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**(2015) 10 SC CK 0018**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 3621 of 2007 with C.A. Nos. 5109-5110 of 2012

Commissioner of C. Ex., Vadodara-I

APPELLANT

Vs

Nirma Ltd.

RESPONDENT

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**Date of Decision :** 09-10-2015

**Acts Referred:**

**Citation :** (2015) 325 ELT 232

**Hon'ble Judges :** A.K. Sikri and Rohinton Fali Nariman, JJ.

**Bench :** Division Bench

**Advocate :** S/Shri K. Radhakrishnan, Senior Advocate, Rupesh Kumar, Mrs. Aruna Gupta, Jitin Singhal, Pratik and B. Krishna Prasad, Advocates, for the Appellant; S/Shri V. Sridharan, Senior Advocate, M.P. Devanath, Ms. L. Charanaya, Hemant Bajaj, T.D. Satish, Anandh K. and Aditya Bhattacharya, Advocates, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

1. The issue involved in the present appeal relates to the alleged under valuation of Linear Alkyl Benzene (LAB) which is manufactured and cleared by the respondent-assessee herein to its sister units located in different places and is also used captively in the same factory where the said LAB is manufactured. It is not in dispute that this is the intermediary product which is used for the manufacture of Nirma Detergent products. It is also not in dispute that the respondent - assessee has been paying excise duty on this product. The only issue is about the valuation that was to be arrived at for the purposes of payment of excise duty on this product. We may also mention that the parties are ad idem that the costing of LAB is to be done as per Rule 8 of the Valuation Rules, 2000 which prescribes cost method.

2. The appellant-Department had issued five show-cause notices to the respondent herein for different periods alleging therein that the costing as done by the respondent - assessee was not in accordance with the method of costing and it resulted in under valuation and thus lesser payment of duty. The

differential duty was, thus, demanded.

3. The respondent herein, on going through the formula of costing as suggested by the Department, objected to the inclusion of the items of costing which are as follows :

1997-98

1998-1999

1999-2000

(Rs./MT)

(Rs./MT)

(Rs./MT)

Cost of production as per show cause notice (1)

51755.00

51799.00

51799.00

Less : Profit Margin (2)

8554.00

7883.00

7883.00

Less : Interest (3)

6943.00

9570.00

9570.00

(4)=(1)-(2)-(3)

36258.00

34346.00

34346.00

(-) Depreciation costs not includible

402.67

546.08

546.08

(-) Catalyst cost not includible (6)

333.18

365.34

365.34

(-) Catalyst cost not includible

190.50

1190.50

1190.50

(=) Interest Expenditure

0.00

623.38

623.38

(9)=(4)=(5)-(6)-(7)+(8)

35522.15

34057.96

34057.96

(+) Profit Margin @ 10% (10)

3552.22

34005.80

34005.80

Cost of production as per submissions (11) = (9) + (10)

37764.81

36154.20

36154.20

Value at which duty has been paid (12)

37700.00

37700.00

45000.00

(upto December) (1999)

46500

(From January 2000)

4. The demand was confirmed after considering the reply that was filed by the respondent. The order of the adjudicating authority was challenged by the respondent before the CESTAT. The CESTAT vide its impugned judgment dated 16-6-2005 partly allowed the appeal filed by the respondent. In so far as the first show-cause notice is concerned, it has arrived at a finding that the aforesaid three elements of cost which were sought to be included by the Department while arriving at the cost of production could not be included. It is also found that the first show-cause notice was barred by limitation in respect of other four show-cause notices after arriving at the findings, as mentioned above. In respect of first show-cause notice which applies to these notices as well, there is a demand on the limited aspect for calculation of the cost.

5. Mr. K. Radhakrishnan, learned senior counsel appearing for the Department made various submissions questioning the correctness of the view taken by the Tribunal. He further argued that once there was a demand in respect of four show-cause notices, such a demand should have gone into the issue de novo. We are unable to agree with the aforesaid submissions of Mr. Radhakrishnan.

6. The impugned order of the Tribunal shall reflect that the Tribunal has kept in mind the Costing Accounting Standard - 4 (CAS-4) as adopted by the Department itself. On that basis, it has come to the conclusion that the three aforesaid elements of cost which were sought to be included by the Department could not be the factors which would be taken into consideration for arriving at the cost of production. After going through the reasons given by the Tribunal in support of the aforesaid conclusions, we find no error therein.

7. The appeal is accordingly dismissed.

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8. In view of the above, the appeals are dismissed.