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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/5258/2004-5259/2004 - EX[DB] Date 25/02/2009

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

To :
M/S HINDUSTAN TRUST (THROUGH COUNSEL SHRI
C.HARI S
W-7, OKHLA INDL. AREA, PHASE-II, NEW DELHI
110020

M/S HINDUSTAN TRUST (THROUGH COUNSEL SHRI
C.HARI S — Appellant

Vs

C.C.E. DELHI-II — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 163-164/2009- **EX[DB]** dated 05-2-09

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. DELHI-II
   ROOM NO 108, C.R. BUILDING, I.P. ESTATE, NEW DELHI
2. Adv. / Consult SH. C. HARI SHANKAR, ADV., 46, BANK ENCLAVE, N. DELHI-92
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 - 3
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
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 5258-5259 OF 2004

[Arising out of Order-in-Appeal No. 193-94/CE/2004 dated 05.08.2004 passed by the Commissioner of Central Excise (Appeals), New Delhi]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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?	No.
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Hindustan Trust (P) Ltd., Appellant

Vs.

CCE, Delhi-II Respondent

Appearance:

Shri C. Hari Shankar, Advocate for the appellant,
Shri Virender Chaudhary, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 5th February, 2009

FINAL ORDER NO. 163-164/09-EX **dated** ______

Per P.K. DAS:

These appeals are arising out of a common order and, therefore, both are being taken up together for disposal.

2. After hearing both sides and on perusal of the records, it is seen that the appellant allowed cash discount at 2% to all their customers at the time of clearance of goods at factory gate. The finding of the Commissioner (Appeals) is that some of the customers had not availed the cash discount benefit and, therefore, the said amount would be included in the assessable value. The period in dispute is from 1.4.1999 to 30.1.2003.

3. Learned Advocate submits that the Larger Bench of the Tribunal in the case of CCE, Ahmedabad vs. Arvind Mills Ltd., reported in 2006 (204) ELT 570 (Tri.-LB) has held that the cash discount is to be granted abatement whether availed or not, even after 1.7.2000 (i.e. introduction of new Section 4 of the Act).

4. Learned D.R. reiterates the findings of the Commissioner (Appeals).

5. After hearing both sides we find that the issue has already been covered by the decision of the Larger Bench of the Tribunal in the case of Arvind Mills (supra). Relevant portion of the said decision is reproduced below:-

"We have considered the submissions. We find that the only difference between the old section 4 and the new section 4 is regarding the deemed price and the actual price payable in respect of each transaction i.e. while under the old section 4, the normal price at which the goods are ordinarily sold was to be applied to all transactions irrespective of the actual price charged, while under the new section 4 each price charged for each transaction whether in wholesale or retail is to be considered as the assessable value. However, the other elements like price for delivery at the time and place of removal remains the same. The question therefore to be asked is what is the transaction value for delivery at the time and place of removal. Obviously, the answer to this is the price actually charged i.e. the lesser price payable for making prompt payment at the time of delivery which shall be relevant transaction value to considered for the purpose of assessment. The price payable at a latter date cannot be said to be the price payable at the time of removal and therefore, cannot be considered as the transaction value at the time and place of removal. The difference in price has to be considered as representing an element of interest on account of delay in payment and unless it is established that such difference in price is so vast that it actually amounts to charging part of the price in the form of interest, the same cannot be rejected, and shall be the price applicable even in respect of those cases where cash discount is not availed of. We find that this view clearly emerges from the catena of decisions cited by the Ld Counsel for the respondents and in the Board's circular issued on the subject of transaction value. Even as per the WTO clarification dealing with the subject of transaction value, the interest element cannot be added in the transaction value as long as the rate of interest does not exceed the level for such transaction prevailing in the country where and at the time when the finance was provided. It is not the revenue's case that in the instant case the price was exorbitant or beyond the normal level of interest rate charged in such business transaction or that there were stringent conditions put on for availing cash discount which make the availment of cash discount more illusory than real. We further note that the earlier decisions under the old section were not on the ground that the goods were normally sold at a lesser price and therefore the cash discount was admissible even in those cases where it was not availed of as we find that the Tribunal in the case of Bhartia Cutler Hammer Ltd v. CCE cited supra found that the sales at higher price was to the extent of 65% without availing cash discount but still held that the lesser price after allowing cash discount will be applicable even in those cases where cash discount has not been availed of. The same shall be the case with respect to the cost of finance where such cost is only relatable to the delay in receiving the payment and such goods are actually sold at the price declared as the price actually paid or payable i.e. the declared price at the time of removal. We are therefore in agreement with the views expressed by the Tribunal in the case of CCE v. Pace Marketing Specialities Ltd. cited supra and hold that cost of finance and cash discount whether availed of or not are to be granted as abatement even after 1-7-2000 and the reference is accordingly answered."

6. It is seen that the Larger Bench of the Tribunal decided that the discount in cash which is not passed on to the customers after 1.7.2000 is to be granted unless it is established that such difference in price is so vast and it actually amounts to charging part of the price. There is no such allegation in the present case. In view of that impugned orders are not sustainable. Accordingly, impugned orders are set aside. Both the appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK