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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/5173/2004 Date 28/07/2008

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

To :
M/S SPICE SYSTEMS LTD. (FORMERLY GBC MODICORP)
F-41, SECTOR 6, NOIDA, DISTT. GAUTAM BUDH NAGAR (U.P.)
201301

M/S SPICE SYSTEMS LTD. (FORMERLY GBC MODICORP) Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 524/08- **Excise** dated 24-7-08

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, SEC-5, NOIDA
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. C.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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 5173 of 2004

[Arising out of Order-in-Appeal No. 208/CE/APPL/NOIDA/2004 dated 14.7.2004 passed by Commissioner (Appeals) Customs & Central Excise, NOIDA.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, 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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Spice Systems Ltd. — Appellant

Vs.

Commissioner of Customs, Central Excise, NOIDA — Respondent

Appearance: Mr. Ravi Raghavan, Advocate for the Appellant
Mr. H.K. Thakur, Jt.CDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Date of decision : 22.7.2008

Final **ORDER NO. 524/2008-Ex**

Per . M. Veeraiyan (for the Bench):

1. This is an appeal against the order of the Commissioner (Appeals) No. 208/CE/APPL/NOIDA/2004 dated 14.7.04.

2. Heard both sides.

3.1. Learned advocate for the appellant submits that the dispute is about the applicability of exemption Notification No. 5/98-CE (S.No. 69 which was subject to the condition prescribed in S.No.10 of the annexure to the said notification) in respect of products manufactured by them.

3.2. He fairly concedes that the very same issue was before in the case of Commissioner of Central Excise Delhi vs. N M Nagpal (P) Ltd. [2008 (220) ELT 486 (SC)] and the matter was remanded to the Tribunal with certain directions on 3.5.2006. The order of the Tribunal in 732-33/06 dated 9.8.06 which was passed in pursuance of order of the Hon'ble Supreme Court is against them. Accordingly, he is not contesting the duty involved amounting to Rs.1,91,690/- and the interest as applicable.

3.3. However, he submits that there is no justification for imposition of penalty as the issue involved is purely a question of legal interpretation as to the fulfilment of condition of the notification and the dispute has been finally settled by the Hon'ble Supreme Court.

4. We have carefully considered the submissions from both the sides. The submission of the learned Advocate that in the given facts and circumstances of the case no penalty is imposable is acceptable. Therefore, we confirm the duty demand as not contested. However, we set aside the penalty of Rs.25,000/- imposed on the appellant.

5. The appeal is disposed of on the above terms.

(Operative part pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(D.N.Panda)
Member(Judicial)

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