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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

STAY Application No. : E/Stay/1207/2005
Appeal No. : E/1656/2005-EX[DB]

Dated: **17/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
SWARAJ FOUNDRY DIVISION
Rajinder Arora, Manager - Finance,
Punjab Tractors Ltd, Phase IV, Mohali,
District Ropar, Punjab

SWARAJ FOUNDRY DIVISION (Appellant)

VS

C.C.E. LUDHIANA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/815/2012-EX[DB]** dated **10/07/2012** 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. LUDHIANA
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5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

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

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Assistant Registrar
EXCISE Appeal Branch

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

Date of Hearing/ Decision:10.07.2012

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 Appeal No.E/ 1656 of 2005

(Arising out of Order-in-Original No. 07/LDH/05 dated 21.02.2005 of the Commissioner of Central Excise (Appeals-II), Ludhiana).

M/s.Swaraj Foundry Division ...Appellants

Vs.

CCE, Ludhiana ...Respondent

Appearance:

Shri B.L. Narsimhan, Advocate for the appellants.
Shri Nagesh Pathak, AR for the respondent.

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

Final Order No. A/815/2012-EX(BR)

Per Rakesh Kumar:

The appellant manufacture castings of iron and steel, which are used for manufacture of motor vehicle parts. The appellant during the period of dispute were clearing the castings to their another unit for its captive consumption on payment of duty on the basis of 115% of the cost of production in accordance with the provisions of Rule 8 of the Central Excise Valuation Rules. The cost of the goods was determined in accordance with CAS-4. The department was of the view that the cost should also include the element of "interest on loans" and on this basis, duty demand was raised by the department by issuing show cause notice. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 21.02.2005 by which the Commissioner confirmed the duty demand of Rs.34,38,979/- for the period from May, 2001 to September, 2001 along with interest. Besides this, he also imposed penalty of Rs.5 Lakhs on the appellant. Against this order of the Commissioner, this appeal has been filed.

3. Heard both the sides.

4. Shri B.L. Narsimhan, Advocate, the learned Counsel for the appellant pleaded that the impugned order of the Commissioner confirming the duty demand by including the interest on loans in cost of the castings is not sustainable for the reason that the same is not required to be included in the cost, that this position has been clarified to the department vide letter dated 1-9-1999, that the interest on loans is not required to be included in the cost of finished products as per Accounting Standard CAS-4, that in terms of Board's Circular dated 13-2-2003 regarding the costing of the goods cleared for captive use, the same is to be determined by applying CAS-4 Standard, that this Circular of the Board has retrospective application, and that in this regard, reliance is placed on the judgment of the Tribunal in the case of *Nirma Ltd.* v. *C.C.E.*, reported in 2006 (200) E.L.T. 213 and of Hon'ble Supreme Court's judgment in the of *C.C.E., Pune* v. *Cadbury India Limited* reported in 2006 (200) E.L.T. 353 (S.C.)

5. Shri Nagesh Pathak, ld. Authorised Representative for the department defended the impugned order by reiterating the findings of the Commissioner in the impugned order and pleaded that the Board's Circular dated 13.2.2003 have only prospective validity and cannot be applied for the period prior to 13.2.2003 and that in this regard, he relies upon the Apex Court's judgement in the case of H.M. Bags Manufacturer Vs. CCE reported in 1997 (94) ELT 3 (SC).

6. We have carefully considered the submissions from both the sides and perused the records.

7. Coming to the question of interest cost, in terms of the Board's Circular No. 6/29/2002-CX.I, dated 13-2-2003, the cost of the goods cleared for captive consumption must be determined in accordance with the general principles of costing and accordingly for this purpose, CAS-4 Standard is to be adopted. As per CAS-4, for determining the cost of goods, the interest cost is not to be included. The department's plea, however, is that Circular dated 13-2-2003 of the Board has only prospective application and is not applicable for the period prior to 13-2-2003 for the purpose of determining the cost of production under Rule 6(b)(ii) of the Central Excise Valuation Rules. However, Hon'ble Supreme Court in the case of ***C.C.E.,Pune* v. *Cadbury India Ltd.*** **reported in 2006 (200) E.L.T. 353 (S.C.)** where the period of dispute pertains to the period prior to 13.2.2003, has held that for determining the cost of production for the purpose of determining the assessable value under Rule 6(b)(ii) of Central Excise (Valuation) Rules, 1975, the cost must be determined, strictly according to the principles of costing and for this purpose CAS-4 must be adopted. In this regard, para-9, 10, 11, 12 and 13 are reproduced below :-

> "9. The issue in the present case is about the value of the goods captively consumed by the respondent. The assessee has contended

that there is no dispute that these intermediate goods are not marketable and are not bought and sold in the market. Hence the valuation of these intermediate goods has to be done according to Rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975.

Rule 6(b)(ii) reads as follows :

"Rule 6 - If the value of the excisable goods under assessment cannot be determined under Rule 4 or Rule 5, and -

(a).........................

(b)(i).....................

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

10. According to settled principles of accountancy only the elements that have actually gone into the manufacture/production of these intermediates i.e. sum total of the direct labor cost, direct material cost, direct cost of manufacture and the factory overheads of the factory producing such intermediate products are included in the cost of production. The appellant produced along with the reply to the Show Cause Notice the following authoritative texts: Wheldon's Cost Accounting and Costing Methods, Cost Accounting methods by B.K. Bhar, Principles of Cost Accounting by N.K. Prasad, Glossary of Management Accounting Terms by ICWAI.

11. In *C.C.E.* v. *Dai IchiKarkaria Ltd.,* (1999) 7 SCC 448, at page 459 it has been held that the normal principles of accountancy shall be applied to determine the cost. In this decision this Court observed :

"Learned Counsel for the respondents drew our attention to the judgment of this Court in *Challapalli Sugar Ltd.* v. *CIT*. The Court was concerned with "written-down value". The "written-down value" had to be taken into consideration while considering the question of deduction on account of depreciation and development rebate under the Income Tax Act. "Written-down value" depended upon the "actual cost" of the assets to the assessee. The expression "actual cost" had not been defined in the Income Tax Act, 1922 and the question was whether the interest paid before the commencement of production on the amount borrowed for the acquisition and installation of the plant and machinery could be considered to be a part of the "actual cost" of the assets to the assessee. As the expression "actual cost" had not been defined, this Court was of the view that it should be construed "in the sense which no commercial man would misunderstand. For this purpose, it could be necessary to ascertain the connotation of the above expression in accordance with the normal rules of accountancy prevailing in commerce and industry". Having considered authoritative books in this regard, this Court said that the accepted accountancy rule for determining the cost of fixed assets was to include all expenditure necessary to bring such assets into existence and to put them in a working condition. *That rule of accountancy had to be adopted for determining the "actual cost" of the assets in the absence of any statutory definition or other indication to the contrary."*

12. Subsequent to the filing of these appeals, the Institute of Cost and Works Accountants of India (ICWAI) has laid down the principles of determining cost of production for captive consumption

and formulated the standards for costing: CAS-4. According to CAS-4 the definition of "cost of production" is as under :

Cost of Production : Cost of Production "4.1. shall consist of Material consumed, Direct wages and salaries, Direct expenses. Works overheads, Quality Control cost, Research and Development cost, Packing cost, Administrative Overheads relating to production."

13. The cost accounting principles laid down by ICWAI have been recognized by the Central Board of Excise and Customs vide Circular No. 692/8/2003-CX., dated 13-2-2003. The circular requires the department to determine the cost of production of captively consumed goods strictly in accordance with CAS-4."

9 In view of the above judgement of the Apex Court, the impugned order confirming duty demand on the basis that costing of the product would also include the interest cost, even though it is not required to be included as per CAS-4, is not sustainable. The same is set aside. The appeal is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.

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: 22/04/2013

To

Appellant as per address in table below

Respondent as per address in table below

Misc Order No. MO/57317/2013-EX[DB] dated 15/03/2013

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)

Application	Appeal	Name and Address of Appellant
1 **E/ROM/5173/2012**	**E/1656/2005**	**SWARAJ FOUNDRY DIVISION** Rajinder Arora, Manager - Finance, Punjab Tractors Ltd, Phase IV, Mohali, District Ropar, Punjab

Name and Address of Respondent

2 **C.C.E. LUDHIANA**
Central Excise House, F - Block, Rishi
Nagar, Ludhiana 141001 (Punjab)

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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

13 C.D.R. 14 Office Copy 15 Guard File 16 Second Folder

Asstt. Registrar(EXCISE Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

E/ROM Application No. 5173 of 2012
Excise Appeal No. 1656 of 2005

M/s. Swaraj Foundary Division — Appellants

Vs.

CCE, Ludhiana — Respondent

Appearance:

Shri B.L. Narsimhan, Advocate for the Appellants
Shri M.S. Negi, AR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 15.03.2013

ORDER NO .MO/ 57317 /2013-Ex(Br)

Per Rakesh Kumar (for the Bench):

This is an ROM application filed by the Department for rectification of mistake apparent for record in Final Order No. A/815/2012 dated 10.7.12. The appellants are manufacturer of castings of iron and steel the castings of for motor vehicle parts. The dispute is in respect of clearance of castings made to their other unit from May 2001 to September, 2001 in respect of which in terms of provisions of Rule 8 of Central Excise Valuation Rules, the appellants were required to discharge the duty liability on 115% of cost of production. According to the department the appellant had paid the duty on the lower value and on this basis, the Commissioner by the impugned order confirmed the duty demand of Rs.34,38,979/-. From para 4.5.1, 4.5.9 and 4.5.10, it appears that main objection of the department was that while appellant had paid the duty on castings on 115% of the cost of production, they have not includes interest on loan in the cost of production. The Commissioner holding that the interest on loan is includable in the cost of production, confirmed the duty demand. The Tribunal vide Final order has set aside the impugned order and allowed the appeal on the ground that during the period of dispute, the assessable value in respect of clearances in question was to be taken on 115% of the cost of production and the cost of production for the purpose was to be determined interest of CAS-4 standard of ICWAI, in term of CAS-4, interest on loan was not includable in the cost. Thus, on this basis the Commissioner's order was set aside.

2. The ROM application has been filed on the basis that non inclusive of interest cost is not the only allegation and that bulk of duty demands on account of non inclusive of 15% profit margin in the cost.

3. Heard both sides.

4. Shri M S Negi, learned DR reiterate the grounds mentioned in the ROM application and emphasised that profit margin has not been added in the cost of production and this is a factual mistake in the order which needs to be rectified.

5. Shri B.L. Nasrasimhan, learned advocate appearing for the appelants further pointing out to para 4.5.9 and 4.5.10 pleaded that in the proceedings before Commissioner, the appellant had pleaded that they had been paying duty on 115% of the cost of production and from the Commissioner findings it is clear that this has not been disputed and that duty demand was confirmed only on the ground that cost of production should also include interest of loan. He, therefore, pleaded that there is no mistake in the final order and that the appellant have discharged the duty liability on the assessable value determined under Rule 8 of the valuation Rule on the basis of 115% of the cost of production, which includes the profit margin and to which profit margin can not be added once again

6. We have considered the submissions made from both the sides and perused the records. From 4.5.9 and 4.5.10 of the impugned order, it is clear that department itself has accepted that appellants have discharged duty liability on cost of production plus 15% and thus plea in the ROM that the profit margin had not been included is not correct. In view of this, we do not find any merit in this application. The same is dismissed.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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