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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/2882/2007,2973/2007 Date 08/07/2008

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

To :
DAENYX INTERNATIONAL PVT LTD
A-31, PHASE-II EXTENSION, NOIDA
201301

DAENYX INTERNATIONAL PVT LTD Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 413-414/08- **Excise** dated 21-7-08

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. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.S.C. KAMRA & CO.
   B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029
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)

1 PHILIPS ELECTRONICS INDIA LTD
PANCHSHIL, 3RD FLOOR, OPP MAGARPATTA CITY, HADAPSAR, PUNE.
411028

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K Puram, New Delhi-110066

## COURT-III

**Date of hearing:30.6 .2008**

**Central Appeal Nos.2882 & 2973 of 2007**

Arising out of the order in appeal No.84 & 85/CE/APPL/NOIDA/07 dated 31st July, 2007 passed by the Commissioner (Appeals), Customs & Central Excise, Noida.

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? | Yes |
| 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

1. Daeynx International Pvt. Ltd. vs. C.C.E
2. Philips Electronics India Ltd. NOIDA

Appearance:

Shri S.C. Kamra, for the appellants and none for the appellant No.2 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. 413-414/08-Ex

Per Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner (Appeals). We have heard Shri S.C. Kamra, learned Advocate for M/s Daenyx International Pvt. Ltd. and nobody appeared on behalf M/s Philips Electronics India Ltd.

2. As per facts on record, the appellant is engaged in the manufacture of colour television. Inasmuch as CTV is one of the specified items in terms of Section 4A of the Central Excise Act, the appellants were clearing the same on payment of duty, in terms of the said Section based upon MRP fixed on the CTVs. The dispute in the present appeals relates to CTVs of a particular model No.21HT 1532 manufactured by the appellants supplied to M/s Philips Electronic India Ltd., Pune. The said particular brand of CTVs was sold by M/s Philips Electronic India Ltd. only to hotel industry and not to the open market for retail. As such, it is the Revenue's case that no MRP was required to be fixed on the CTVs in terms of the provisions Rule 34(a) of Standard of Weights and Measures (Packaged Commodities) Rules, 1977. Inasmuch as, no MRP was required to be declared because the goods cannot be assessed under Section 4A of the Act and valuation under Section 4 is required to be resorted. Accordingly, after the initiation of proceedings by way of issuance of show cause notice, the original adjudicating authority confirmed the demand of duty of Rs.35,32,916/- against M/s Daeynx International along with imposition of penalty of identical amount on the first appellant and identical amount on M/s Philips Electronic India Ltd., the

3. After hearing both sides, we find that admittedly, CTV is one of the specified items under Notification issued in terms of Section 4A of the Act. Revenue has strongly relied upon the provisions of Rule 34(A) of Standard of Weights and Measures (Packaged Commodities) Rules, 1977 which we reproduce below:

> *"Rule 34, Exemption in respect of certain packages –*
>
> *Nothing contained in these rules shall apply to any packages containing a commodity if,*
>
> *(b) the ma*r*king on the package unambiguously indicates that it has been specially packed for the exclusive use of any industry as a raw material or for the purpose of servicing any industry, mine or quarry."*

A reading of the above shows that if a package is marked unambiguously indicating that the goods having specially packed for the use of any industry, no MRP is required to be affixed. However, in the present case , it is not the Revenue's stand that CTVs being manufactured by the first appellant and supplied to second appellant, who in turn, have sold the same to hotel industry have been specifically marked indicating that the same are packed for the exclusive use of any industry. The Revenue 's case is based upon the fact that a model No.21HT 1532 is meant for hotel industry only, as clarified by the representative of M/s Philips Electronics India Ltd.. Be that it may be, the fact remains that there is no clear~~ing~~ indication ~~on~~ in any unambiguous term, on the package of the CTVs, indicating that the goods have been specifically packed for the hotel. Such type of indication, we clearly come across, in respect of ~~indicates that~~ goods specifically packed for airlines and consumption of the air passengers

Commodities) Rule is not in respect of packages , which may be having some model number indicating supply and use in a particular industry but is in respect of goods which in unambiguous terms indicates that the same have been manufactured for a specific industry. Inasmuch as CTV's manufactured by the appellant did not specifically carry any marking to the effect that the same were specifically manufactured for hotel industry, the provisions of Rule 34(a), referred supra, were not applicable to the same. As such, fixation of MRP and clearance of goods on that basis and payment of duty on the basis of MRP was in accordance with the provisions of law.

4. We find support for our above view by the Tribunal decision in the case of Philips Electronics (I) Ltd. – 2007 (215) ELT 49 ( Tri – Mumbai). The Tribunal after taking note of the earlier decisions, has held that supply of CTVs by M/s Philips to hotels meant for their exclusive use are not covered by Rule 34(1)(a) of the Standard of Weights and Measures (Packaged Commodities ) Rules, 1977 exempting theirfrom the goods packaging indicating special use by any industry. Hence the duty payment under Section 4A was correct.

5. We find that for the said judgment was placed before the Commissioner (Appeals), who has not considered the same in the order passed by him. We also note that the earlier instructions by the Board dated 28.2.2002 indicating to the contrary stands reversed by the Board after the Hon'ble Supreme Court order in the case of

ELT 327 (SC).

6. In view of the foregoing discussion, we set aside the impugned order and allow the appeals with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

scd/