that the prices are more or less the same or even higher than the prices charged from independent buyers. As such, we find no merits in the present appeals filed by the Revenue and reject the same.

(Pronounced in the open Court)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

scd/