FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70673/2016-EX[DB] dated 29/07/2016

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
1	E/930/2007	**THOMSON PRESS (INDIA) LTD.** C-35, PHASE-II, NOIDA (U.P.)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION
LINK ROAD NEW DELHI-
110014

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal No. : E/930/2007-EX[DB]

Arising out of O/O No. 04/Commissioner/Noida/2007 dated 31.01.2007 passed by Commr. of Central Excise, Customs & S. Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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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

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M/s. Thomson Press (India) Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida

...RESPONDENT(S)

APPEARANCE

Shri B.L. Narasimhan (Adv), &
Shri Hrishikesh,(Adv), for the Appellant(s)
Shri D.K. Deb (Asst. Commr.), A.R. for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 29. 07. 2016

Final ORDER NO. 70673/2016

Per Mr. Anil Choudhary :

The appellant, M/s Thosmson Press (India) Ltd, is a 100% EOU and is engaged in the manufacture of various goods viz. Printed books, Catalogues, Brochures, Labels, Posters, Folders etc. apart from exporting these articles, the appellant also cleared the same in DTA on payment of appropriate duty in terms of the permission of Development Commissioner, (NEPZ).

2. The issue and or disputes in the present appeal, pertain to the following two ~~catalogues~~ category of products:-

(a) Demand of duty of Rs. 94,69,300/- on the encyclopedia and dictionary, clearances made in the DTA during the period 2001-02 to 2004-05.

(b) Demand of Duty of Rs. 98,72,182 on the catalogue, brochures, Address/year book, folders printed sheets, etc. cleared in the DTA during the period from 2001-02 to 2003-04.

3. The brief facts of the case are that the Show Cause Notice dated 31-03-2006 was issued invoking the extended period of limitation under the proviso to Section 11 A of the Act and the aforementioned duty or demand were proposed. The appellant had contested the Show Cause Notice and vide the impugned order passed by ld. Commissioner, the proposed demand was confirmed with interest. Further, penalty was also imposed of Rs. 1,93,68,482/- under Section 11 AC of the Act.

4. The ld. Counsel for the appellant, Mr. B.L. Narasimhan, has urged that the demand of duty on encyclopedia and dictionaries is fully unsustainable in view of the Serial No. 160 of Notification No.

21/2002-Cus, which prescribes nil rate of Customs duty for printed books, including covers of printed books and also printed manuals (including those in loose leaf form with binder) falling under chapter 49 of CETA. Therefore, even if the encyclopedia and dictionaries are classified under sub heading 4901.01 still they would remain as printed books only for legal and classification purposes. Encyclopedia and dictionaries are a sub-classification of printed books. Therefore, in view of the aforementioned notification, which covers printed books falling under chapter 49 irrespective of its sub classification, no duty was leviable. The ld. Counsel further, states that their contention is further fortified by the judgment of this Tribunal in case of "Tata Press Vs. Commissioner of Customs, Mumbai reported in 2001 (136) ELT 1420 (Tri.-DB) wherein the context of identically worded predecessor Notification No. 25/95-Cus this Tribunal held as follows:-

> (i) "It is next contended that notwithstanding the classification of the commodity, the benefit of the notification would be available. The relevant entry to the notification exempts from duty, *inter alia* printed books classifiable under Chapter 49. A number of decisions of this Tribunal have been cited in support of this proposition, that in considering the scope of exemption under the Customs Act, the Notes to chapters or sections of the tariff and the rules of interpretation should not be applied. However, this issue has been settled by the Supreme Court in its judgement in *Steel Authority of India Limited v. CCE* - 1997 (91) E.L.T. 529. The Court

said that in construing the exemption granted to "tar", the meaning of the term has to be governed from the tariff description contained in Section 11 of the Central Excise Act.

(ii) The exemption that we ~~have~~ are concerned herewith is books classifiable under Chapter 39, of the tariff. That is what the entry in the notification says. We have already held that, for the purpose of classification in the publication under consideration is not a printed book that is to say, it is not classifiable under Heading 49.01. This is, however, very different from saying that it is not a book. It is, undoubtedly, what a layman would understand a book. It is a collection of printed pages securely fastened and bound with covers on either end. We have already noted that but for the provisions of note 5 to Chapter 49 the publication would merit classification as a book. Books of various kinds are classifiable under different headings of Chapter 49, even if they are not classifiable under sub-heading 1 of that Chapter. Children's picture, drawing or colour books are classifiable under Heading 49.03. A book containing sheets of music is classified under Heading 49.04. An Atlas which is a collection of printed maps in book form classifiable under Heading 49.05. The notification exempts, not just books under Heading 49.01 but books classifiable under Chapter 49. It would therefore be available to any kind of printed matter recognizable as a book wherever it falls for classification in Chapter 49. It would be a different matter if the notification restricted the exemption to books classifiable under heading 49.01. In that case articles which are usually understood to be books but would not be classifiable (by virtue of notes to that chapter) under heading 49.01 would not be entitled to its benefit. The specification in the exemption notification of books classifiable under Chapter 49, and not in heading 49.01 shows clearly that it applies to books (as commonly understood) which fall for classification anywhere in the chapter. It would therefore be available to the goods imported by the appellant. Since the benefit of the notification that the appellant claimed has to be extended to the goods, there is not attempt in evasion of duty by it. In these circumstances the fact that it wrongly classified the goods should not, in our view, justify confiscation of the goods or imposition of penalty on the appellant."

5. Further, the demand of Rs.98,72,182/- on the clearances of catalogues, brochures, posters, labels, Address/year book etc., the ld. Counsel states that the Commissioner's order on facts, is perverse and cryptic. Even though the appellants have vehemently disputed the classification adopted by Revenue in reply to the Show Cause Notice, which have been noted by the Commissioner, but the ld. Commissioner has erred in observing in his order that the appellants

have not disputed the classification as proposed in the Show Cause Notice. Thus, the impugned order is perverse on the facts on record. Further, the ld. Commissioner's finding on the alternate submissions as regards the benefits of Notification No. 13/98-CE or Notification No. 25/95-CE, is without any basis and contrary to the factual position on record.

6. The ld. Counsel further states that the issue involved is ~~of~~ interpretational. The transactions were duly recorded in the books of accounts maintained in the normal course of business and accordingly, there is no suppression and or misstatement on their part. Further, they had filed and made the declaration in their periodical returns to the Revenue. The present proceedings invoking the extended period, is by way of change of opinion, which is not permissible. The finding of the ld. Commissioner that the extended period is invokable for want of proper declaration, is perverse and needs to be set aside.

7. The ld. A.R. for the Revenue, Mr. D.K. Deb, relies on the findings of the order of the Commissioner, he further relies on the ruling of the Apex Court in the case of Commissioner of Central Excise, Trichy Vs. Rukmani Pakwell Traders [2004(165) E.L.T. 481 (S.C.)], wherein in the matter of interpretation of statues, it was observed that exemption notification is not interpretable with aid of other notification, strict construction of a notification is to be done in terms of only of its own words. Wordings of other notification are of no benefit in construing a particular notification. The ld. A.R. also relies on the ruling in the case of Eagle Flask Industries Limited Vs. Commissioner of Central Excise, Pune, 2004 (171) E.L.T. 296 (S.C.), wherein the matter of exemption

notification No. 11/88-CE (N.T.), held exemption notification-conditions thereto are to be strictly complied with for availing its benefit. Condition of filing declaration/undertaking under exemption notification is not merely procedural and hence exemption to be denied for non-observance of said conditions.

8. Having considered the rival contentions, we find that the Tariff heading 49.01, includes printed books, newspapers, brochures and other products of the printing industry, typed manuscripts and plans. We further observe with this Tribunal in Tata Press Ltd. Vs. CC – 2001 (136) ELT 1420 (Tri.-DB), wherein the same tariff Entry No. 49.01 was interpreted in respect of predecessor Notification No. 25/95-Cus wherein the similar exemption was granted and it was held that the specification in exemption notification of books classifiable under Chapter- 49 clearly shows that it applies to books (as commonly understood) which fall for classification anywhere in chapter. Accordingly, we hold that the ld. Commissioner has erred in holding that encyclopedia and dictionaries will not fall in the Tariff heading No. 49.01 for the purpose of exemption under the notification No. 21/2002-Cus. Thus, the demand of Rs. 94,69,300/- is set aside.

9. We, further, hold that no case of any suppression or any misstatement on the part of the appellant in the facts and circumstances of the case is made out. Accordingly, we hold that the extended period of limitation is not invokable. We also set aside the demand of Rs.98,72,182/-.

10. Accordingly, we allow the appeals with consequential relief and set aside the impugned order.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
18-8
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001