

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

Date 24/03/2011

Appeal No. E/462 /2006 - EX[DB]

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

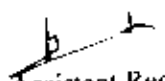
To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE

Appellant
Vs
Respondent

MAN INDUSTRIES (INDIA LTD.(ALUMINIUM DIVISION))

2011 EX[DB] dated 09-3-11

I am directed to transmit herewith a certified copy of Final order No.304/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

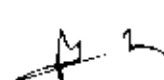

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
MAN INDUSTRIES (INDIA LTD.(ALUMINIUM DIVISION))
PLOT NO. 67-A, SECTOR-1
PITHAMPUR, DISTT. DHAR (M.P.)

2. Adv. / Consult *SH. S. YADAV., ADV.,*
A-5, BASEMENT,
LAXPAT NAGAR - III
N. DELHI - 24

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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, Iseon 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 Registrar
(Excise Appeal Branch)

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 09.03.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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?	See
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Excise Appeal No. 462 of 2006

[Arising out of order in appeal No. IND-I/462/2005 dated 09.11.2005 passed by the Commissioner (Appeals-I) Customs & Central Excise, Indore].

CCE, Indore

Appellants
[Rep. by Shri R. K. Verma, DR]

Vs.

M/s Man Industries (India) Limited

Respondent
[Rep. by Shri S. Yadav, Advocate]

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

FINAL ORAL ORDER NO. 304 / 2011-EX.

Per: Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and learned Advocate for the respondents.

2. This appeal arises from order dated 09.11.2005 passed by the Commissioner (Appeals), Indore. By the impugned order, the order passed by the adjudicating authority has been set-aside. Deputy Commissioner, Pithampur, Dhar under his order dated 16.08.2005 had confirmed the demand of Rs. 71,721/- alongwith interest payable thereon.

3. The respondents were engaged in manufacture of aluminium sections covered under chapter 76 of the first schedule to the Central Excise Tariff Act, 1985 and were availing credit under Rule 57A in relation to the inputs used in the manufacture of final products. It was revealed that for the period from April, 2004 to January, 2005 the respondents had been collecting Die Research & Development charges from their customers without including cost thereof in the assessable value of the final product nor disclosing the same in the monthly returns submitted to the department. After necessary investigation, show cause notice dated 29.04.2005 came to be issued to the respondents which was contested by the respondents by filing their reply dated 09.08.2005. In the course of investigation, statement of Shri Deepak Das, General Manager and authorized signatory of the respondents was recorded on 14.07.2004 who had deposed that they were charging Die Research & Development charges from their customers by raising debit notes and in some cases on invoice itself by showing the charges in the

invoices and as far as disclosure of the same in invoices is concerned, the respondents had paid the appropriate duty.

4. The impugned order is sought to be challenged essentially on the ground that the Commissioner (Appeals) failed to take note of the fact that it was undisputed fact that the charges in relation to die research & development charges were collected by the respondents by issuing debit notes and there is nothing on record placed by the respondents to reveal that the cost of such die and development charges formed part of the assessable value of the final product.

5. Indeed, plain reading of the impugned order discloses that the Commissioner (Appeals) merely on presumption that the cost of development of tools and dies is required to be amortised in such a manner that total amount so incurred is to be equally distributed amongst the total number of items manufactured and while clearing the final goods the same would stand already included in the assessable value and thus would be recovered by way of amortization without charging it separately under invoices or raising debit notes to the customer, set aside the order of the adjudicating authority simultaneously it has totally ignored the specific and clear admission by the General Manager and authorized signatory of the respondents that in fact during the relevant period the respondents had chosen to follow the procedure of recovering the cost of dies and development charges separately by issuing debit notes without any disclosure thereof to the department.

6. In **Mutual Industries Ltd. vs. CCE, Mumbai** reported in 2000 (117) ELT 578 (T), the Larger Bench of the Tribunal had clearly observed that "but for the use of the mould he cannot manufacture his product. So the value of the mould which has outlived its maximum capacity must certainly go in the production of finished product as far as the manufacturer is concerned. This means that so long as the mould is in use in the manufacture of the finished product, it continues certain value to be added to the value of the finished product. That additional value must necessarily go in assessing the duty payable on the finished product under the excise law".

7. In **United Systems Engineers Pvt. Ltd. vs. CCE, Coimbatore** reported in 2001 (134) ELT 473 (Tri-Chennai) while dealing with the issue as to whether the cost of Research and Development and Technological know-how fees are includible in the assessable value of the final product, it was held thus:-

"6. We have considered the submissions of both the sides. It is not in dispute that prototype developed by the appellants was supplied by them. Whatever cost has been incurred by them in developing the prototype will form part of the assessable value. If any expenses have been incurred on R&D they have to form part of the intrinsic value of the prototype developed and supplied by them. The Hon'ble Supreme court in the case, relied upon by the learned SDR, has observed that intellectual inputs greatly enhance the value and giving example, the Hon'ble Supreme Court mentioned that the value of paper is negligible as compared to the value or price of the Encyclopaedia or a Dictionary. The Hon'ble Supreme Court held that "this means that the charges of a duty is on the final product whether it be Encyclopaedia or the engineering or architectural drawings or any

manual". Following the ratio of the judgement of the Supreme Court, we find no reason to interfere with the impugned order".

8. The law on the point involved in the matter, therefore, is well settled as stated above.

9. Learned Advocate for the respondents however has sought to rely upon the decision in the matter of **Ashok Iron Works Ltd. vs. CCE, Belgaum** reported in 2004 (168) ELT 198 (Tri.-Bang.), therein the Commissioner had demanded duty on development charges. It was the contention of the assessee that the department had failed to establish that the development charges were recovered from the customer for certain patterns were relatable to particular excisable goods cleared during the material period. While dealing with the various contentions canvassed on behalf of the assessee in that regard the Tribunal held that the developmental charges were recovered by the assessee separately. Those charges could have gone into the cost of the patterns manufactured and the duty could have been demanded only on excisable goods, which were manufactured from those patterns developed by the assessee for manufacture of the casting. The number of casting which could have been manufactured from the patterns developed for which developmental charges were recovered was neither ascertained by the department nor the excisable goods which could have been manufactured from such patterns were worked out. In those circumstances, the demand of duty on development charges was not held to be sustainable. Apparently, the decision was in different set of facts. The contention which was sought to be canvassed in **Ashok Iron works** were never the points of defence in the case in hand and, therefore, the said

decision will not be of any help to the respondents to defend the impugned order.

10. As already pointed out above the clear finding to the effect that the respondents have been charging in relation to die & research development charges from their customers by raising debit notes without disclosing the said fact to the department and without including the cost thereof in the assessable value of the final product apparently justified the order passed by the adjudicating authority and, therefore, the Commissioner (Appeals) was not justified in interfering with the said order. Hence, the appeal succeeds, the impugned order is accordingly hereby set-aside and the order passed by the adjudicating authority is confirmed with consequential relief.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Pant