CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 27/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70049-70053/2016 dated 21/1/2016

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

Application	Appeal	Name and Address of Appellant
	E/199/2007 E/759-760/2008 E/933-934/2008	VINEETA POLYMERS PVT LTD 55,GOPAL NAGAR NEAR KRISHNA NAGAR LUCKNOW EVEREADY INDUSTRIES INDIA LTD MILL ROAD, AISHBAGH LUCKNOW(UP)
	Name and Address of Respondent	CCE, LUCKNOW 7-A, ASHOK MARG LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI-14

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.199/07

Arising out of O/A No.135-CE/2006 dated 26.08.2006 passed by Commr. (Appeals) of Customs & Central Excise & S.Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, 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? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

M/s Vineeta Polymers Pvt. Ltd. ...APPELLANT(S)

VERSUS

CCEx. & S.Tax, Lucknow RESPONDENT (S)

APPEARANCE

Shri B. L. Narasimhan, Adv. for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

Ex. Appeal Nos.759,760/08 & 933,934/08

Arising out of O/A Nos.177 & 178-CE/LKO/2007 dated 22.11.2007 & 13 & 14-CE/LKO/2007 dated 31.01.2008 both passed by Commr. (Appeals) of Customs & Central Excise & S.Tax, Lucknow.

CCEx. & S.Tax, Lucknow ...APPELLANT(S)

VERSUS

(i) M/s Vineeta Polymers Pvt. Ltd.
(ii) M/s Eveready Industries India Ltd.
(iii) M/s Vineeta Polymers Pvt. Ltd.
(iv) M/s Eveready Industries India Ltd

RESPONDENT (S)

APPEARANCE

Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department
Shri B. L. Narasimkhan, Adv. for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 21.01.2016

Final ORDER NO. 70049-70053/2016

Per Mr. Anil Choudhary :

Heard the parties.

2. In all the appeals, the issue involved is whether the assessee being a manufacturer of flashlight torches, is chargeable to duty under Section 4A in respect of Institutional/industrial sales made by them instead of Section 4 as claimed by the assessee.

3. The ld.Counsel appearing for the appellant, has taken us through sample copy of purchase order issued by M/s Eveready Industries India Ltd. on them, wherein it is specifically mentioned that the product is for promotional purposes and not for retail sale, in the sales invoices/challans, the assessee also mentioned that the clearance is for Industrial/institutional sale. It is further an admitted fact that the appellant had crossed out the MRP on the packs or goods so cleared to institutional buyers.

4. Under such circumstances, we find that the issue is no more *res-integra* and the same have been decided in favour of the assessee by this Tribunal following the ruling of the Supreme Court in the case of Jayant Food Processing (P) Ltd. Vs. CCE., Rajasthan – 2007 (215) ELT 327 (SC), being Final Order No.401-405/08-Ex. dated 01.07.2008, in Central Excise Appeal Nos.2355,2451-2453 & 2723 of 2007, wherein the present assessee is one of the party. For better appreciation, the entire order is reproduced below :

> "The short question in all these appeals, which are being decided by a common order, is as to whether the dry battery cells and torches manufactured and to be supplied as free gifts are required to be assessed under Section 4A of the Central Excise Act, 1944, as held by the authorities below or under Section 4 of the Central Excise Act, as contended by the assessee.
>
> 2. Both sides fully agree that the issue is covered by the Hon'ble Supreme Court in the case of Jayant Food Processing (P) Ltd. Vs. CCE., Rajasthan – 2007 (215) ELT 327 (SC). We also note that by following the said judgement, the Chennai Bench of this Tribunal in the same appellant's case has held as under :
>
> > '6. *The facts of the instant case are identical to the case considered by the Apex Court in the Jayant Food Processing (P) Ltd. (supra) case discussed above. Dry cell batteries are sold by M/s Eveready in bulk to RPL/RCIL. These dry cell batteries are not sold to customers but are given free of cost. Therefore, there is no need to print MRP on the package of dry cell batteries supplied free to customers of Dettol*

soap/Mosquito coil. As SWM Act and Rules do not require fixing MRP on such dry cell batteries, the question of assessing the said goods in terms of provisions of Section 4A is ruled out. Therefore, the appeals of the assessee are allowed and the Revenue's appeal dismissed.'

3. In view of the above, we set aside the impugned orders and allow all the appeals with consequential relief to the appellants."

5. In view of the earlier order of this Tribunal, we hold that the sale/clearance made to institutional buyers shall be taxable under Section 4 and not under Section 4A of the Act. Accordingly, we allow the appeal filed by the assessee's Ex.Appeal No.199/2007 and dismiss all the appeals filed by the Revenue.

(Pronounced in the open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy
12.2.16
सहायक पंजीयक / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / C.E.S.T.A.T.
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001