IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: E/1014 & 1017/2010

[Arising out of Order-in-Appeal No. SB/51 & 52/Th-I/10 dated 29/03/2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Wellman Hindustan Ltd. … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – I ***…Respondent***

Appearance:

None for appellant

Shri AB Kulgod, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Dr. D. M. Misra, Member (Judicial)
Hon'ble Shri C. J. Mathew, Member (Technical)

Date of hearing:	**18/10/2018**
Date of decision:	**18/10/2018**

ORDER NO: A/87870-87871/2018

Per: Dr. D.M. Misra

None present for the appellant.

2. Learned Authorised Representative for Revenue submits that the matter has been listed on 28/06/2018, 02/08/2018, 24/08/2018 and today i.e., 18/10/2018 and on all these occasions none appeared for appellant nor there was any request for adjournment. It is his contention that further adjournment will not serve any purpose. Consequently, the appeal is taken up for disposal.

3. This appeal is filed against Order-in-Appeal No. SB/51 & 52/Th-I/10 dated 29/03/2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I. Briefly stated, the facts of the case are that the appellant are engaged in the manufacture of excisable goods, namely Polywool Yarn of different variety. During the relevant period, they have manufactured and cleared Polywool Yarn of 65/35 composition 2/56 counts @ ₹ 318/- per kg. Similarly, they have also manufactured and cleared/sold Poly Viscose Yarn of 65/35 composition and Polywool Yarn of 70/30 composition and 2/254 counts @ ₹ 235.77 per kg. However, they have declared a value of ₹ 213/- and ₹ 150/- respectively for the same variety/composition of yarn when these yarn were consumed captively. Alleging that the appellant determined the assessable value incorrectly, resulting into short-payment of duty, show cause notice was issued to them for recovery of differential duty of ₹ 4,34,338/- with proposal for imposition of penalty under Rule 173Q of erstwhile Central Excise Rules, 1944. Consequently, on adjudication the demand was

confirmed and penalty of ₹ 2.00 lakhs imposed on the appellant. Aggrieved by the said order they filed an appeal before the Learned Commissioner (Appeals), who in turn rejected their appeal. Hence the present appeals.

4. Learned Authorised Representative for the Revenue submitted that even though the sale price was available for the same quality and comparable quantity of yarn sold by them, the appellant had wrongly adopted the costing method in arriving at the assessable value of the said varieties of yarn under Rule 6(b)(i) of Central Excise (Valuation) Rules, 1975 read with Section 4(1)(b) Central Excise Act, 1944. Learned Authorised Representative for Revenue placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Thane v. Essel Propack Ltd* [2016 (338) ELT 162 (SC).

5. The short issue involved in the present appeal is whether the subjected goods are required to be assessed under Rule 6(b)(i) or under Rule 6(b)(ii) of the erstwhile Central Excise Valuation Rules, 1975. It is not in dispute that the same variety of goods which are sold in the market were also used captively by the appellant. In these circumstances the authorities below has rightly assessed the goods under Rule 6(b)(i) of the Central Excise Rules, 1975 taking into consideration the value of the comparable goods sold by the

Appellant. The Hon'ble Supreme Court in *Essel Propack Ltd (supra)* has held as follows:

> "2. Under Rule 6(b)(i) of the Rules, the price of the comparable goods had to be adopted for the purpose of fixing the valuation. The Revenue took into consideration sales made by the assessee to its customer known as M/s. Courtaulds Packaging (India) Pvt. Ltd., Goa, and passed orders dated 30-12-1998 on that basis. However, it transpires that sale of goods to the said Goan company by the assessee was only up to June, 1997. Thereafter, no supplies were made and, therefore, for the period in question, i.e., October, 1997, to June, 2000, the price on which the sales were made to Goan company could not have been the basis. The Tribunal, on the other hand, found that during this period, there was a solitary sale transaction which was at Rs. 100 per k.g. in December, 1997.
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> 3. Insofar as the period in question, i.e., October, 1997, to June, 2000, is concerned, there is only captive consumption of goods. In these circumstances, since that was the only comparable price available with the Tribunal, we find nothing wrong in adopting that solitary sale as the basis for arriving at the valuation for the period in question as well."

6. Following the aforesaid precedent decision, the impugned order is upheld and the appeals being devoid of merit, are accordingly dismissed.

(Pronounced in Court)

(C J Mathew)	**(Dr. D.M. Misra)**
Member (Technical)	***Member (Judicial)***

**/as05110611*