

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

Appeal No. E/5890/2004-5892/2004 - EX[DB]

Date 17/07/2009

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

To :
C.C.E.LUDHIANA

F-BLOCK RISHI NAGAR LUDHIANA

C.C.E.LUDHIANA

M/S SATIA SYNTHETIC LTD.

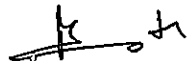
Appellant

Vs
Respondent

469-471/09.

EX[DB] dated 03-7-09

I am directed to transmit herewith a certified copy of Final order No. 478-480/2009-
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 SATIA SYNTHETIC LTD.

LUBANIAN WALI MUKTSAR PUNJAB

2. Adv. / Consult

SH. K.K. ANAND, ADV.

A-5, BASEMENT,

LAXPAT NAGAR-III, N. DELHI-24

3 C.D.R

4 J.C.D.R.

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

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

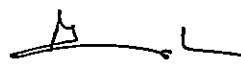
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

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17 Guard file

18 HON'BLE PRESIDENT


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision: 03.07.2009

Excise Appeal Nos. 5890 to 5892 of 2004

[Arising out of order-in-appeal No. 606/CE/Appeal/Ludh/2004 dated 31.8.2004 passed by the Commissioner (Appeals), Central Excise, Ludhiana].

CCE, Ludhiana

Appellant

Vs.

M/s Satia Synthetics Limited

Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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.	Yes
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

Appearance:

Appeared for the Appellant – Shri V. Chaudhary, DR
Appeared for the Respondent – K.K. Anand, Advocate

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 468-478/09-EX

Per Shri M. Veeraiyan:

These three appeals by the Department concerning the same respondent, arise out of a common order-in-appeal passed by the Commissioner (Appeals) and are accordingly being dealt with by a common order.

2. Heard both the sides.

3. The relevant facts, in brief, are that the respondent are clearing excisable goods from the factory to the depots and they are also having sale at the factory gate. The respondent paid the duty on factory gate sales as per the transaction value and there is no dispute about the same. In respect of transfers made to the depots, they initially paid duty adopting the price prevailing at factory gate. However, subsequently they have claimed that the sale price of such goods at the depot at the date of clearances were lower and preferred refund claims. The refund claims have been rejected by the original authority. However, Commissioner (Appeals) allowed the appeals of the respondents and hence the Department is in appeals.

4.1. Learned DR for the appellant – Department submits that the goods have been partly cleared to the depot on transfer basis and partly sold at the factory gate. The respondents have rightly adopted the transaction value at the factory gate on the date of removal on transfer to the depot for sale. The rejection of the refund claims by the original authority is in order. The Commissioner (Appeals) has not appreciated the factual position correctly and allowed the refunds to the respondents. He submits that the respondents never produced any evidence that on the date of the removal on transfer to the depots, their prevailing prices at the depot were lower than the price at which the goods were sold at the factory gate. He also submits that the respondents have not challenged the order of assessment and therefore the refund claims are not admissible in the light of decision of the Hon'ble Supreme Court in the case Priya Blue Industries Limited vs. CC (Preventive) reported in 2004 (172) ELT 145 (SC).

4.2. Learned DR also relied on the decisions in the case of Traco Cable Co. Ltd., vs. CCE, Cochin reported in 2004 (172) ELT 33 (Tri. Bang.) and also decision of the Hon'ble Supreme Court in the case of MRF Ltd., vs. CCE, Madras reported in 1997 (92) ELT 309 (S.C.) and the decision of the Hon'ble Supreme

Court in the case of CCE, Kanpur vs. Flock (India) Pvt. Ltd., reported in 2000 (120) ELT 285 (SC) in support of his submissions.

5.1. Learned Advocate for the respondent submits that whenever there are sales at factory gate as well as transfer to depots on the same day, the sales at factory gate is not relevant for the purpose of determining the assessable value in respect of goods transferred to the depot. In terms of Rule 7 the Valuation Rules, the value of goods on transfer to depots have to be based on sale price on the relevant day which is on the nearest date from the depot. He also relies on the instructions of the Board contained in Circular No. 354/81/2000-TRU, dated 30.6.2000, particularly in para 19 which reads as follows:-

“19. If the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to his depots or consignment agents or any other place for sale, the assessable value in such case for the goods cleared from factory/ warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse. It may be pertinent to take note of the definition of “normal transaction value” as given in the valuation rules. What it basically means is the transaction value at which the greatest aggregate quantity of goods from the depots etc. are sold at or about the time of removal of the goods being from the factory/warehouse. If, however, the identical goods are not sold by the assessee from depot/ consignment agent’s place on the date of removal from the factory/ warehouse, the nearest date on which such goods were sold or would be sold shall be taken into account. In either case if there are series of sales at or about the same time, the normal transaction value for sale to independent buyers will have to be determined and taken as basis for valuation of goods at the time of removal from factory/ warehouse. It follows from the Valuation Rules that in such categories of cases also if the price charges is with reference to delivery at a place other than the depot, etc. then the actual cost of transportation will not be taken to be a part of the transaction value and exclusion of such cost allowed on similar lines as discussed earlier, when sales are effected from factory gate/warehouse”.

5.2. Learned Advocate submits that the decisions relied upon by the learned DR are not relevant to the facts of the present case as in those cases the clearances were on sale and that the variation in prices subsequent to sale has been held to be irrelevant for the duty determined. In respect of their submissions that the respondents have not challenged the assessment, he submits that this is an issue taken afresh for the first time before the Tribunal and this was not an issue before the original authority.

6. We have carefully considered the submissions from both sides. The submission of the learned Advocate that when there are clearances on sale at factory gate and clearances by way of transfer to depot, both should be treated independently appears to be incorrect. His submission that the goods were not cleared on assessment but only on self-assessment by the party is also not relevant.

2(b) of Central Excise Rules
 Assessment as per Rule 2B includes self-assessment by the assessee. When the goods are sold at a particular price on a particular day at the factory gate, the claim that goods transferred to depot should be assessed at price lower than the said price appears to be against the scheme of valuation provided under Section 4 and the rules made thereunder. The value is determined based on price at the time and place of removal. In the present case, admittedly there are sales at the factory gate at the time of removal. When the prices are not available at the "time of removal", then sale prices at the nearest point of time from the "time of removal" is required to be adopted. Similarly, when the prices are not available at the place of removal, the sale prices at the depots are required to be taken into account. When there are no sales at factory gate and when the entire goods are transferred only to depot and the sale are effected only from the depot, the rules provide for taking the sale value from the depot as the basis for assessment. In such a circumstances the assessee is required to ascertain the sale price at the depots at the time of removal at the factory gate and adopt the same at the time of clearances of the excisable goods for self-assessment. As rightly pointed out by the learned DR, we do not find any

evidence having been produced before the original authority or the Commissioner (Appeals) about the lower prevailing price at the depot of the assessee at the time of transfer to the depot. The original authority has clearly held as follows:-

“The notice contends that the goods cleared from factory gate to the depots on payment of duty on the transaction value prevalent on the date of clearance of such goods has ultimately sold at lower prices whereas duty was paid at factory gate at higher prices and thus claimed the refund of differential duty. It is seen that the goods were cleared to the depots on the prices prevalent on that date. On such dates, the notice has also sold yarn to the independent buyers at the prices at which the goods were sold/ transferred to the depots”.

7. There is no evidence produced before the Commissioner (Appeals) contradicting the above finding by the original authority. The Commissioner (Appeals) observed that “the appellant was liable to discharge duty liability on the basis of transaction value of such goods prevailing at depot at the time of clearance of such goods from factory”. However, he has also not recorded any basis to conclude that the prices prevailing at the depots were lower than those at the factory gate on the relevant date i.e. date of removal.

8. Therefore, we set aside the order of the Commissioner (Appeals) and restore the Order-in-Original by the original authority.

9. Appeals by the Department are allowed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/