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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/759/2006-EX[DB], E/760/2006-EX[DB]

Dated: **14/09/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
GORAMAL HARIRAM LTD.
VILLAGE DEVLA GAUTAM BUDH
NAGAR(UP)

(Appellant)

GORAMAL HARIRAM LTD.

VS

(Respondent)

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of Final Order No. **A/1156-1157/2012-EX[DB]** dated **03/09/2012** 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. NOIDA
C-56/42, Sector-62, Noida-201307

2. Advocate(s) / Consultant(s):
R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038
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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: 3.9.2012

Central Excise Appeal No.759, 760 of 2006

Arising out of the order in appeal No. 154-155/CE/APPL/NOIDA/06 dated 19.1.2006 passed by Commissioner (Appeals), Central Excise, Noida.

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?	

M/s Goramal Hariram Ltd. ... Appellant

Vs.

C.C.E., Noida .. Respondent

Present for the appellant :Shri R. Santhanam, Advocate
Present for the respondent :Shri Devender Singh, A.R. (Jt.CDR)

FINAL Order No. A/1156-1157/2012-EX(BR)

Per Mr. Justice Ajit Bharihoke (Oral):

Appellant manufacture acid slurry. During the period of dispute i.e. from April 2000 to March 2004 they were supplying this acid slurry to their sister unit for its captive consumption. Duty on the acid slurry was paid on the price at which other unit was purchasing the same from other suppliers. The Department was of the view that in respect of these clearances, duty should have been paid on the value determined under Rule 8 of Central Excise Valuation Rules, 2000 i.e. on 115% of the cost of production. Since the appellant did not furnish the cost data or cost of production, the Department was of the view that the price at which they were paying the duty should be treated as cost of production and duty should be charged on 115% of that price. On this basis, two show cause notices were issued for the demand of duty amounting to Rs.3,80,055/- for the period April 2000 to March 2003 and Rs.1,77,409/- for the period April 2003 to March 2004.Show cause notices also proposed recovery of interest on the duty and imposition of penalty. These show cause notices were adjudicated by the Assistant Commissioner by two separate orders by which duty demands were confirmed along with interest. While no penalty was imposed in respect of second show cause notice in respect of the first show cause notice for the period from April 2000 to March 2003 penalty of equal was also imposed. These orders of the Assistant Commissioner were upheld by Commissioner of Central Excise (Appeals) by a common order in appeal dated 19.1.2006 against which these two appeals have been filed by the appellant.

2. Heard both the sides.

3. Shri R.Santhanam, Advocate, the ld. Counsel for the appellant pleaded that the impugned orders are not sustainable in law firstly for the reason that Rule 8 of Central Excise Valuation Rules, 2000 has been wrongly invoked as the appellant was clearing acid slurry manufactured by him to independent buyers also. It is further submitted that otherwise also it is not a case of captive consumption. It goes to two different units. There is no basis for working out of cost of manufacture for calculating excise duty under Rule 8 of Central Excise Valuation Rules, 2000. It is

further submitted that the adjudicating authority as well as Commissioner(Appeals) have wrongly taken the value at which acid slurry was cleared to their sister unit as manufacturing cost to work out the differential excise duty.

4. Shri Devender Singh, ld. Jt.CDR for Revenue on the contrary has argued in support of the impugned order. He has contended that duty demands have been rightly confirmed against the appellant because the appellant were clearing their entire production to a sister unit and as such the valuation in accordance with Rule 8 is perfectly in order. It is further submitted that the plea of the counsel for the appellant is devoid of merit , as there is no evidence on record to indicate that the appellant was clearing acid slurry to independent buyer also. It is further contended that the appellant had been non-cooperative during the adjudication proceedings and despite request did he not furnish any information regarding his goods manufactured and as such, the authorities concerned were well within their right to take the value of the acid slurry which was cleared to their sister unit concerned as cost of manufacture.

5. We have considered the rival contentions and perused the record. On perusal of the records, we find that show cause notices in this regard were issued to the appellant consequent upon the visit of audit party to the production unit of the appellant. On perusal of the order in original as well as impugned order we find that but for the passing reference pertaining to audit , there is no reference in those orders as to whether or not the audit party tried to work out the manufacturing cost of acid slurry produced in the factory of the appellant during the period in dispute.

6. Rule 8 of Central Excise Valuation Rules, 2000 deals with the cases where the manufacturer has cleared the excisable goods for captive consumption only. Said rule is reproduced thus:

> **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*.

On bare reading of the Rule 8 it is evident that if the clearance of the excisable goods is only for captive consumption the excise duty has to be worked out on the valuation based upon the 115% of the cost of manufacture, . Thus it is evident that cost of manufacture is the most relevant aspect of this adjudication. Neither in the show cause notices nor in the order in original nor in the order-in appeal there is even suggestion that the officers tried to work out the cost of manufacture. The only reason to justify this valuation as given in the impugned order is that the appellant was non-cooperative and despite request he did not furnish any information regarding his manufacturing cost. That by itself in our considered view does not vest the adjudicating authority or the appellate authority with powers to arbitrarily fix the cost of manufacture without making any efforts to scrutinize the relevant record of the assessee. Thus under the circumstances, we are unable to sustain the impugned order., which is based upon with arbitrary figures taken as cost of manufacture. Ordinarily we would have remanded the matter back to the adjudicating authority to re-adjudicate the matter but taking into account the amount of excise duty involved and the fact that these appeals relate to the period upto March 2004, we refrain from doing so. It may not be out of place to mention that with reference to the show cause notices dated 15.10.2004, the appellant vide letter dated 23.11.2004 informed the Revenue authority that other unit of the appellant company during the relevant period had been purchasing acid slurry from other independent manufacturers to meet its requirement and the acid slurry transferred by the appellant to his other unit in Delhi was cleared at the valuation higher than the purchase price from the market. Neither the adjudicating authority nor the appellate authority has cared to look into this aspect of the matter. This circumstance also go against the Revenue.

7. In view of the discussion above, we ourselves are unable to sustain the impugned orders. The impugned orders are set aside and the appeals are accepted.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/