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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/724 /2008 - CU[DB]   Date 11/02/2009

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

To :
M/S VEEKAY SURGICALS PVT. LTD.
D-8, INDUSTRIAL AREA, BAHADRABAD
HARIDWAR, UTTARANCHAL.

M/S VEEKAY SURGICALS PVT. LTD.   Appellant
Vs
C.C.E. DELHI IV   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/76/09-CUS. DATED 02.02.09 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.E. DELHI IV, NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.

2. Adv. / Consult MR.PRABHAT KUMAR, ADV., B-51 (BASEMENT) SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI

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 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
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 724 of 2008-Cus.

(Arising out of Order-in-Appeal No. 25/Cus/Appl/DLH-IV/2008 dated 21.10.2008 passed by the Commissioner of Central Excise, (Appeals), Faridabad)

M/s Veekay Surgicals (P) Ltd. — Appellant

Vs.

CC, Faridabad — Respondent

Appeared for Appellant : Dr. Prabhat Kumar, Advocate

Appeared for Respondent : Shri Sumit Kumar, DR

Date of Hearing: 2.2.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. C/76/09 dated............

Per D.N. Panda:

The only dispute in this appeal is whether the value declared by the appellant shall be regarded as transaction value under Section 14 of the Customs Act, 1962 read with Rule 4 (1) of Customs Valuation Rules, 1988. According to the appellant when the goods in question were imported, all the facts and figures were made available to the proper officer. The officer being satisfied, tested the goods through Chartered Engineer's observations and under Rule 4(1) of the Valuation Rules and this is not ruled out by cogent reason that satisfies the requirement of Rule 4(2) of the Valuation Rules. The show-cause notice without disclosing any reason to discard the transaction value cannot proceed for adjudication. We are unable to appreciate why depreciated value should be the transaction value and for what reason. The appellant not having been granted an opportunity of rebuttal with any cogent reasons, the proceeding should not sustain. Accordingly, for the reasons aforesaid we direct that the value declared by the appellant to be the transaction value should be accepted. In the result, the appellant succeeds.

(Dictated & pronounced in open Court)

10.2.2009

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM

3. Ld. DR submits that the board's circular is very specific for depreciation of the asset. This particular circular has recognised that value of the goods which has economic life after being depreciated that value is acceptable to be transaction value. He relies on the judgment of apex court in the case of **Gajra Bevel Gears Vs. CC** reported in 2000 (115) ELT 612 (SC). He further relies on the orders of the authorities below to submit that reasons were stated by the authorities for invoking Rule 12A of the Valuation Rules 1988. Also according to him when the Chartered Engineer's certificate from abroad discloses the year of manufacture, the appellant squarely falls under the purview of the circular for depreciation of the assets imported. Therefore, there is no necessity to interfere to the order passed by the learned first appellate authority.

4.1 Heard both the sides.

4.2 We enquired into the basis of the charge against the appellant. Charge was conveyed to the Appellant through show-cause notice, at page-88 of the paper book. It was based on the board's circular No. 493/124/86 dated 4.1.88. Department proposed to value the goods according to the criteria laid down by the circular. On perusal of the show-cause notice, we are unable to notice the reasons why the transaction value declared by the appellant should be discarded. According to the law if value falls certificates. This is patent from page-88 which is show-cause notice. After the goods were allowed to be cleared, the appellant faced the present proceedings which emerged due to audit objection and interpretation of the Board's Circular No. 493/124/86-Cus. dated 4.1.88.

2. Ld. Counsel Dr. Prabhat Kumar submits that board's circular was very well available to the proper officer to examine at the time of import. He had thorough knowledge about the Chartered Engineer's certificate from abroad. So also the year of manufacture of the goods and the value declared was available for scrutiny. Once the assessment has reached its finality before clearance, such assessment cannot be reopened without any review done. Relying on the basis of judgment in the case of **Eicher Tractors Ltd. Vs. CC,** 2000(122)ELT 321(SC) ld. counsel submits that unless and until there are circumstances existing to bring transaction beyond the purview under Rule 4(2), the value declared as transaction value cannot be discarded. He further relies on the Apex Court's judgment in the case of **Tolin Rubbers** reported in 2004 (163) ELT 289. He submits that consistent view of the Tribunal is that Rule 10 cannot be invoked for the purpose of valuation mechanically. In absence of any contrary evidence and material the transaction value declared and falling under Rule 4(1) is entitled to be sustained.