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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/5581/2004-5582/2004 - EX[DB] Date 07/01/2009

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

To :
C.C.E. INDORE
P.O.-10, MANIK BAGH PALACE, INDORE (M.P.)

C.C.E. INDORE Appellant
Vs
M/S STANDARD INDS. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.14-15/2009- **EX[DB]** dated 02-1-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S STANDARD INDS. LTD.
VILL.- BALGARH, DISTT.- DEWAS (M.P.)
2. Adv. / Consult

NONE

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 - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Ragahuraman'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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Excise Appeal Branch)

~~M/S STANDARD INDS. LTD.~~
~~VILL.-BALGARH, DISTT. DEWAS (M.P.)~~

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 5581-82 of 2004-NB

(Arising out of order-in-appeal No. 325-326-CE/IND/APPLS-II/2004 dated 11.08.2004 passed by the Commissioner of Central Excise (Appeals), Indore)

DATE OF HEARING : 01.01.2009
DATE OF DECISION : 01.01.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDRAM, VICE-PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (T)

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 ?	Yes
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

CCE, Indore .... **Appellant**
(Rep by Sh. Amit Jain & B.S. Suhag, DRs)

VERSUS

M/s Standard Indus. Ltd. .... **Respondent**
(Rep. by NONE)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE- PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 14-15/09-Ex

PER JYOTI BALASUNDARAM :

The brief facts of the case are that, the respondents herein, who are manufacturers ~~of~~ *inter alia,* of cotton yarn and cellulosic & non-cellulosic yarn cleared both for captive consumption as well as outside their factory on payment of duty, were required to file price declaration declaring 'normal price' of these yarns in terms of Section 4 of the Central Excise Act, 1944 read with Rule 173-C of the Central Excise Rules, 1944. Price lists were filed and orders for provisional assessment were sought; various orders were passed by the Assistant Commissioner under Rule 9-B, which, on scrutiny, revealed that 'normal price' of the yarn comprises of several ingredients, but the assessee had not included/added the ingredients representing the profit element while arriving at the normal value. As per Section 4(1)(b) of the Central Excise Act, where the normal price of the excisable goods is not ascertainable for the reason that such goods are not sold or for any other reasons, the value shall be nearest ascertainable equivalent of the normal price determined in the manner as may be prescribed. The Central Excise ~~Values~~ Valuation Rules, 1975 prescribed the manner for such determination and as per Rule 6(b)(i) of the above Rules, assessable value is to be determined on the basis of value of comparable goods manufactured by the same assessee or any other assessee. However, in the instant case, since value of comparable goods was not available, the value of the goods manufactured by the respondents was required to be determined by applying Rule 6(b)(ii) of the Valuation Rules, according to which, the value of goods consumed captively or cleared to sister units/depot, is to be determined on the basis of manufacturing cost plus manufacturing profit. Since element of profit had not been included while working out the normal price, it appears to the Revenue that the respondents had failed to include the element of profit. While determining the normal price declared to the Department in terms of Rule 173-C of the Central Excise Rules, the element of profit emerging from the balance-sheet was sought to be applied for the transaction of subsequent period and the percentage of profit worked out to 2.43% of the value of the goods (cost price) included by adding raw material cost, salaries & wages, operation & other expenses, and interest. Since the respondents had short paid Central Excise Duty on the profit element, which was not included in the assessable value, ~~duty~~ of Rs. 3,06,272/- for the period April, 1997 to August, 1997, and Rs. 41,001/- for the period September, 1997 to November, 1997, show cause notices proposing recovery of the above amounts were issued; notices were adjudicated by the Assistant Commissioner vide orders dated 13.09.1997 and 30.11.998 confirming demands of Rs. 1,87,652/- and Rs. 1,60,891/- respectively; the Commissioner (Appeals) vide order-in-appeal no. 325-326-CE/IND/APPLS-II/2004 dated 11.08.2004 allowed the appeals with consequential relief. Hence these appeals by the Revenue.

2. None appears for the respondents in spite of notice; hence we heard learned SDR and perused the records.

3. We note that the lower appellate authority has relied upon the Larger Bench decision of this Tribunal in the case of **Raymonds Ltd. vs Commissioner of Central Excise, Aurangabad,** 2001 (129) ELT 327 (T-LB) and **Crompton Greaves Ltd. vs Commissioner of Central Excise, Chandigarh,** 2002 (139) ELT 101 (T), to hold that profit earned by the chemical division cannot be included in determination of the cost of the captively consumed yarn and that the textile division had incurred loss and not made any profit, and that the value was determined correctly by the assessee for payment of duty on captively consumed salary and there is no question of any further duty liability. However, we find that even in the decision of the Larger Bench in the case of **Raymonds Ltd. vs Commissioner of Central Excise, Aurangabad** (supra), the Tribunal has held that, the profit, if any, to be taken into account while determining value under Rule 6(b)(ii), is the profit that the assessee would have normally earned on the sale of such goods, and this decision was carried in appeal to the Apex Court, which, vide its judgment reported in 2006 (204) ELT 3 (SC), upheld the contention of the Revenue that notional profit is to be included in the cost of production and remanded the case for the assessee to satisfy the Revenue that notional profit ~~of~~ was less than 10% adopted by the Department and held that if the assessee fails to satisfy the Commissioner that the notional profit should be less than 10%, 10% notional profit may be added to the value of the goods under assessment. The principle laid down by the Apex Court is clearly, therefore, that even if profit is not actually earned, the profit, that would have normally been earned by the assessee on the sale of such

goods, is to be taken into account while arriving at the assessable value. In the present case, since even the notional profit has not been included in the assessable value, we set aside the impugned order and remit the case to the adjudicating authority for the asssessee to satisfy him that notional profit of less than 2.43% (as reflected in the balance sheet of all the divisions of the assessee company) has to be included in the cost of production and in case the assessee fails to satisfy the adjudicating authority that the notional profit should be less than 2.43%, it is open to the Revenue to add 2.43% to the cost of production to arrive at the assessable value of the goods.

4. The appeals are thus allowed by way of remand.

(Dictated and pronounced in the open Court on the 1st January, 2009)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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