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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/4514/2004 Date 03/06/2008

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

To :
C.C.E. INDORE
P.O.-10, MANIK BAGH PALACE, INDORE (M.P.)

C.C.E. INDORE Appellant

Vs

M/S BANMORE FOAMS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No 299/2008** **Excise** dated 13-5-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S BANMORE FOAMS (P) LTD.
   105-106, INDUSTRIAL AREA, BANMORE
2. Adv. / Consult
   SH. RAVI RAGHVAN, ADV.,
   B-6/10, S.J. ENCLAVE,
   N. DELHI-29
3. 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)

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.4514/04

[Arising out of Order-in-Appeal No.164-CE/IND/APPL-II/03 dt.31.3.03 passed by the Commissioner(Appeals), Indore)

For approval and signature:
Hob'ble Mr. P.K.DAS, MEMBER JUDICIAL
Hon'ble Mr. A.K.SRIVASTAVA, 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?	:	
3.	Whether their Lordships wish to see the fair copy of the order?	:	
4.	Whether order is to be circulated to the Department Authorities:	:	

CCE, Indore — Appellant

Versus

M/s. Banmore Foams(P)Ltd. — Respondent

Appearance

Sh. V.K.Agarwal, Authorised Departmental Representative(DR)For Appellant
Sh. Ravi Raghvan, Adv. For respondent

Coram: Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL
Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

Date of decision: 13.5.08
Final Order No. 299/08-EX

Per P.K.Das:

Heard both sides and perused the records.

2. The Revenue filed this appeal against the order of the Commissioner(Appeals) whereby the adjudication order was set aside.

3. The issue involved in this case is as to whether waste, parings and scrap generated during the process of manufacture of polyurethane blocks are eligible to exemption under notification No.14/92-CE dt.1.3.92. The Commissioner(Appeals) dropped the demand of duty following the decision of the Tribunal in the case of CCE vs Maruthi Foam Pvt. Ltd. reported in 1996(85)ELT.157(T). The Ld. DR submits that the revenue filed appeal before the Hon'ble Supreme Court against the order of Tribunal. Ld. Advocate placed the decision of the Hon'ble Supreme Court in the case of CCE, Meerut vs Maruti Foam(P) Ltd. reported in 2004(164)ELT.394(SC). Relevant paragraph of the said decision is reproduced below:

> "It is not in dispute that during the period in question in all these appeals there were circulars in operation issued by the Central Board of Excise & Customs(CBEC) which had specifically construed the phrase "already been paid", as occurring in condition 1 against S.No.3, to include cases where nil rate of duty had been prescribed. No doubt this was done on the basis of the decision of this Court in Usha Martin (1997(7)SCC.47). It is also true that the decision in Usha Martin was over-ruled by this Court in the decision of Dhiren Chemical Industries(Supra). However in paragraph 9 of Dhiren Chemical Industries(supra) the Constitution Bench of this Court has made it clear that regardless of the interpretation placed on the aforesaid phrase by the Court, if there were circulars which had been issued by the CBEC which placed a different interpretation upon the phrase, that interpretation would be binding on the Revenue. This view has been reaffirmed in Collector of Central Excise, Vadodara v. Dhiren Chemical Industries, 2002(143)ELT.19. Therefore, the circulars in question issued by the CBEC construing the phrase "duty already paid" must be held to bind the Revenue as long as they were not withdrawn which they were but only in 2002. For the

> period in question the circulars were operative. The appeals are, accordingly, dismissed albeit for reasons which are different from those expressed by the Tribunal. We make it clear that this decision will not operate to reopen any assessment order nor will any duty already paid become refundable by reason of this judgment. There will be no order as to costs".

3. In view of the decision of the Hon'ble Supreme Court, we do not find any reason to interfere the order of the Commissioner(Appeals). Accordingly, appeal filed by the Revenue is rejected.

Order dictated in the open Court.

(P.K.Das)
Member Judicial

(A.K.Srivastava)
Member Technical

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