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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

Date 11/11/2008

Appeal No. E/5160/2004 - EX[DB]

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

To :
NATIONAL FERTILIZERS LTD., NAYA NANGAL-
140126 DISTT. ROPAR (P.B.)

NATIONAL FERTILIZERS LTD — Appellant

Vs

C.C.E. LUDHIANA — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 860/2008-EX[DB] dated 15-9-08

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. LUDHIANA

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult SH. A. C. JAIN, ADV.,
103, PUSHANJLI COLONY,
VIKAS MARG, EXTENSION, DELHI-92

3 D.R

~~4 JCDR~~

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 - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
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13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 5160 of 2004

[Arising out of the Order-in-Appeal No. 437/CE/Appeal/Ldh/2004 dated 28/06/2004 passed by The Commissioner (Appeal), Central Excise Commissionerate, Ludhiana.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s National Fertilizers Ltd. Appellant

Versus

CCE, Ludhiana Respondent

Appearance

Shri A.C. Jain, Advocate – for the appellant.

Shri S.N. Srivastava, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 15/09/2008.

Final Order No. 860/08-EX Dated : ____________

Per. Rakesh Kumar :-

The Appellant, a public sector enterprises, manufacturer; among other items, Methanol in their factory at Naya Nangal, District Ropar, Punjab, while the bulk of the Methanol is cleared for captive consumption for use in the manufacturer of fertilizer, the production of Methanol, which is in excess of their requirement, is sold to various industrial consumers. A small quantity of Methanol is sold to the Bhatinda and Panipat units of the Appellant company. There is no dispute that the sale price of Methanol to Panipat and Bhatinda units is same as the price at which Methanol is sold to other independent buyers. The Revenue, however, has treated the sales to Bhatinda and Panipat units as sales to "related persons" (inter-connected units) who have used the Methanol for manufacture of some finished goods and on this basis, invoking Rule 8 & 9 of the Central Excise Valuation Rules, 2000, seeks to determine the assessable value of the Methanol sold to Panipat and Bhatinda units on the basis of 115% of the cost of production. It is on this basis that duty demand of Rs. 25,531/- was raised for period from 01/9/02 to 31/12/02. The Assistant Commissioner, vide order-in-original dated 26/2/04 confirmed the duty demand of Rs. 25,531/- alongwith interest and beside this imposed equal penalty on the Appellant under Section 11AC of the Central Excise Act, 1944. The Commissioner of Central Excise (Appeals) vide order-in-appeal No. 437/CE/Appeal/Ldh/2004 dated 28/06/04, upheld the Assistant Commissioner's order. It is this order of CCE (Appeals), which has been challenged in this appeal.

2. Heard both the sides.

2.1 Shri A.C. Jain, Advocate, the learned counsel on behalf of the Appellants, pleaded that :

> (a) though the Appellant and its Panipat and Bhatinda units are "inter-connected undertakings" as specified in sub-clause (i) of clause (b) of Section 4 (3) of the Central Excise Act, 1944, within the meaning assigned

to it under Section 2 (g) of the Monopolies and Restrictive Trade Practices Act, 1969, the Appellant are not related to Bhatinda and Panipat units in the manner specified in sub-clause (ii), (iii) or (iv) of clause (b) of Section 4 (3) of the Central Excise Act and hence the value, in terms of Rule 10 (b) would be the Appellant's sale price of Methanol to their Bhatinda and Panipat units and Rule 8 readwith Rule 10 of the Valuation Rules cannot be invoked ;

(b) Methanol was being sold to Bhatinda and Panipat units without any discount while sale was being made to other buyers at a discount and, thus, no ~~force~~ favour was shown to Bhatinda and Panipat units and

(c) Tribunal in case of **CCE, Pune vs. Arofine Polymers Limited** reported in **2007 (214) E.L.T. 241 (Tri. – Mumbai)** relying upon its earlier decision in case of **Pepsico India Holdings Pvt. Ltd. vs. CCE, Mumbai** reported in **2004 (163) E.L.T. 478 (Tribunal)** and **Commissioner vs. Kanam Foam Industries** reported in **2004 (170) E.L.T. 237 (Tribunal)** has held that Rule 9 of the Central Excise Valuation Rules, 2000, is not invokable when the sales are to related as well as independent buyers.

2.2 Shri S.N. Srivastava, the learned Departmental Representative, reiterating the Commissioner's findings in the ~~these~~ impugned order, pleaded that in this case, Rule 9 readwith Rule 8 has been correctly invoked, ~~and~~ in respect of clearances of Methanol by the Appellants to their Panipat and Bhatinda units, and ~~then~~ duty is payable on value determined by taking 115% of the cost of production.

3. We have carefully considered the submissions from both the sides. Even if the Panipat and Bhatinda units of the Appellant are treated as "related persons" (inter-connected undertaking), Rule 10 readwith Rule 8 cannot be invoked as these are substantial sales to independent buyers and Tribunal in case of CCE, Pune vs. Arofine Polymers Limited (Supra), relying upon its earlier judgments in cases of CCE vs. Rocket Engineering Corporation Pvt. Ltd. (Order No. A/668-669/C-III/SMB/WZB/2006 dated 04/5/06), Pepsico India Holdings Pvt. Ltd. vs. CCE, Mumbai (Supra) and CCE vs. Kanam Foam Industries (Supra) has held that when goods are being sold by a manufacture to independent as well as related buyers, Rule 9 is inapplicable and in such a case, resort will have to be made to Section 4 (1) (a) – that is the price at which the goods are sold to other independent buyers at the

same time and place. In this case, since there are substantial sales to independent buyers and the price at with the goods are sold to Panipat and Bhatinda units is even more than the price to independent buyers, in view of the above-mentioned judgments of the Tribunal, there is no justification for rejecting the sale price in respect of clearances to Panipat and Bhatinda units and taking ~~recovery~~ recourse to Rule 8 readwith Rule 9 of the Valuation Rules.

4. In view of the above, the impugned order is not sustainable and the same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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