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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

Appeal No. E/983 /2005-985 /2005 - EX[DB] Date **27/04/2011**

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

To :
C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8, PANCHKULA
(HARYANA) 134119.

C.C.E. PANCHKULA Appellant

Vs

M/S BALLARPUR, INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.364-366 2011 EX|DB|** dated 21-4-11 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 BALLARPUR, INDUSTRIES LTD.
YAMUNA NAGAR

2. Adv. / Consult Sh. B.L. NARASIMHAN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29

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 (Harvana)
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.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeals No. 983-985 of 2005

[Arising out of the Order-in-Appeal No. 486-487/AKG/PCK/2004 dated 21/12/2004 passed by The Commissioner (Appeals), Central Excise, Delhi - III.]

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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Panchkula — Appellant

Versus

M/s Ballarpur Industries Ltd. — Respondent

Appearance

Shri Sunil Kumar, Authorized Representative (DR) – for the appellant.

S/Shri B.L. Narasimhan and Hemant Bajaj, Advocates - for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 25/01/2011.
DATE OF DECISION : 21/4/2011

Final Order No. 364-366/2011-EX Dated : ____________

Per. Rakesh Kumar :-

The facts giving rise to these appeals by the Revenue are, in brief, as under.

1.1 The respondent are engaged in manufacture of paper and paper board of different varieties chargeable to Central Excise duty under Chapter 48 of the Central Excise Tariff. They clear cut paper sheets as well as paper in reels. They have sales of cut papers as well as paper reels at the factory gate as well as through depots. Besides this, some quantity of paper reels are cleared on payment of duty to cutting centres for cutting on job work basis and from there, the cut paper sheets are transferred to depot from where the same are sold. The dispute in this case is about the value of the paper reels cleared to cutting centres, which after cutting into sheets were sold from depot. The period of dispute in these appeals is from 1/7/98 to 31/3/03. The Department's contention is that in respect of the reels cleared to cutting centres for conversation into sheets and which were subsequently sold from the depot, the charges for freight and insurance from cutting centre to Depot and handling at the cutting centre had not been included in the assessable value. It is on this basis that –

(a) Assistant Commissioner vide order-in-original No. 101/AC/YNR/03 dated 13/9/03 and ;

(b) Additional Commissioner, Central Excise, Panchkula vide order-in-original No. 8 & 9/ADC/PCK/2004 dated 6/3/04, confirmed duty demands of Rs. 62,998/- and Rs. 15,08,526/- respectively alongwith interest under Section 11AB of the Central Excise Act, 1944 and imposed penalties of Rs. 10,000/- and Rs. 15,08,526/- respectively on the respondent. The duty demands were confirmed on the grounds that the charges for handling at Depot and freight and insurance from the cutting centre to the depot had not been included in the value on which the duty had been paid at the time of clearance and that this case is squarely covered by the judgment of Hon'ble Supreme Court in the case of **Prabhat Zarda Factory Limited vs. CCE** reported in **2002 (146) E.L.T. 497 (S.C.)**.

1.2 On appeal to Commissioner (Appeals), the Commissioner (Appeals) by the impugned order-in-appeal set aside the orders of the original Adjudicating Authority relying upon the judgment of the Tribunal in the appellant's own case vide final order No. 607/2002-A dated 3/12/2002 wherein it has been held that the condition in which the goods are cleared from the factory at the material time is the basis for determination of value under Section 4 of the Central Excise Act, 1944 and not the condition in which the goods are finally sold to the customers from the job worker cutters/depots after carrying out the further operations. The Commissioner (Appeals), therefore, held that the handling charges incurred at the cutting centres are not to be included in the assessable value. It is against these orders of the Commissioner (Appeals) that these three appeals have been filed by the Revenue.

2. Heard both the sides.

2.1 Shri Sunil Kumar, the learned Departmental Representative, assailed the impugned order reiterating the grounds of appeal in the Revenue's appeal and pleaded that in this case the paper in reels had been cleared to cutting centres for conversation into sheets and from there the same had been sent to the depot from where the cut paper in sheets had been sold, that in terms of judgment of Hon'ble Supreme Court in the case of **Prabhat Zarda Factory Limited vs. CCE** (supra) the expenses incurred up to the depot are to be included in the assessable value, and that the impugned order setting aside the orders-in-original passed by the original Adjudicating Authority is contrary to the law laid down by the Hon'ble Supreme Court in the case of **Prabhat Zarda Factory Limited vs. CCE** (supra).

2.2 Shri B.L. Narasimhan, Advocate and Shri Hemant Bajaj, Advocate, the learned Counsels for the respondent, defending the impugned order pleaded that what had been cleared from the factory was paper reels and the same after being cut into sheets at the cutting centres had been sold from the depot, that duty had been paid on the paper reels at the time of their clearance from the factory on the price of the paper reels prevailing at that time at the depot, that the freight, handling charges etc. are already included in the selling price of the paper reels, that this very issue in the respondent's own case had been decided by the Tribunal vide final order No. 607/2002-A dated 3/12/2002, that

Government's SLP to Hon'ble Supreme Court, against this judgment of the Tribunal has been dismissed by the Hon'ble Supreme Court vide order dated 16/7/2010, that since what had been cleared from the factory was the paper reels and the duty had been paid on the paper reels at the price of paper reels prevailing at the depot at the time of removal, there is no question of addition of the expenses of freight, insurance and handling incurred in sending the cut paper from the cutting centres to depot and that in view of this, there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records.

4. The point of dispute, as succinctly mentioned by the Additional Commissioner in para 15 and 16 of the order-in-original dated 3/6/04, is as under :-

> **"15. The party is clearing paper reels and cut paper through various routes. These goods are broadly cleared in the following manner :-**
>
> **Reels are, -**
>
> **A. Sold to customers directly at the mill gate ; or**
> **B. Cleared to cutting centres for cutting them into cut paper; This cut paper is then, -**
>
> **(a) sold to customers from the cutting centres ; or**
>
> **(b) cleared to depots from where it is sold to customers.**

(C) Cleared to depots from where they are sold as reels to customers.

Cut paper is cleared to, -

D. customers directly from the factory; or

E. to depots from where it is sold to customers.

16. The present proceedings cover the case B(b) above. Hence the entire case has to be understood only in respect of clearances of B (b) above."

5. Thus, the dispute in this case is only in respect of the paper reels cleared from the factory to the cutting centres for cutting them into sheets which are thereafter cleared sent to depot from where the same are sold to the customers. As mentioned in para 19 of the Additional Commissioner's order-in-original, while the duty on paper reels at the time of the clearance from the factory is paid by taking their cum-duty price as Rs. 37,850/- per unit (which corresponds to the assessable value of Rs. 28,305.71 per unit), the cut papers are sold from the depot at cum-duty price of Rs. 38,424/-. The Department's view is that the difference between the price on which duty is paid on the paper reels and the price at which the cut paper is sold from the depot, is on account of non-inclusion of freight, insurance and handling expenses incurred from factory to the cutting centre and cutting centre to depot.

6. In the case of **Union of India vs. J.G. Glass Industries Ltd.** reported in **1998 (97) E.L.T. 5 (S.C.)** the point of dispute

was as to whether printing/decoration of Glass bottles amounts to manufacture and also whether the printing/decoration charges would be includible in the assessable value of the glass bottles, if the printing and decoration is done in the same factory in which the glass bottles are manufactured. Hon'ble Supreme Court in this case while holding that printing or decoration on plain glass bottles would not amount to manufacture, in para 23 of the judgment, the Hon'ble Court held that when the printing/decoration is done in the same factory in which the plain bottles are manufactured, the duty would be payable on the value of the printed/decorated bottles including the printing/decoration charges. In the above case of J.G. Glass Industries Ltd., the Hon'ble Apex Court also held that if only the plain glass bottles are cleared from the factory and printing/decoration is done outside, duty would be chargeable only on value of the plain glass bottles and printing/decoration charges would not be includible. Thus the ratio of this judgment of the Apex Court is that when the duty on any goods is on ad-valorem basis, the value of the goods adopted has to be the value of the goods in the form in which the same had been cleared at the time of removal. In this case while what had been cleared from the factory was the paper reels, the Revenue is comparing the value of the paper reels with the selling price of the cut paper at the depot which is not correct. Since, the price of paper reels at the depot at the time of removal was available and the duty had been paid only on that price, there is no short payment of duty. The judgment of Hon'ble Supreme Court in the case of **Prabhat Zarda Factory Limited vs. CCE** (supra) is not applicable to the facts of this case. We find that the same view had been taken by the Tribunal in the appellant's own case decided vide **final order No. 607/2002-A dated 3/12/2002,** the SLP filed by the Government to the Hon'ble Supreme Court which has been dismissed. In view of this, we do not find any infirmity in the impugned order. The Revenue's appeals are dismissed.

(Pronounced in open court on 21/4/11.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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