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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/1216/2005-EX[DB]

Dated: **23/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E Bhopal
Hoshangabad Road, 48, Administrative
Area, Area Hills, Bhopal (M.P.) 462011

(Appellant)

C.C.E Bhopal

VS

(Respondent)

HINDUSTAN LEVER LTD.

I am directed to transmit herewith a certified copy of Final Order No. **A/823/2012-EX[DB]** dated **11/07/2012** 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
HINDUSTAN LEVER LTD.
5/5 KM Stone Narsinghpur Road Legadua
Chhindwara M.P.

2. Advocate(s) / Consultant(s): SH. J.M. SHARMA, ADV, POST OFFICE BUILDING, 2ND FLOOR, J.B. NAGAR, ANDHERI-KURLA ROAD, ANDHERI (EAST) MUMBAI-59

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

COURT NO. I

DATE OF HEARING/DECISION : 11/07/2012.

Excise Appeal No. 1216 of 2005

CCE, Bhopal — Appellant

Versus

M/s Hindustan Lever Limited — Respondent

[Arising out of the Order-in-Appeal No. GWL/683-685/2004 dated 29/10/2004 passed by The Commissioner (Appeals), Customs & Central Excise, Gwalior.]

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?	:

Appearance

Shri I. Beg, Authorized Representative (DR) – for the Appellant.
Shri J.M. Sharma, Consultant – for the Respondent.

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

FINAL Oral Order No. A/823/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

These appeals are directed against the order-in-appeal No. GWL/683-685/2004 dated 29/10/2004, whereby the Commissioner (Appeals) confirmed three order-in-original dropping the demands of differential excise duty raised vide three show cause notices. We may note that instant appeal relates to the show cause notice pertaining to the period June and July 1998 involving the duty demand of Rs. 10,18,953/-.

2. Briefly stated the facts relevant for disposal of the appeal are that the respondent M/s Hindustan Lever Ltd., Chhindwara is engaged in the manufacture of Detergent Cake. Around the relevant period, the respondent cleared "Wheel Blue Cakes" weighing 250 gms. and 300 gms. respectively at the same M.R.P. of Rs.5.25 per cake. 250 gms. detergent cakes were cleared in the packets of 60 pieces at assessable value of Rs.204.75 whereas the respondent cleared detergent cakes of 300 gms. in packets of 50 cakes at assessable value of Rs.170.63. The appellant was of the view that respondent has undervalued the detergent cake weighing 300 gms. each for the purpose of excise duty. Accordingly, two show cause notices raising total demand of Rs.10,18,953/- were issued. Jurisdictional Assistant Commissioner after hearing the parties took the view that the respondent

has rightly cleared 300 gms. detergent cakes on payment of excise duty on M.R.P. basis as per Section 4A of the Central Excise Act, 1944. Accordingly, he dropped the demand. Appeal preferred by the Department before the Commissioner (Appeals) was also dismissed.

3. Heard both sides.

4. Shri I. Baig, learned A.R. for the appellant has contended that the impugned order has been passed ignoring the explanation 2 to Section 4A of the Central Excise Act, 1944. Expanding on the argument, ld. A.R. submitted that during relevant period, the respondent simultaneously cleared "Wheel Blue Cake" 300 gms. and "Wheel Blue Cake" 250 gms. at rate of assessable value of Rs.204.75 for a packet of 60 detergent cakes of 250 gms. and Rs.170.63 for a packet of 50 detergent cakes of 300 gms. He submitted that since the goods of same quality and brand were cleared at different price explanation 2 to Section 4A of the Central Excise Act, 1944 would come into play and the Commissioner (Appeals) ought to have valued the packets containing 300 gms. detergent cakes at a higher rate for the purpose of excise duty. Thus it is urged that impugned order is not sustainable in law and liable to be set aside.

5. Shri J.M. Sharma, ld. Authorised Representative for the respondent on the contrary has submitted that the respondent has rightly paid excise duty on MRP basis in terms of Section 4A of the Central Excise Act, 1944. As such, there is no infirmity in the impugned order.

6. We have considered the rival contentions and perused the record. Undisputedly the detergent soap cakes are covered under Standards of Weights and Measures Act, 1976 and the rules framed thereunder. As per the Rules the assessee is required to declare the MRP as well as weight on the packet of detergent cakes cleared for marketing. It is also not disputed that MRP on 300 gms. of detergent cakes was declared as Rs.5.25 per cake. Since the respondent has cleared the goods in question on MRP basis Section 4A would come into play which read thus:

> SECTION [4A. Valuation of excisable goods with reference to retail sale price. — (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the [Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.
>
> (2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

7. Undisputedly the respondents had cleared 300 gms. detergent cake on payment of duty calculated in terms of Section 4A of the Central Excise Act, 1944 as per declared MRP of Rs.5.25. The contention of the ld. Representative for the Department is that the respondent had cleared packets of detergent cakes weighing 15 kg. Each respectively containing

detergent bars of 250 gms. and 300 gms. at different assessable value, as such the value of the packets relating to 300 gms. detergent bars ought to have been assessed proportionately higher rate in view of explanation 2 to Section 4A. Contention of the learned A.R. for Revenue is misconceived for the reason that explanation 2 to Section 4A deals with the situation where on the same package of an excisable goods more than one M.R.P. is declared. It is not the case of the Department that on any of the packets containing 300 gms. detergent cake more than one retail price was declared. As such explanation 2 to Section 4A would not come to the help of the appellant. Merely because under marketing scheme the respondent had cleared detergent bar of 300 gms. at the rate equivalent to the detergent cake of 250 gms., it cannot be said that Section 4A of the Central Excise Act, 1944 would not come into play and the transaction value for the purpose of excise duty is to be assessed as per Rule 4 of Central Excise Act. Thus, we find no merit in the appeal.

8. In view of the discussion above, impugned order cannot be faulted. Appeal is, therefore, dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

SCD/