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

Appeal No. C/754 /2007 Date 10/04/2008

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

To : M/S GUIDANT INDIA PVT. LTD.
OFFICE FLOOR, CROWNE PLAZA SURYA, NEW
FRIENDS COLONY, NEW DELHI – 110065.

M/S GUIDANT INDIA PVT. LTD. Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/92/08-CUSTOMS DT. 02.04.08**

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT,
NEW DELHI 110037.
2. Adv. / Consult MR.PRICEWATERHOUSE COOPERS (P) LTD.
SUCHETA BHAWAN (GATE NO. 2, IST FLOOR), 11-A,
VISHNU DIGAMBER MARG, NEW DELHI 110002.
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 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
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 754 of 2007

(Arising out of Order-in-Appeal No. CC(A)CUS/164/SVB/I&G/D-1/07 dated 18.09.2007 passed by the Commissioner of Customs (Appeals), New Delhi).

DATE OF HEARING : 02.04.2008
DATE OF DECISION : 02.04.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
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 ?	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

M/s Guidant India Pvt. Ltd. .... **Appellants**
(Rep. by Sh. R. Murlidharan, Conslt.)

VERSUS

CC, New Delhi .... **Respondent**
(Rep by Sh. R.C. Sankhla, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

Final **ORDER NO.** C/92/08

PER M. VEERAIYAN :

This is an appeal against the order of the Commissioner (Appeals) dated 18.09.2007.

2. Heard both sides.

3. The relevant facts of the case, in brief, are as follows.

(a) The appellant, M/s Guidant India Pvt. Ltd., is a subsidiary of M/s Guidant Corporation, USA, and commenced its operation in India in October, 2003. The appellant has entered into a distribution agreement with the parent company in USA; the said agreement, interalia provides for compensation to the appellant for the first few years of their operation.

(b) Prior to October, 2003 third parties were importing the products in question directly from the appellant's parent company in USA and from their trading company in Hong Kong .The difference in prices of such import by third parties and the prices at which the appellant made the imports was in the range of 57% to 161%.

(c) The Original Authority asked the appellant to explain the wide variation between the prices between import by third parties and import by the appellant, and also sought for details of transfer pricing policy adopted by the appellant company.

(d) They produced a certificate dated 16.08.2005 issued by the appellant's parent company claiming that the exports were made at prices to ensure the recovery of normal purchase and production costs, overheads and normal margins.

(e) The Original Authority has analyzed the post importation scenario and found that the appellant has accounted for expenses about 76% of the sale value (i.e. employee compensation benefits 38.6%, advertising and sales promotion expenses 12.36%, travelling expenses 13.72%, and other general expenses 12.13%. Taking into account the above factors, he disallowed 50% expenses on account of advertisement and sales promotion, travelling and other general expenses, which comes to 19.1% (half of 38.21% of the cost of the goods). He also disallowed 9.5% towards compensation provided for in the agreement. As a consequence, the Original Authority ordered loading of the value by 21.2%.

3. The Commissioner (Appeals) upheld the order of the Original Authority insofar as it related to the disallowance of 50%

of the expenses amounting to 28.21% of the cost of the goods and consequent loading of value thereof. However, he remitted the matter relating to loading on account of compensation provided for in the agreement to the original authority for fresh consideration.(We are informed that consequent to the remand, the Original Authority has agreed with the contention of the appellant in this regard and reduced the overall loading to 14.1%).

4. The learned advocate for the appellants concedes the relationship between the appellant and the supplier. However, he submits the relationship has not influenced the prices. He also assailed the order of the authorities below in comparing the prices of third party imports which were in small quantities and a few months before the appellant started importing. He also submits that in view of the sophisticated nature of the product, post importation expenses are bound to be high. According to him, the marketing involves visit to a lot of hospitals throughout the length and breadth of India and arranging training programs etc. He also submits that the authorities have disregarded the certificate of the Chartered Accountant and the audited balance sheet which shows that these expenses were real and reasonable and, therefore, disallowance of 50% of the expenses leading to loading of the assessable value is wrong.

5. The learned DR submits that the very high import prior to October, 2003 and import at a substantially lower price by the appellant are clear indicators of the influence in prices due to the relationship. The orders of the authorities below are reasonable inasmuch as in terms of Rule 7, after taking into account the relevant particulars which have been furnished by the appellant, has come to a decision of allowing 50% of the expenses and disallowing the balance and loading the value which is as of now 14.1%.

6. We have carefully considered the submissions and perused the records. We agree with the learned DR that the wide variation of the import prices, before or after coming into picture the appellant, is a clear indicator of the influence due to the relationship between the appellant and the supplier. It is also seen that in spite of a provision for payment of compensation for undertaking various promotional activities as per the agreement dated 14.07.2003, the appellant Company has gone on record saying that they have not been paid any compensation and that the parent company do not propose to pay any compensation in future as well. This mean that the appellant, has to meet the various obligations at their own expenses. This arrangement is bound to have an influence on the prices adopted. Under these circumstances, the order of the authorities below in holding that

the relationship has influenced the prices and requires a loading to the tune of 14.1%, cannot be held to be unreasonable.

7. Therefore, we do not find any merit in the appeal and accordingly reject the appeal.

(Dictated and pronounced in the open Court on the 2nd day of April, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay