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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3455/2004 Date 25/02/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SHRI RAM MARBLE INDUSTRIES

M/S SHRI RAM MARBLE INDUSTRIES, VILLAGE-
CHHITAPUR, BHERA GHAT ROAD. JABALPUR. M.P.

M/S SHRI RAM MARBLE INDUSTRIES Appellant

Vs

C.C.E. BHOPAL Respondent

I am directed to transmit herewith a certified copy of Final order No. 62/08 Excise dated 7-2-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. BHOPAL
   THE COMMISSIONER OF CENTRAL EXCISE, C.R.
   BUILDING, 178, M.P. NAGAR, ZONE-II, BHOPAL,
   [M.P.]
2. Adv. / Consult
   ~~MR R.K. CHAUDHRY~~ SH. BIPIN GARG, ADV.,
   B-1/1289-A, VASANT KUNJ, NEW DELHI-110070
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Excise Appeal No. 3455 of 2004

[Arising out of the Order-in-Appeal No. 232/CE/APPL/BPL/ 2004 dated 15/04/2004 passed by The Commissioner (Appeals), Central Excise, Bhopal, M.P.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri P. Karthikeyan, 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? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s Shri Ram Marble Industries Appellant

Versus

CCE, Bhopal Respondent

Appearance

Shri Bipin Garg, Advocate – for the appellant.

Shri H.K. Thakur, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Shri P. Karthikeyan, Member (Technical)

DATE OF HEARING : 07/02/2008.

Final Order No. 62/08-EX Dated : 7-2-08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby demand is confirmed on the ground that appellant is engaged in the manufacture of Marble, whereas appellants were showing the same as Dolomite. The goods found in the factory were also seized and the Adjudicating Authority confiscated the same and allowed the release of the same on payment of redemption fine and penalty was imposed. The contention of appellant is that the goods in question are actually Dolomite and as per the Chemical Analysis Report, the goods in question are composed mainly of carbonates of calcium, Magnesium with small amount of iron and siliceous matter. The Chemical examiner on the request of the revenue again clarified that samples are of 'marble tiles' and are conforming to the characteristics of 'marble' in terms of texture, structure and porosity. The contention of appellant is that as there is no clear opinion by the Chemical Examiner, therefore, the goods are not classifiable as marble. The appellant relied upon H.S.N. Explanatory Report and submitted that Dolomite is a natural double carbonates and magnesium and as the chemical report says that the sample is of carbonates of calcium and magnesium, hence the same is not marble.

2. Contention of revenue is that the carbonates is double crystallized form of dolomite and also H.S.N. Explanatory note where it has been defined that marble is a carbonates of calcium.

3. After examining the Chemical Examiner Report, where it has been categorically mentioned that the sample is of marble conforming to characteristics of marble in terms texture, structure and porosity, we find no inform in the impugned order where goods were held to be marble.

4. In respect of the redemption fine and penalty, we find as the issue is in respect of classification of goods and the first report by the chemical examiner was not categorical, therefore, we find it is not a fit case for imposition of fine and penalty. The fine and penalty is set aside. The appeal is disposed of as indicated above.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(P. Karthikeyan)
Member (Technical)

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