FAX : 011-26108426

REGISTERED / AD

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

Dated: **23/11/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1316-13318/2012-EX[DB]** dated **09/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

Name and Address of Respondent

1 E/929/2006 **RAJASTHAN SPINNING&WEAVING MILLS LTD.**
KHARIGRAM,GULABPURA,BHILWARA

Name and Address of Appellant

2 **C.C.E. JAIPUR II**
N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

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Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH. B.L. NARASIMHAN, ADV, B-6/10, S.J.ENCLAVE, N. DELHI-29

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 9.11.2012

Central Excise Appeal No.929-931 of 2006

Arising out of the order in appeal No.926-928(HKS)CE/JPR-II/2005 dated 23.12.2005 passed by Commissioner , Customs & Central Excise (Appeals II), Jaipur.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. 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?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

C.C.E., Jaipur II .. Appellant

Vs.

M/s Rajasthan Spinning & Weaving Mills Ltd. .. Respondent

Present for the appellant : Shri I. Baig, A.R.
Present for the respondent: Shri B.L. Narasimhan, Advocate

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL Order No. A/1316-1318/2012-Ex(BR)

Per Justice Ajit Bharihoke (Oral):

By this order, we propose to dispose of these three appeals filed by Revenue against common respondent M/s Rajasthan Spinning & Weaving Mills Ltd. involving similar question of law and facts.

2. Briefly stated the facts relevant for disposal of these appeals are that the respondent M/s Rajasthan Spinning & Weaving Mills Ltd. are engaged in the manufacture of yarn and man-made fabrics chargeable to excise duty under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985. Respondent was using yarn manufactured in its spinning division for captive consumption for manufacture of fabric and also selling part of the yarn produced to independent buyers.

3. During the financial years 1998-99, 1999-2000 and 01.04.2000 to June 2000, the appellant cleared the yarn manufactured in the spinning division for captive consumption on payment of excise duty as per ex-factory sale price wherever the said price was available. However, in certain cases, where ex-factory price of the yarn as on date was not available the appellant cleared yarn for captive consumption on payment of excise duty on provisional basis as per the valuation in accordance with the Rule 6(b)(ii) of Central Excise Valuation Rules, 1975 i.e. cost of manufacture of said quality of yarn plus reasonable margin of profit.

4. The respondent vide letters dated 30.9.98 and 1.8.99 intimated the Department that he was clearing yarn for captive consumption in such cases where factory gate price was not available on payment of excise duty on provisional basis on the valuation arrived at by adding margin of profit to the cost of manufacture of yarn. The jurisdictional Assistant Commissioner Vide three separate orders in original differed with the provisional assessment of the respondent and raised the demand of differential excise duty amounting to Rs.20 lakhs for the financial years 1998-99, Rs.5,75,395/- for the financial year 1999-2000 and Rs.72,953/- for the period w.e.f. 1.4.2000 to June 2000. The basis on which the concerned Additional Commissioner arrived at valuation of more than the provisional valuation was that the provisional valuation done by the respondent was contrary to the CBEC

Circular No.258/92/96-CX dated 30.10.96 and the instruction of the Board No.133/96 dated 27.11.96 inasmuch as the respondent while computing the provisional valuation for the purpose of excise duty took into account the margin of profit of spinning division only whereas he ought to have taken into account the profit margin of the respondent factory taken as a whole including spinning division and weaving division.

5. Being aggrieved of above referred orders in original the respondent preferred three separate appeals challenging final valuation and confirmation of differential excise duty. Commissioner (Appeals) vide common order in appeal dated 22.12.2005 decided the above referred three appeals and modified the impugned orders in original to the effect that for arriving at the valuation under Rule 6(b)(ii) of the relevant Rules only the profit margin of spinning division is to be taken into account and not profit margin of entire factory of the respondent . He thus allow the appeals with consequential relief to the respondents.

6. Shri I. Baig, ld. A.R. for Revenue has taken us through the common order in appeal and submitted that this order is based upon the finding of the Tribunal in the matter of Raymonds Ltd. vs. C.C.E., Aurangabad - 2001 (129) ELT 327 which judgment was appealed against by the Department and the same has been set aside by the Hon'ble Supreme Court. Ld. A.R. for Revenue has pleaded that as per Board Circular No.258/92/96-CX dated 30.10.96 when intermediate exciable goods are captively used for manufacture of final product and the ex-factory price is not available, in such a case the valuation for the purpose of excise duty is the cost of the manufacture of intermediate goods reasonable profit margin which assessee would have earned on sale of such goods. Ld. A.R. pleaded that since the respondent has failed to produce the separate accounts to throw light on the profit margin yarn manufacturing division the jurisdictional

authority was right in assessing value of the yarn captively consumed by taking into account the profit margin of entire manufacturing unit of the respondent including yarn manufacturing as well weaving division for the previous years. He thus contended that impugned order of Commissioner (Appeals) is not sustainable.

7. Shri B.L. Narasimhan, ld. Advocate for the respondent on the contrary has drawn our attention to the relevant Rule 6(b)(ii) of Central Excise Valuation Rules, 1975 which provides that in the case of intermediate final products cleared for captive consumption the valuation for the purpose of excise duty has to be determined on the basis of cost of production of such product plus reasonable profit which the assessee would have made on such product. Ld. counsel further submitted that Commissioner (Appeals) has allowed the appeals preferred by the respondent against respective orders in original.

8. We have considered the rival contentions and perused the material on record. In order to properly appreciate the contentions of the parties, it would be useful to have a look on Rule 6(b)(ii) of the Central Excise Valuation Rules, 1975 which read thus:-

> " 6(b)(ii) if the value cannot be determined under sub-clause (i), on the cost of production or manufacturing including profits, if any, which the assessee would have normally earned on the sale of such goods."

9. Bare reading of the above Rule makes it clear that if the value of intermediate product cleared for captive consumption cannot be determined on the basis of actual sale transaction to independent buyers then the valuation of such goods for the purpose of excise duty would be cost of production or manufacture including reasonable profit which the manufacturer would have earned. In our view the word ' profit' used in Rule 6(b)(ii) relates to the profit in respect of

intermediate product and not the final product which emerges after user or processing of the intermediate product.

10. CBEC Circular No.252/92/96-CX dated 30.10.96 relied upon by the Department clarified as to how Rule 6(b)(ii) for the purpose of valuation of intermediate product used for captive consumption has to be applied. Relevant portion of the aforesaid Circular is reproduced thus:

> 3. The matter has been further examined in consultation with the Cost Accounts Branch of Department of Expenditure. Board has observed that the method of calculation provided under Rule 6(b) (ii) of the Central Excise (Valuation) Rules, 1975 is to ascertain the nearest equivalent of the normal price. Therefore, while determining the cost of production of captively consumed goods during the current year, all elements which are otherwise includible in Section 4(1)(a) price have to be included in the cost of production.
>
> It is hereby clarified that for calculation of value of the goods captively consumed under Rule 6(b)(ii) the following steps are to be followed :-
>
> (i) The cost of production of the goods has to be determined so as to include *inter alia*, the cost of material, labour cost and overheads including administrative cost, advertising expenses, depreciation, interest etc.
>
> (ii) Profit before tax has to be taken from audited balance sheet of the previous year and the profit margin has to be calculated as a percentage of cost of production in the previous year as per the formula prescribed by the Cost Accounts Branch of Department of Expenditure (copy enclosed).
>
> (iii) The profit margin of the previous year as arrived at step (ii) as a percentage of cost of production has to be loaded to the cost of production of the impugned goods derived at (i) above for the current year to arrive at the assessable value of captively consumed goods.
>
> C.A. certificate and the loss and profit statement should be scrutinised carefully, in the light of these guidelines and should not be accepted blindly or automatically.
>
> 4. Board's earlier circular/instructions as mentioned above stand modified to this extent.
>
> Annexure
>
> A clarification has been sought whether gross profit or gross profit before tax has to be taken into consideration for determination of assessable-value under Rule 6(b)(ii) of Central Excise Rules, 1975. It is clarified that for the purpose of assessable value, profit before tax should be considered. "Profit before tax" is, invariably, a distinct item appearing in the Profit & Loss Account of companies. Profit before tax is arrived at after providing for interest and depreciation. Therefore, cost of production of the captively consumed goods will also include applicable interest, depreciation etc.

On reading of the above we find that instruction of the Board as per this Circular is consistent with the Rule 6(b)(ii) of the Valuation Rules and it nowhere provides for arriving at valuation of intermediate product cleared for captive consumption the profit margin of other activities of the assessee has to be included.

11. The issue relating to valuation of intermediate product used for captive consumption came up before Larger Bench of this Tribunal in the matter of Raymonds Ltd. vs. C.C.E., Aurangabad reported in 2001 (129) ELT 327 (T-LB) wherein the Larger Bench after analyzing the relevant provisions of Valuation Rules as also the instructions of the Board came to the conclusion that for the purpose of valuation of intermediate product used for captive consumption where comparable market value is not available, only relevant factor is the cost of manufacture or production of intermediate product plus reasonable profit the asseseee would have normally earned on sale on such intermediate product. We find no reason to differ with the aforesaid view. Ld. A.R. for Revenue has taken a plea that above referred finding of the Larger Bench is no more good law as the aforesaid order of the Larger Bench has been set aside in appeal by the Hon'ble Supreme Court in the matter of C.C.E., Aurangabad vs. Raymonds Ltd. reported as 2006(204) ELT 3 (SC). We have gone through the judgment of Supreme Court in the matter of Raymonds Ltd. (supra). On going through this judgment we find that Supreme Court has not differed with the ratio of the judgment of Larger Bench of CESTAT in the matter of Raymonds Ltd. (supra) instead in para 3 of judgment, the Hon'ble Supreme Court has observed thus:

> **3.** It was common ground between the parties before the Tribunal that the cost of production under erstwhile Rule 6(b)(ii) of Central Excise (Valuation) Rules, 1975 [for short "the Rules"] will have to be determined based on the actual cost of production at the factory

> of production alone and not the costs of production in all the textile units of the respondent-assessee together. This point has been decided in a recent judgment of this Court in the case of *Commissioner of Central Excise, Pune* v. *M/s. Cadbury India Ltd.* [JT 2006 (7) SC 147].

12. From the aforesaid observations of the Supreme Court it is clear that for determination of valuation of intermediate product apart from the profit of manufacturing division of the intermediate product is to be taken into account and not the profit of all the divisions of respondent factory.

13. In view of the discussion above, we do not find any merit in the above appeals filed by Department. However we find that after coming to above conclusion the Commissioner (Appeals) allowed the appeals of the respondent with consequential relief. That relief can be computed only if an evasion of valuation of intermediate product i.e. yarn is undertaken by the jurisdictional authority to calculate the incidence of excise duty. Accordingly, we direct the jurisdictional Assistant Commissioner to recalculate the differential excise duty, if any, payable by the assessee in terms of the observation made in this order.

14. Appeals are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/