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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/4253/2004-4254/2004 Date 08/08/2008

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

To :
M/S VIJAY DHATU UDYOG
C-IV, 2536, COURT ROAD, JAGDHRI (HARYANA)

M/S VIJAY DHATU UDYOG Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No.**581-582/08-EX **Excise** dated 20-6-08 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. PANCHKULA
   NEW CGO COMPLEX NH IV, FARIDABAD, HARYANA
   121001
2. Adv. / Consult
   MR.GAGAN KOHLI
   394,SECTOR-30 A, CHANDIGARH.
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

P.T.C.-2

Assistant Registrar
(Excise Appeal Branch)

1 SHRI ASHISH GOYAL, PARTNER M/S VIJAY DHATU UDYOG
C-IV,2536, COURT ROAD, JAGDHRI (HARYANA)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 4253-4254 of 2004

[Arising out of Order-in-Appeal No. 17-18/CE/APPL/Div /PCK /04 dated 27.5.2004 passed by Commissioner (Appeals) Central Excise, Haryana.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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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 should 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? : No
4. Whether Order is to be circulated to the Departmental authorities? : Yes.

1.M/s. Vijay Dhatu Udyog — Appellant
2.Shri Ashish Goyal

Vs.

Commissioner of Central Excise — Respondent
Panchkula

Appearance: Mr. Gagan Kohli, Advocate for the Appellant
Mr. V. Choudhary, Jt. CDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of decision : 20.6.2008

FINAL **ORDER NO.** 581 - 592/08-EX

Per P.K.Das (for the Bench):

The relevant facts of the case as per record in brief are that the appellants are engaged in the manufacture of brass circles from brass sheets mainly. They claimed exemption benefit on brass circles under S.No. 198 appended to Table of Notification No. 6/2000 CE dated 1.3.2000. The adjudicating authority denied the exemption benefit and confirmed the demand of duty of Rs.2,56,693/- and imposed penalty of equal amount along with interest on the appellant No.1. He also imposed a penalty of Rs. One lakh on Shri Ashish Goyal, Partner (appellant No.2 herein). Commissioner (Appeals) upheld the Adjudication Order.

2. The learned advocate submits that they are manufacturing brass circle from brass sheets which is clearly covered by S.No. 198 of said Notification. He relied upon the decision of the Tribunal as under:-

1. CCE, Rajkot vs. Subhash Rolling Mills
   [2006(204)ELT 448 (Tri-Mum)]
2. CCE, Chandigarh vs. New Sandhu Metal Works
   [2004 (168) ELT 177 (Tri-Del)]
3. CCE, Bavnagar vs. Deerajlal A. Kansara
   [2005 (186) ELT 240 (Tri-Mum)]
4. Shivangi Metal Industries (P) Ltd. vs. CC, Kolkatta
   [2008 (221) ELT 66 (Tri-Kolkatta)]

3. Learned DR reiterates the finding of the Commissioner (Appeals). He drew the attention of the Bench to several entries of the said Notification and Chapter Notes. He relied upon the decision of the Hon'ble Supreme Court in the case of Collector of Customs, Bangalore vs. Maestro Motors Ltd. [2004 (174) ELT 289 (SC).

4.. After hearing both the sides and on perusal of the records, it is seen that S.No.198 of the said Notification No. 6/2000 extended nil rate of duty ~~to~~ all goods under Heading No. 74.09 ~~goods~~ other than trimmed or untrimmed sheets or circles of copper intended for use for in the manufacture of utensils or handicrafts.

5. The revenue confirmed the demand of duty holding that brass metal includes reference to its alloys in terms of note 6 of section XV of the Central Excise Tariff Act, 1985. In the present case, we find that the sheets and circulars are made up of brass and not of copper alone. We find that while interpreting the said notification, the Tribunal in series of cases held that brass sheets and circulars cannot be considered to be copper sheets and circles and benefit of notification cannot be denied. The Tribunal in the case of CCE, Bavnagar vs. Deerajlal A. Kansara (supra) on the earlier notification No. 8/98-CE dated 2.6.98 in identical issue held as under:-

> "2. We have heard the ld. SDR and perused the records. The Commissioner (Appeals) has squarely noticed the distinction between copper and brass and held that, even though brass is the alloy of copper, it is different from copper. He has also relied upon Chapter Note 1(b) of the Chapter 72 of the Tariff. The findings of the lower appellate authority that the respondents manufacture brass and not copper has not been dislodged by the Revenue in the appeal before us. Since the items manufactured by the respondents are brass sheets and circles and Sr. No. 175 of the table to Notification No. 8/98-CE excludes only trimmed and untrimmed sheets and circles of copper, the Commissioner (Appeals) has rightly held that the benefit of the notification is admissible to the products manufactured by the respondents herein.
>
> 3. We, therefore, uphold the impugned order and reject the appeal."

6. It is well settled that exemption notification is not only to be construed strictly but also reasonably having regard to the language employed therein. It is noted that Serial No. 198 of the Notification excludes "trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of handicrafts and utensils", which are covered by Serial No. 197 of the notification. So, the case law relied upon by the learned DR in the case of Maestro Motors Ltd. (supra) it has been held that a notification has to be interpreted in accordance with the language used in the language. In the present case, Serial No. 198 excluded only copper circle and therefore benefit would be available to brass circles manufactured out of brass sheet.

7. In view of the above discussions, we find that the demand of duty and penalties under the impugned orders are not sustainable. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

(Dictated in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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