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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 14/03/2011

Appeal No. E/815 /2005 - EX[DB]

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S SEIL COMPLEX , Respondent

I am directed to transmit herewith a certified copy of **Final order No.289/ 2011 EX[DB]** dated 03-3-11 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 SEIL COMPLEX ,
VILLAGE KHADULI, RAJPURA

2. Adv. / Consult SH. A. SAGAR, ADV.,
MR.KACHWAHA & PARTNERS
1/6, SHANTI NIKETAN NEW DELHI-110021

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1. 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj. New Delhi - 110070
13. Office Copy
14. Guard file
15. HON BLE PRESIDENT.

Assistant Registra
(Excise Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:3.3.2011

Central Excise Appeal No. 815 of 2005

[Arising out of order in appeal No.801/CE/CHD/2004 dated 9.12.2004 passed by Commissioner(Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.E., Chandigarh .. Appellant

Vs.

M/s Siel Chemical Complex ... Respondent

Appearance:

Shri S.R. Meena, Authorized Departmental Representative(DR) for the Revenue and Shri A. Sagar, Advocate for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

Final Oral Order No. 289/2011-EX.

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellants and the Advocate for the respondents.

2. This appeal arises from the order dated 9.12.2004 passed by the Commissioner (Appeals) whereby the order passed by the adjudicating authority has been set aside. The Additional Commissioner, Chandigarh by his order dated 23.8.2004 had confirmed the demand and ordered recovery of Rs.5,72,537/- along with interest and equal amount of penalty from the respondents. Consequent to the impugned order, the said demand and imposition of the penalty has been set aside.

3. The respondents manufacture liquid chlorine gas classifiable under sub-heading 2804.21 of the schedule to the Central Excise Tariff Act, 1985. On visit of the respondent's factory by preventive staff of the Excise Department on 31.12.2002 and subsequent perusal of the records, it was revealed that for the period from April 1999 to 31.8.2003, the respondents had been offering discount to different buyers in comparison to some other On investigation, it was revealed that there was difference between the assessable value of the chlorine gas sold by the respondents to other buyers inasmuch as that the other buyers were supplied the gas in the cylinders of the manufacturer whereas discount was given to those buyers who were providing their own cylinders for filling gas. Consequently, show cause notice dated 19.4.2004 came to be issued to the respondents which was contested by the respondents.

4. Placing reliance in the decisions in the matter of Commissioner of Central Excise, Ghaziabad vs. Modi Gas & Chemicals Ltd. reported in 2010 (261) ELT 1154 (Tri-Del.) , Kota Oxygen (P) Ltd. Vs. C.C.E., Jaipur reported in 2000 (121) ELT 369 (Tribunal) and 2001 (128) ELT A 68 (SC), the DR submitted that the respondents were not entitled to two different measures in relation to valuation of the goods supplied to the buyers and the law on this point is being well settled by the said decisions, the Commissioner (Appeals) erred in setting aside the order passed by the adjudicating authority.

5. The learned Advocate appearing for the respondents on the other hand placing reliance in the matter of C.C.E., vs. Indian Oxygen Ltd. Reported in 1988 (36) ELT 730 (SC) submitted that in view of the decision in Modi Gas & Chemicals Ltd. case could be said to be applicable only from 1st July 2000 onwards in view of the amendment brought about to Section 4 particularly in relation to the meaning of the expression "transaction value" but as far as the case prior to 1st July 2000 is concerned, the same is fully covered by the decision of the Supreme Court in Indian Oxygen Gas case and therefore, to that extent, no fault can be found with the view taken by the Commissioner (Appeals) under the impugned order.

6. The Tribunal in Modi Gas & Chemicals Ltd. Case after taking into consideration the concept of transaction value and Rule 6 of the Central Excise Valuation Rules (Determination of Price of Excisable Goods) Rules, 2000 held that the valuation of the goods cannot be without taking into consideration the concept of transaction value as introduced under Section 4 of the Central Excise Act, 1944. Applying the same rule to the facts of the case, the Department is justified in contending that the valuation of the product supplied to the buyers who were providing their own cylinders could not have been different from the one in the case where the gas was supplied in cylinders of the manufacturers themselves and hence the deduction on account of cylinders having been brought by the buyers was not permissible. To that extent, certainly, the impugned order cannot be said to have been in consonance with the provision of law. However, this would apply as rightly pointed out by the Advocate for the appellants from 1st July, 2000 onwards. As far as situation prior thereto is concerned, it was fully covered by the decision of the Supreme Court in Indian Oxygen Ltd. case.

7. The decision in Kota Oxygen (P) Ltd. has no application to the facts of the case. In that case, the issue related to collection of rental charges in respect of cylinders wherein gas was filled for supply to the buyers

relating to the period prior to 1st July, 2000. The decision will not apply to the facts of the case in hand.

8. For the reasons stated above, therefore, the impugned order to that extent it applies from 1st July 2000 cannot be sustained and is liable to be set aside and the adjudicating authority is directed to recalculate the amount of duty and consequential obligation bearing in mind the liability in that regard starting from 1st July 2000 onwards and not prior to that.

9. Accordingly, the appeal is partly allowed. The impugned order to that extent it relates to the period from 1st July 2000 is set aside and the order of the adjudicating authority in that regard is restored for the said period. The adjudicating authority to recalculate the duty liability and penalty accordingly and intimate the same to the assessee.

10. Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

Rakesh Kumar)
Technical Member

scd/