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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 4110/2004-4111/2004 Date 16/07/2008

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

To :
M/S H.J.I. PROP. GMMCO LTD.
P.O-AMLAI, PAPER MILLS AMLAI,484117 DISTT.
SHADOL, M.P.
M/S H.J.I. PROP. GMMCO LTD. Appellant

Vs

C.C.E. BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.**459-460/2008 **Excise** dated 17-7-08

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. BHOPAL
   48, ADMINISTRATIVE AREA, AREA HILLS, HOSHANGABAD ROAD, BHOPAL
2. Adv. Consult
   MR.Z. U. ALVI
   D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01
3. C.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)

16.M/S H G.I. PROP. GMMCO LTD.
P.O. AMLAI, PAPER MILLS AMLAI,484117 DISTT. SHADOL, M.P.

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

EXCISE APPEAL NOS. 4110-4111 OF 2004

Date of Hearing: 8.7.2008
Date of Decision:8.7.2008

[Arising out of Order-in-Appeal Nos.216-217-CE/BPL/2004 dated 5.4.2004 passed by the Commissioner of Customs & Central Excise (Appeals), Bhopal]

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
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.

M/s. HJI Prop. GMMCO Ltd. — Appellant
[Rep. by: Shri Z.U. Alvi, Advocate]

Versus

CCE, Bhopal — Respondent
[Rep.by:Shri S. Kumar, DR]

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

FINAL **ORDER** 459-460/08-SM

Per Archana Wadhwa:

The dispute in the present appeal relates to the assessable value of the hydrochloric acid. As per facts on record it is seen that during August 1995 appellant has also sold the said acid to one M/s. Jain Acid & Chemical at a price of Re.1/- per MT whereas during the same month the said acid was sold to M/s. Sunita Chemicals & Others at the rate of Rs.650/- per MT. During the period April 1994 to February 1995 the goods were sold to M/s. Sunita Chemicals at Re.1/- per MT whereas the same was sold to M/s. Jain Acid & Chemicals at Rs.650/- per MT. The demand of duty was confirmed against the appellant by taking Rs.650/- per MT as the correct assessable value.

2. However, on appeal against the above order, appellant contended that the price of acid was fluctuating depending upon the market demand and on account of forced circumstances to avert pollution hazard, the goods could not be stored for long storage; that acid being a by-product generated during electrolysis process in the manufacture of caustic soda and to avoid accumulation, the same was to be sold at whatever price they immediately fetch in the market; that their buyers are not related person; that the price was as per contract and was the sole consideration for sale and as such even the price of Re.1/- per MT should be considered a normal price in commercial parlance.

3. On above consideration of the submissions made by the appellant, the Commissioner (Appeals) observed as under:-

> "(i) I find that the hydrochloric acid is produced during the course of manufacture of caustic soda, when during electrolysis process on sodium chloride solution, chorine gas is generated as a by product, which is liquefied and sold to the extent possible, but where it is not possible due to huge production of chlorine and there is less storage place, the chlorine is to be
>
> converted to hydrochloric acid by diluting the gas with water. The conversion of gaseous chorine into HCL is necessary because chlorine as such can not be left in to atmosphere. Further, the HCL can also not be drained into open because it is also highly hazardous and pollutant. As such whenever the

production of caustic soda increases, the resultant production of HCL is also varies and it has to be immediately sold out for want of storage space, at whatever price it fetches locally. This being the back ground for the fluctuating price of this product. I hold that the reason for price variation in a month or over a period is fully justified for the reasons discussed above.

(ii) Moreover, as can be seen from brief facts of both the appeals, during a particular period the said goods had been sold @ Rs.1/- PMT by way of distress sales to one party while the same were sold at a higher price during the same month to another party, whereas the transactions were vice-versa in respect of the very same buyers in respect of period covered under another appeal. However, the value per metric ton being very much below even the cost of production, I hold that the fair price at which the assessable value of goods is to be taken would be the average value of goods sold during the month for the clearances effected during each of the period/month, and this value can be taken to be the normal under section 4 of the CEA, 1944. Accordingly, the adjudicating authority will work out the duty liability for the periods covered in both the appeals."

The above order is impugned before us.

4. After hearing the learned advocate appearing for the appellant and Shri S. Kumar, learned DR for the Revenue, we do not find any infirmity in the view of the lower authorities. The value of hydrochloric acid at the rate of Re.1/- per MT is, on the face of it, on the lower side. If the appellant choose to clear the goods free of cost, on account of want of storage facility at their end, the same would not result in non-payment of duty. The duty is required to be paid on the correct and reasonable assessable value. The method adopted by the lower authorities seems to be the reasonable method to arrive at the fair price of the acid in question and duty is required to be discharged on the same. Accordingly, we do not find any merit in the present appeals and reject the same.

[Operative part of the order already pronounced in the open Court on 8.7.2008]

14/7/08

[Archana Wadhwa]
Member (Judicial)

14/7/08

[M. Veeraiyan]
Member (Technical)

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