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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

Date 06/02/2009

Appeal No. E/5080/2004 - EX[DB]

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

To :
NATIONAL FERTILIZERS LTD
NAYA NAGAL-140126 DISTT.
ROPAR (PUNJAB) Appellant
NATIONAL FERTILIZERS LTD Vs
Respondent
C.C.E.LUDHIANA

I am directed to transmit herewith a certified copy of **Final order No.** **105/2009-EX[DB]** dated 04-2-09 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.LUDHIANA
   F-BLOCK RISHI NAGAR,LUDHIANA (PUNJAB)
2. Adv. / Consult SH. A. C. JAIN, ADV., 103, PUSHPANJALI COLONY, VIKAS MARG EXTENSION, DELHI-92
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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH - Excise
E/5080/04

(Arising out of Order-in-Appeal No.443/CE/Appeal/LDH/04 dt.29.6.04 passed by Commissioner(Appeals), Ludhiana)

M/s. National Fertilizers Ltd. — Appellant

vs

CCE, Ludhiana — Respondent

Coram : Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Appeared for the Appellant : Shri A.C.Jain, Adv.
Appeared for the Respondent: Shri B.S.Suhag,DR

Date of Hearing: 21.1.09
FINAL Order No. 105/09 Dt. [illegible]

Per D.N.Panda:

The entire confusion arose in this case is as to whether there was any discrimination done by the appellant while selling to different buyers and also making use of part of the production for captive consumption. Revenue ~~involved~~ invoked Central Excise Valuation(Determination of Prices of Excisable Goods) Rule,2000 and most particularly Rules 8 and 9 thereof were applied to value the goods.

2. Shri A.C.Jain, Ld. counsel submits that this Tribunal in their own case has held that the rule is not invokable and that was in Appeal Case No.E/5160/04. He prays that the concerned Valuation Rules shall be invokable if the value disclosed by an assessee under Section 4 of the Central Excise Act,1944 does not get sanction for legal reason. Therefore, the impugned order is not sustainable in the eyes of law.

3. Ld. DR Shri B.S.Suhag submits that when there were different buyers, the valuation has been done correctly by the authorities below. But he agrees that in the past, this appellant was litigation in Excise Appeal No.E/5160/04 which was disposed on 15.9.08. There the appellant has succeeded.

4. Heard both sides and perused the records.

4.1 Before we embark upon the reading of Valuation Rules,2000 as aforesaid, we have to examine whether there was any discrimination in valuation adopted by an assessee. If the discrimination is attributable for any cogent reason recognized by law that only calls for valuation under Section 4(1)(b) of Central Excise Act,1944. We did not find any discrimination that was at all existing in the present appeal. The appellant had charged same price to all buyers without any suppression/depression of the assessable value. In absence of any attributable reason and suppression/depression of assessable value, the appellant should be brought under purview of Section 4(1)(a) of Central Excise Act,1944. Once we found as above and held as above, there is no necessity to go into the gamut of the Valuation Rules. We note that the appellant has also succeeded in the past by Tribunal's order as aforesaid and agreed by both sides. For reasons aforesaid, we allow the appeal and the appellants are entitled to consequential relief, if any, in accordance with law.

Order dictated and pronounced in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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