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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/2451/2007,2452/2007,2453,2355&2723/07 Date 03/07/2008

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

To :
M/S VINEETA POLYMERS PVT. LTD.
55, GOPAL NAGAR, NEAR KRISHNA NAGAR,
LUCKNOW 226023.

2. M/S. EVEREADY INDUSTRIES INDIA LTD.,
MILL ROAD, AISHBAGH, LUCKNOW (UP)
3. M/S. MALIK LITEMATICS PVT. LTD.,
PLOT NO. 1-6, DARIYAPUR, C-BLOCK,
RAJAJIPURAM, LUCKNOW-226004 (UP)

M/S VINEETA POLYMERS PVT. LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order** No.401-405/2008 **Excise** dated 02-7-08 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.-LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.

   2. CCE NOIDA
   B-123, SECTOR-5,
   NOIDA (UP)
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R.
~~4. ICDR.~~
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
16. M/S. EVEREADY INDUSTRIES INDIA LTD.,
    B-1/B-2, SECTOR-80, PHASE-II, NOIDA
    GAUTAM BUDH NAGAR U.P. 201305

Assistant Registrar
(Excise Appeal Branch)

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

Court No.III

Date of hearing: 1.7.2008

Central Excise Appeal Nos.2355, 2451-2453 & 2723 of 2007

Arising out of the Order in appeal No.50/CE/Appl/NOIDA/07 dated 18.5.2007; 40A & 40B-CE/2007 dated 28.3.2007 and 89-CE/07 dated 27.7.07 passed by the Commissioner of Central Excise (Appeals), Lucknow/NOIDA, U.P.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 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 Departmental authorities?	Yes

Appellants		Respondent
M/s Vineeta Polymers P. Ltd. M/s Eveready Inds. India Ltd. M/s Malik Litematics Pvt. Ltd.	vs.	C.C.E., Lucknow/NOIDA

Appearance:

Shri V. Laxmikumaran, Shri Ravi Raghvan,Advocates for the appellants and Shri S. Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Order No. 401-405/08-Ex.

manufactured and to be supplied as free gifts are required to be assessed under Section 4A of the Central Excise Act, 1944, as held by the authorities below or under Section 4 of the Central Excise Act, as contended by the assesses.

2. Both sides fully agree that the issue is covered by the Hon'ble Supreme Court decision in the case of Jayant Food Processing (P) Ltd. vs. C.C.E., Rajasthan – 2007 (215) ELT 327 (SC). We also note that by following the said judgment, the Chennai Bench of this Tribunal in the same appellant's case has held as under:

> "*6. The facts of the instant case are identical to the case considered by the Apex Court in the Jayant Food Processing (P) Ltd. (supra) case discussed above. Dry cell batteries are sold by M/s Eveready in bulk to RPL/RCIL. These dry cell batteries are not sold to customers but are given free of cost. Therefore, there is no need to print MRP on the package of dry cell batteries supplied free to customers of Dettol soap/Mosquito coil. As SWM Act and Rules do not require fixing MRP on such dry cell batteries, the question of assessing the said goods in terms of provisions of Section 4A is ruled out. Therefore, the appeals of the assessee are allowed and the Revenue's appeal dismissed.*"

3. In view of the above, we set aside the impugned orders and allow all the appeals with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)