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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NO.26,Sashtri Bhavan Annexe Building, Haddows Road,Chennai-600006

OFFICE OF THE COMMISSIONER (AUTHORISED REPRESENTATIVE) CESTAT
16 MAY 2017
SHASTRI BHAVAN CHENNAI-6

Order Forwarding Letter

Final Order No. 40644 / 2017

Appeal No. : E/242/2007-DB

Appellant :	Respondent :
Needle Industries India Pvt Ltd	**Commissioner of Central Excise – Salem**

I am directed to send herewith a certified copy of the **Final Order No. 40644 / 2017** dated **21/04/2017** ,passed by the Tribunal under Section 129 B of the Customs Act 1962/Section 35C of the Central Excise Act 1944/Section 86 (7) of the Finance Act 1994.

Dated: 25/04/17

Assistant Registrar
CESTAT - Chennai

DATE ENTRY COMPLETED | DOCUMENT SCANNED

To:

Needle Industries India Pvt Ltd
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Copy forwarded to :

Commissioner of Central Excise - Salem

Commissioner of Central Excise – Salem (Appeal)

The Commissioner (AR) , CESTAT Chennai.

Indirect Tax Bar Association CESTAT, Chennai

1) M/s. Centax Publications (P) Ltd.

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3) M/s. Taxindiaonline.com (P) Ltd. Chennai.

4) M/s. Tax Man Allied Services Ltd New Delhi.

5) M/s. Easy Services Tax Online.Com (P) Ltd Ahmedabad.

6) M/s. Lawcrux Advisors (P) Ltd. Faridabad.

7) M/s. Mark Professional Services (P) Ltd.

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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/242/2007

(Arising out of Order-in-Appeal No. 179/2006-CE (SLM) dated 29.11.2006 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Needle Industries (India) Pvt. Ltd. Appellant

Vs.

CCE, Salem Respondent

Appearance

Shri R. Janardhana Pillai, Consultant for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **21.04.2017**

Final Order No. 40644/2017

Per Madhu Mohan Damodhar

The issue in dispute relates to dutiability of "Gold Potassium Cyanide Solution" emerging as an intermediate product and consumed by the appellant captively for manufacture of Gold Eyed Handle Sewing Needle. The issue arising for determination is whether the said intermediate product is dutiable or not.

2. This is the third round of litigation. In the first round, the Tribunal vide Final Order 30.8.1994 remanded the matter with the following specific directions:-

(i) The classification of the product viz. "Gold Potassium Cyanide" will have to be examined with reference to note 1 of chapter 28.

(ii) The marketability of Gold potassium cyanide solution will have to be established.

(iii) Demand of duty beyond the period of six months would not liable to be confirmed if duty is found to be leviable."

3. In subsequent denovo proceedings, the demand was scaled down to Rs.18,47,048/- for six months only and inter alia, a penalty of Rs.5 lakhs was imposed, which was upheld by the then lower appellate authority. In the second round before this Tribunal, vide Final Order dated 26.7.2005, Tribunal directed the department to comply with its earlier remand order dated 30.8.1994. In the denovo proceedings, the original authority vide order dated 28.3.2006, again confirmed the demand of Rs.18,47,048/- for the six months period within the limitation and imposed penalty of Rs. 5 lakhs. In appeal, Commissioner (Appeals) vide the impugned order dated 29.112006, while vacating the penalty, upheld the duty demand. Hence, the appellants are once again before this forum.

4. Today, when the matter came up for hearing, learned consultant Shri R. Janardhana Pillai takes us to the impugned order and points out that inspite of Tribunal's directions, there has been no discussion on the marketability or otherwise of the said Gold Potassium Cyanide Solution. He submits that the Commissioner (Appeals) has merely reproduced a number of case laws and without any further discussion, passed the impugned order. Learned consultant also takes us through para 2.1 of the impugned order where the manufacturing process of Gold Potassium Cyanide Solution has been indicated and submits that the resultant product is not only highly poisonous because of the presence of its cyanide molecule but also it is highly unstable. He submits that the product cannot be marketed in that form.

5. On the other hand, learned AR reiterates the findings in the impugned order. He also submits information about Gold Potassium Cyanide MSDS, downloaded from the internet, to prove that the item is marketable. Hence he contends that since they manufacture the Gold Potassium Cyanide Solution in the factory, the same would definitely be in the nature of a marketable product.

6. Heard both sides and perused the records.

7. The literature submitted by learned AR pertains only to solid crystalline form of Gold Potassium Cyanide. The

Customs, Excise & Service Tax Appellate Tribunal illustration thereto also involves crystalline forms only. Under the head Transparency, it has been indicated that it is clause 6.1 poisonous material. On the other hand, what is manufactured by the appellant is evidently Gold Potassium Cyanide Solution and not Gold Potassium Cyanide crystalline powder. Further, even at this point, it has not been established by Revenue as to the marketability of Gold Potassium Cyanide Solution manufactured by the appellant. This impugned product, therefore, fails to satisfy the twin tests namely (i) process constituting manufacturing and (ii) marketability, as laid down by the Hon'ble Apex Court in the landmark judgment Board of Trustees Vs. Collector of Central Excise, A.P reported in 2007 (216) ELT 613 (SC). The relevant portion of the judgment is reproduced herein for better appreciation:-

> "3. Therefore, the principal question involved in this civil appeal relates to exigibility of Cement Concrete Armour Units. At the outset we may state each of these units weight is about 50 metric tones. They are like Tripods which also keep the water calm and tranquil. In order to constitute "goods" twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In the present case the second test of marketability is in issue. It is well-settled that goods are manufactured with the object of being sold in the market. If the goods are not capable of being sold then the test of marketability is not fulfilled. Further, the burden is on the Department to prove whether there is the process which constitutes manufacture and secondly whether the product is marketable."

8. It is also distressing to note that in spite of the two occasions that the matter has been remanded for denovo consideration, with specific instructions. Those instructions

have not been complied with by lower authorities. Instead, the earlier orders seem to have been replicated *ad nauseam*. This has resulted in an appeal of 1994 year, traversing such a long course for over 27 years for closure. This certainly is not helping speedy dispensation of disputes.

9. In view of the discussions herein above and following judicial discipline, it is held that the product in question is definitely not marketable and therefore cannot be charged to duty as proposed by the department. The impugned order is therefore unsustainable and the appeal is allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court)

(**MADHU MOHAN DAMODHAR**)
Member (Technical)

(**SULEKHA BEEVI**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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