

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

Appeal No. E 5068 2008

Date 23/07/2008

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

To:
M/S CANON INDIA LTD.
A-23, SECTOR-59, NOIDA (UP)

M/S CANON INDIA LTD.

C.C.E. NOIDA

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 504 2008-**

Excise dated **18-7-08**

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


Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. NOIDA

B-123, SECTOR 5, NOIDA

2. Adv. Consult

SH. R. RAGHAVAN, ADV.

B-6/10, S.J. ENCL. N. DELHI-29

3. ~~C.D.R.~~

~~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 Publications (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

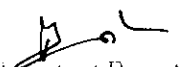
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

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)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III**

Excise Appeal No. 5068 of 2004

[Arising out of Order-in-Appeal No. 270-CE/APPL/NOIDA/04 dated 27.08.2004
passed by the Commissioner of Central Excise (Appeals), Noida]

Date of hearing/decision: 11.07.2008

Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

M. Veeraiyan

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?	Yes
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Canon India Pvt. Limited

Appellant
[Rep. by Mr. Ravi Raghavan, Advocate]

Vs.

CCE, Noida

...Respondent
[Rep. by Mr. V. Chaudhry, Jt. CDR]

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

FINAL ORDER 504 / 08 - EX

Per: M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 270-CE/APPL/NOIDA/04 dated 27.08.2004.

2. Heard both sides.

M. Veeraiyan

3. The relevant facts, in brief, are as follows:-

(a) Appellant is engaged in the manufacture of photocopiers in their factory at Noida. They sell the photocopiers directly to end customers/users based on contract between the company and the end users. The appellant claimed abatement at 28% of the retail price to arrive at value in terms of Rule 6(a) of the Valuation Rules, 1975. The appellant submits that their marketing pattern is identical to that of their competitor M/s Modi Xerox Limited and therefore claims abatement at the same rate as claimed by their competitor M/s Modi Xerox Limited.

(b) The original authority by his order dated 31.8.2001 held that deduction at the rate of 28% from the retail price cannot be allowed. He also recorded the findings that the appellant has not produced any relevant details except relying on the decision in the case of Modi Xerox Limited, one of their competitors.

(c) On appeal, Commissioner (Appeals) considered the various submissions by the appellant and determined the admissible retail margin as 12.29%; he disallowed the expenses on account of advertisement and sales and promotion and bad debts which together account for 16.53% holding them as cost of manufacture and the same cannot be considered as retail expenses.

4.1. Learned Advocate submits that the product manufactured by them is comparable to that of M/s Modi Xerox Limited; their marketing pattern and marketing pattern of M/s Modi Xerox Limited are also identical; in the case of Modi Xerox Limited 28% reduction on retail price has been allowed by the Tribunal which has been upheld by the Hon'ble Supreme Court. This decision of Modi Xerox Limited has been followed in the case of HCL Limited vs. CCE, Meerut reported in 2001 (133) ELT 102 (Tri. Del.).

4.2. He further submits that their claim for 28% discount is also supported by clarification issued the Board in 1975 relating to valuation of goods sold in retail.



5. Learned DR submits that the appellant has been claiming the benefit made available to M/s Modi Xerox Limited by way of abatement of 28% from retail price. They have not substantiated their claim before the original authority as well as the Commissioner (Appeals). The Commissioner (Appeals) have gone into the decisions relied upon by the appellant in support of their claim and found not acceptable.

6. We have carefully considered the submissions from both sides. The relevant portions of the instructions of CBEC relating to valuation of goods sold in retail are reproduced below:-

“(c) Clause (a) of Rule 6: Retail Sales (i) Where the goods are sold by the assessee in retail, clause (a) of rule 6 provides authority for determination of value on the basis of the retail price after making suitable reduction. The amount to be reduced should be such as would bring the net value in conformity with the price at which the assessee would have sold such goods in the course of wholesale trade to a buyer other than a related person.

(ii) The amount to be reduced from the retail price may be determined, keeping in view the margin of difference between the assessable value and the retail price of comparable goods, the assumption being that roughly the percentage difference between the retail price and the assessable value of comparable goods will not vary to a large extent. Where this margin of difference varies considerably, some averaging may have to be done.

EXAMPLE The assessee sells the goods under assessment in retail at Rs.100/- Comparable goods ‘X’ are sold in retail at Rs. 105/- and their assessable value is Rs. 84/- Comparable goods ‘Y’ are sold in retail at Rs. 110/- and their assessable value is Rs. 90/- Comparable goods ‘Z’ are sold in retail at Rs. 95/- and their assessable value is Rs. 75/-. The percentage difference calculated on the basis of the retail price in the case of comparable goods ‘X’, ‘Y’ and ‘Z’ comes to approximately 20%, 18% and 21% respectively. For deriving the normal price of the goods sold by the assessee, it will be reasonable to make a reduction of 20% from the retail price of the goods. The retail price of the goods under assessment being Rs. 100/-, the assessable value would come to Rs. 80/-. Since 20% includes the excise duty and other taxes, any further reduction on account of these factors from Rs. 100/- is not to be made”.

7. The above instructions of the Board provides for determination of value on the basis of the retail price after making suitable deductions. It also envisages that deduction from the retail price should be determined keeping in view the margin of difference between the assessable value and the retail price of comparable goods, the assumption being that roughly the percentage difference between the

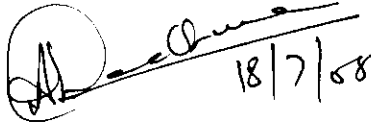
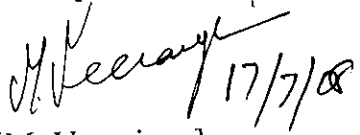
M. K. Sanyal

retail price and the assessable value of comparable goods will not vary to a large extent. It also envisages that where this margin of difference varies considerably, some averaging may have been done. It has also prescribed certain examples as guidance.

7.1 We find that the appellant has been demanding 28% abatement from retail price blindly seeking to adopt the same extent of abatement granted in the case of their competitors M/s Modi Xerox Limited. The have not produced any relevant details before the original authority as can be seen by his order. No presumption can be made that the retail expenses of two manufacturers are of identical level. The Board's instruction relied upon by the appellant also envisages that where this margin of difference varies considerably, some averaging may have been done. The issue has not been considered in proper perspective in the light of the guidelines given by the Board. Under these circumstances, we deem it proper to set-aside the order of the Commissioner (Appeals) and order of the original authority to enable consideration of the entire issue afresh by the original authority. The appellant is directed to file written submissions along with evidence, if any, relied upon by them within two months from the date of receipt of this order. The original authority thereafter will decide the matter within two months from the date of expiry of the time limit given for filing written submissions. He shall decide after giving reasonable opportunity of hearing. We leave all issues open. We express no views on merits of the case.

8. Appeal is allowed by way of remand on the above terms.

[Operative portion of the order was pronounced in the open Court].

 18/7/88
[Archana Wadhwa]
Member [Judicial]
 17/7/88
[M. Veeraiyan]
Member [Technical]

[Pant]