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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/1471,1478,2186/2005-EX[DB]

Dated: **27/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
INDIAN OIL CORPORATION LTD.
G.T.Karnal Road Ambala Cantonment
Haryana

INDIAN OIL CORPORATION LTD. (Appellant)

VS

C.C.E. PANCHKULA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/967-969/2012-EX[DB]** dated **13/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. PANCHKULA
SCO No. 407 and 408, Sector 8,
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2. Advocate(s) / Consultant(s):
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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-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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:13.08.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. 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 Appeals Nos.E/1471,1478 & 2186 of 2005

M/s.Indian Oil Corporation Ltd. ...Appellants

Vs.

CCE, Panchkula ...Respondent

Appearance:

Shri L.P.Asthana, Advocate for the appellant.
Shri Sanjay Jain, DR for the respondent.

Coram:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL Order No. A/967-965/2012-Ex(BR)

Per Justice Ajit Bharihoke:

These appeals relating to the same appellants involve similar question of law and facts. Therefore, we propose to decide the appeals by a common order.

2. Briefly stated the facts relevant for the disposal of these appeals are that the appellant is engaged in the in the manufacture of petroleum products viz. Motor Spirit (M.S.), High Speed Diesel (HSD/Aviation Turbine Fuel (ATF), Furnace Oil, (FO), Light Diesel Oil (LDO), Superior Kerosene Oil (SKO), etc. During the relevant period, the appellant was clearing its products to its own depots as also to the other oil manufacturing companies.

3. Case of the department is that the volume of the petroleum product undergo change with change in temperature. The appellant cleared its products to its own depots at room temperature of the specified rate per liter. However, in respect of their sales to the other oil manufacturing companies, though the appellants charge the same price per litre based on notional volume of the oil product by converting the volume at room temperature to the volume at 15°C. As a result the volume of oil supplied get reduced and this result in lesser price than the price at which the oil is supplied by the appellant to its own depots. The department was of the view that by adopting aforesaid procedure, the appellants have undervalued their products in respect of goods cleared to other oil manufacturing companies with a view to reduce the excise duty

incidence. Thus show cause notices raising the excise duty demand for differential in the transaction value were issued to the appellants which were adjudicated by the jurisdictional Commissioner vide respective orders-in-original Nos.2/Comm./PKL/05 dated 31.1.29005 and No.01/Comm./PKL/05 dated 27.1.2005 and duty demand based on the differential of price was respectively confirmed against the appellants with interest.

4. Ld. Shri L.P. Asthana, Advocate has contended that impugned order is not sustainable as the adjudicating authority has failed to appreciate that goods supplied to other oil manufacturing companies who are not related parties vis-à-vis the appellant as such the appellant has rightly paid excise duty as per Section 4 of the Central Excise Act, 1944 on the price at which the goods were calculated to the purchasers.

5. Shri Sanjay Jain, ld. Authorised Representative for the respondent on the contrary has reiterated the impugned orders. He has submitted that there is no provision in the Act to work out notional quantity of the goods in question at room temperature for fixation of price. Therefore, the volume of the room temperature ought to have been taken for calculating the price of the goods.

6. We have considered the rival contentions and perused the records. It is undisputed that the appellant has supplied goods to other oil manufacturing

companies on payment of excise duty calculated on transaction value of goods supplied at 15°C.

7. Thus only question for determination is whether or not by converting the actual volume of oil at room temperature to notional volume at 15°C for the purpose of fixing the price to be charged by other oil manufacturing companies amounts to undervaluing the product to evade excise duty?

8. In order to find answer to the above question, it would be useful to have a look on Section 4(1) of the Central Excise Act, which is reproduced thus:-

> **4. VALUATION OF EXCISABLE GOODS FOR PURPOSES OF CHARGING OF DUTY OF EXCISE.**
>
> (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—
>
> (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of goods are not related and the price is the sole consideration for the sale, be the transaction value;
>
> (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.
>
> [2][Explanation.—For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]"

9. On plain reading of the above, it is clear that for the purpose of calculating the excise duty chargeable, the price charged if it is sole consideration for the sale, would be the transaction value. Admittedly, in the instant appeals, the goods have been cleared on payment of excise duty as per the price declared in the invoices. It is not the case of the department that other manufacturing companies to whom the oil was supplied at the rate based on the volume at 15°C are the related parties. It is also not the case of the Revenue that invoice price was not the sole consideration for sale or the appellant/assessee has received any other additional consideration apart from the declared sale price. Thus, in our considered view, the appellant has rightly paid the excise duty as per transaction value in terms of Section 4 of the Central Excise Act and there is no justification for allegation of under-valuation of the goods with a view to evade excise duty.

10. In view of the above, we find it difficult to sustain the impugned order confirming the duty demand with interest against the appellant. The appeals are, therefore, accepted and the impugned orders confirming the demand with interest are set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.