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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/491 /2008,537 /2008-540 /2008 WITHE/S/469&521-524/08 Date 30/04/2008

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

To :
M/S AUTOLITE INDIA LTD.

UNIT NO.II,
PARVATI NAGAR
JAIPUR

M/S AUTOLITE INDIA LTD. Appellant

Vs

C.C.E. JAIPUR I STAY ORDER NO. 405-409/08 Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 212-215/08 & 215A Excise dated

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. JAIPUR I

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult

   MR.RUPESH KUMAR

   46, BANK ENCLAVE, DELHI

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

P.T.O. PAGE No 2

1 SHRI K.K.SHARMA
MANAGER (COMMERCIAL),
M/S AUTOLITE (INDIA) LTD,
PARVATI NAGAR,
AJMER ROAD,
JAIPUR.
2 SHRI R.K.MATHUR, CHIEF MANAGER,
M/S AUTOLITE (INDIA)LTD.
PARVATI NAGAR,
AJMER ROAD,
JAIPUR.
3 SHRI MAHIPAL GUPTA, DIRECTOR
M/S AUTOLITE (INDIA) LTD.
PARVATI NAGAR,
AJMER ROAD,
JAIPUR.
4 SHRI INDERJEET SINGH, PURCHASE ASSISTANT
M/S AUTOLITE (INDIA) LTD.
PARVATI NAGAR,
AJMER ROAD,
JAIPUR.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.491/08 with E/S/469/08 and
E/A/537-40 with E/S/521-24/08

[Arising out of Order-in-Appeal No.337(RKS)ST/JPR-I/2007 dt.21.11.07 passed by the Commissioner(Appeals),Jaipur)

For approval and signature:
Hob'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, 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 would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?		No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities:	:	No

M/s. Autolite India Ltd. & Sh.K.K.Sharma — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Sh. Rupesh Kumar, Adv. For Appellant

Sh. V.K.Agarwal, Authorised Departmental Representative(DR)For Respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDEN
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 16.4.08
FINAL Order No. 212-215/08-EX & 215A
STAX ORDER NO 405-409/08-Ex

Per S.S.Kang:

Heard both sides. The applicants filed these applications for waiver of pre-deposit of duty of Rs.14,27,268/- and equal amount of penalty. The demand is confirmed on the ground that the applicant received capsules from

100% EOU which was cleared clandestinely and the same were used by the applicants for manufacture of bulbs which was also cleared without payment of duty. The contention of the applicants is that 100% EOU M/s. Autolite India Ltd. against whom the allegation was that the capsules were cleared without payment of duty regarding which the appeal is pending in the Tribunal against the order passed by the Commissioner(Appeals) and the Tribunal vide stay order dt.3.4.07 directed M/s. Autoline India Ltd. to deposit 50% of the confirmed demand. The contention is that the applicants are contesting the demand on merit on the ground that there is no clearance of 100% EOU without payment of duty and the applicants had also not cleared the bulbs without payment of India.

2. The contention of the Revenue is that the applicants received capsules which were cleared without payment of duty, same were used for manufacture of bulbs and the applicants cleared the bulbs worth approximately at Rs.84 lakhs. Therefore, the demand is rightly made. The contention of the revenue is also that part of the demand is on the ground that the applicants cleared the goods on parallel set of invoices for which ~~no~~ no duty has been made.

3. We find that in this case, demand is in respect of the bulb cleared without payment of duty and also same clearances were made on set of parallel invoices which were not reflected in the statutory record. The applicants received capsules which were cleared without payment of duty by the manufacturer and the same ~~manufactured~~ were used for manufacture of bulbs and cleared without payment of duty. In these circumstances, we find that it is not a case for waiver of duty. The applicants are directed to deposit an amount of Rs.14,27,268/- within a period of eight weeks. On deposit of the above mentioned amount, pre-deposit of penalty amount is waived.

4. We find that Commissioner(Appeals) had not decided the appeals on merit and the same were dismissed for non-compliance to the conditions of stay order. Now we directed the applicants to deposit whole of the duty amount for hearing of the appeals. Therefore, the impugned order is set aside and the matter is remanded to the Commissioner(Appeals) to decide on merits after affording an opportunity of hearing to the appellant and on showing the deposit of the above mentioned amount. The appeals are disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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