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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/2836/2010 - EX[DB]
E/S/2600/2010-EX

Date **19/06/2012**

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

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR

Appellant
Vs

M/S IND SYNERGY LTD. **STAY ORDER NO. 930/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/691** 2012 **EX[DB]** dated 13-6-12 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 IND SYNERGY LTD.
VILLAGE-KOTMAR, MOHAPALI,
DISTT. RAIGARH (C.G.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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-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,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant 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: 13.06.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 should 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 Departmental authorities?	

Excise Appeal No. 2836 of 2010 with Excise Stay No. 2600 of 2010

(Arising out of order-in-Appeal No. 169/RPR-I/2010 dated 19.05.2010 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur).

CC & CE, Raipur — Appellants

Vs.

M/s Ind Synergy Ltd. — Respondent

Present Shri Nagesh Pathak, AR for the appellant.
Present Sh. Ramesh Nair, Advocate for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 930/2012-EX (BR)
FINAL Order No. A/691/2012-EX (BR)

Per. Justice Ajit Bharihoke:

M/s Ind Synergy Limited is engaged in the manufacture of sponge iron, billets etc. falling under chapter 68 of the schedule to Central Excise Tariff Act, 1985. On 07.10.2008, the appellant cleared a consignment of sponge iron / billet to its depot on payment of excise duty on the basis of provisional valuation @ Rs. 27,915/- PMT. Those goods were sold from the depot during the period 18.10.2008 to 03.11.2008 at different rates. The invoice value of the goods sold by the respondent from his depot on 18.10.2008 was Rs. 30862/- PMT. However, after 18.08.2009 and most of the depot sales were at a rate lesser then the transaction value on which the excise duty was paid at the time of clearance of goods from the factory to the depot. The respondent thus applied for refund of Rs. 11,25,653/- on differential of the rate at which excise duty was paid at the time of clearance and the rate on which the goods were sold from depot.

2. The department contested the claim of refund on the ground that the refund claim was not consistent with the provision of Rule 7 of Central Excise (Valuation) Rules, 2000. The jurisdictional Assistant Commissioner vide order dated 01.02.2010 dismissed the refund claim.

3. Being aggrieved of the order of jurisdictional Assistant Commissioner, respondent preferred appeal and the Commissioner (Appeals) allowed the appeal of the respondent and held that the respondent was entitled to refund of the duty paid in excess by him at the time of clearance of the goods from the factory to the depot.

4. Feeling aggrieved by the aforesaid order, the department has approached the Tribunal.

5. Sh. Nagesh Pathak, ld. AR has pleaded that the impugned order is not sustainable for the reason it has been passed on incorrect reading of Rule 7 of Central Excise (Valuation) Rules. Thus, he has pressed for setting aside of the aforesaid order.

6. Sh. Ramesh Nair, ld. Advocate for the respondent on the other hand has argued in support of the impugned order. He has referred to para 3 of the impugned order and submitted that in the aforesaid paragraph there are details of the invoices pertaining to depot sale of the goods in question during the period w.e.f. 18.10.2008 to 3.11.2008 and the price charged at the time of sale. Sh. Nair submitted, from the sale invoices it is apparent that most of the occasions goods were sold at the rate lower than the transaction value on which the goods were cleared from the factory of the respondent to sales depot, therefore, the appellate authority has rightly set aside the order-in-original and allowed the refund claim in respect of the excise duty paid in excess.

7. In order to appreciate the rival contentions it would be useful to have a look of relevant Rule 7 of the Central Excise (Valuation) Rules which reads thus:-

> "Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal

transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment".

8. On bare reading of the aforesaid rule, it is seen that in the cases where the goods are not sold by the assessee at the factory gate but are transferred to depot from where the excisable goods are to be sold the transaction value of such goods cleared from depot for the purpose of excise duty shall be the rate at which goods are sold from such depot on or about the same time and if such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment. Admittedly, in the instant case the goods in question were removed from the factory on 07.10.2008, and the assessee paid duty @ Rs. 27,915/- PMT. Though the respondent has applied for refund of excess excise duty paid, the respondent failed to lead any evidence pertaining to the transaction of sale from depot on 07.10.2008. The respondent, however, produced invoice No. 448 to 543 dated 18.10.2008 before the adjudicating authority issue at sale price @ Rs. 30682/- PMT. These are the invoices supplied by the respondent regarding sale at the time nearest to the date and time for removal of the goods from factory to the depot. Therefore, in view of Rule 7 for the purpose of excise duty normal transaction value of the goods was much more than the rate at which the excise duty was paid at the time of clearance of goods from the factory.

9. The Commissioner (Appeals) have dealt with the issue in para 5.6 of his order in following manner:-

> "In this connection, I find that in a situation when excess payment of duty occurred owning to decrease in market value at depot, the lower authority betrayed irrational reservations in sanctioning the refund claim holding that there "I find that the clearance from depot on 18.10.2008 are on the same transaction value as cleared from the factory and clearance at lower rate from the depot on later date will not make the noticee (Appellant) to entitle for refund claim and not in line with the provisions contained in Rule 7 of the Central Excise (Valuation) Rule 2000". This view of the lower authority is devoid of reasons and contrary to legal provisions under Rule 7 of the Valuation Rule 2000. The Rule 7 provides that under the circumstances of the case the normal transaction value of any consignment may often have to be ascertained from the depot price prevailed even before its clearance from the factory. Only requirement under the law is to ascertain the value of depot sale at the time of ex-factory clearance, and if it is impossible, the value is, at the time nearest to the time of ex-factory removal. Accepting the payment of short paid duty by the appellants the department has tacitly accepted the impossibility of ascertaining the normal transaction value only at the time of ex-factory clearance. Further, the appellants submitted all the relevant documents including depot invoices which are indicative of the price at depot sale. Duty being advalorem is proportionately reduced with the fall of price at the depot. As a result the appellants have to bear the burden of excess duty paid on the ex-factory value of the goods that is higher than the actual transaction value".

10. From reading of above, it is apparent though Commissioner (Appeals) has correctly noted the provision of Rule 7 of Valuation Rules, he has not followed the same while deciding the appeal. The order of Commissioner (Appeals) being in direct conflict with Rule 7 of Central Excise (Valuation) Rules cannot be sustained. Accordingly, we accept the appeal of the department and set aside the impugned order. Appeal and stay application are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant