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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 07/05/2012

Appeal No. E/611 /2005 - EX[DB]

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

To :
M/S OSWAL WOOLLEN MILLS LTD
UNIT NO. III, G.T.ROAD, SHERPUR, LUDHIANA - PUNJAB

M/S OSWAL WOOLLEN MILLS LTD Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/519 2012 EX[DB]** dated passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.BALBIR SINGH
MASTAN & CO,C-5/9,SAFDARJUNG ENCLAVE,N.DELHI

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)

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

<u>COURT NO. I</u>

<u>DATE OF HEARING/DECISION : 02/05/2012.</u>

Excise Appeal No. 611 of 2005

M/s Oswal Woolen Mills Ltd. Appellant

Versus

CCE, Ludhiana Respondent

[Arising out of the Order-in-Appeal No. 640/CE/Appl/Ldh/2004 dated 29/11/2004 passed by The Commissioner, Central Excise (Appeals), Ludhiana.]

Hon'ble Shri Justice Ajit Bharihoke, 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? :

<u>Appearance</u>

Shri Bhupinder Singh, Advocate – for the Appellant.

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

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

FINAL Order No. A/519/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

This appeal is directed against order of Commissioner (Appeals) dated 29/11/04 whereby he dismissed the appeal of the appellant against the order-in-original and confirmed the duty demand to the extent of Rs. 21,75,395/- with interest.

2. Facts in brief are that the appellants are engaged in manufacture of woollen yarn, acrylic yarn, grey manmade yarn and woollen fabric, acrylic blankets etc. which are excisable items. The period of dispute is w.e.f. 1st July 2000 to 31/3/01. The appellant upon served with a show cause notice that during the aforesaid period they manufacture and cleared aforesaid goods to their own unit, and related parties besides other unrelated buyers at the same price. The appellant paid excise duty as per the transaction value in terms of Rule 4 of Central Excise Valuation Rules 2000, whereas the Department was of the view that the appellant ought to have paid excise duty in terms of Rule 8 and 9 of Central Excise Valuation Rules and on that premise the duty demand was confirmed.

3. Learned Counsel for the appellant has assailed the impugned order on the ground that the order has been passed on the assumption that all the sales and clearances were to the own unit on related parties, which is against the facts. In support of this contention, learned Counsel has drawn our attention to the

show cause notice wherein it is specifically noted that the appellant unit is manufacturing woollen yarn, acrylic yarn, grey manmade yarn and woollen fabric, acrylic blankets which are being used captively as well as sold to the independent buyers and to its other units and other related persons. Learned Counsel of the appellant has drawn our attention to Rule 4 of Central Excise Valuation Rules, 2000 and submitted that since the goods manufactured by the appellant was supplied to related and unrelated buyers, the appellant has rightly value those goods for the purpose of excise duty as per transaction value, which was common to all the buyers. Learned Counsel further submits that Rule 8 and 9 of Valuation Rules are not applicable as those rules are applicable in the cases where the goods cleared are use captively or are cleared to related parties only. Thus, it is contended that the appellant has correctly paid the excise duty in terms of Rule 4, as such, the impugned order arising the excise duty in terms of Rule 8 and 9 of Valuation Rules is not sustainable.

4. Shri Sunil Kumar, AR on the contrary, submits that this is a case in which the supplies were made only to the related parties or for capitive use by the appellant, as such, the Adjudicating Authority as well as Commissioner (Appeals) have rightly invoked Rule 8 and 9 and confirmed the demand. In support of his contention, Shri Sunil Kumar has relied upon the judgments of the Tribunal in the case of **BOC India Ltd. vs. CCE, Jamshedpur** reported in **2004 (168) E.L.T. 478 (Tri. -**

Kolkata) and **Ucal Machine Tools Ltd. vs. CCE, Chennai** reported in **2008 (223) E.L.T. 647 (Tri. – Chennai)**.

5. We have considered the rival contentions and perused the record. Real controversy between the parties revolves round the issue whether or not the appellant at the relevant time were supplying the goods to related as well as unrelated parties? In this regard, the show cause notice issued by the Department assumes importance, wherein it is categorically stated that during the period under show cause notice the appellant cleared manufactured goods to related as well as unrelated persons. We have gone through the order of Adjudicating Authority as also the Appellate Authority. Though both of them concluded that the appellants during the relevant period were supplying goods only to the related parties, but they have not given any reason or basis for the aforesaid conclusion. Therefore, in view of the admission of the Department in the show cause notice, we are unable to accept the contention that the goods were supplied only to the related parties. Having concluded that the appellant has cleared goods to related as well as unrelated buyers, the question which arises is whether the appellant has correctly paid excise duty in terms of Rule 4 of the Central Excise Valuation rules or Rule 8 and 9 of the aforesaid rules are applicable for the purpose of valuation, as claimed by the respondent. To resolve this controversy, it would be helpful to have a look the relevant rules which are reproduced thus :-

Rule 4 The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable.

Rule 8 Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be [one hundred and ten per cent] of the cost of production or manufacture of such goods.

Rule 9 When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-Section (3) of Section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail :

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

6. On reading of the aforesaid provision, it is apparent that Rule 4 is the general Rule for valuation of the excisable goods which provides that for the purpose of excise duty, the value of the goods cleared/sold by the assessee shall be the transaction value i.e. the price at which the goods are sold to the buyer. Rule

8 and 9 are in the nature of exception to Rule 4, which deals with the transactions between the assessee and the related party or the transaction in which the assessee resorts to clearance of goods to unrelated buyers through a related party. Since in the instant case, the assessee had cleared goods on the same price to the related as well as unrelated parties, in our considered view, Rule 4 is applicable. Thus, we conclude that the assessee had rightly paid excise duty based upon Rule 4 of Central Excise Valuation Rules, 2000 and the Adjudicating Authority as also the Appellate Authority have gone wrong in applying Rule 8 and 9 of Valuation Rules to confirm the duty demand upon the appellant. We have gone through the authorities relied upon by the respondent. In our considered view the judgments are not applicable to the facts of this case.

7. In view of the above, we find it difficult to sustain the impugned order. Appeal is thus accepted and impugned order is set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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