TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date 26/09/2008

Appeal No. E/4006/2006-4010/2006 - EX[DB]

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

To :
M/S P.G.INTERNATIONAL
KHASRA NO 174, 15 TH MILE STONE VILLAGE-RAIPUR, PARGANA BHAGWANPUR, TEHSIL-ROORKEE, DISTT- HARIDWA

M/S P.G.INTERNATIONAL — Appellant

Vs

C.C.E. MEERUT I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 729-733/08-EX EX[DB] dated 10-9-08 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult SH, A.R.M. RAO,
   B-6/10, S.J. ENCLAVE,
   N. DELHI-29
3. 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 - 3
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
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

P.T.O. -2

17. PRAMOD GUPTA
S/O LATE SH L.C. AGARWAL, B-11, MAHENDRU ENCLAVE, OPP GUJRANWALA TOWN, DELHI. - 33

18. VISHAL GUPTA
S/O SH PRAMOD GUPTA, B-11, MNAHENDRU ENCLAVE, OPP GUJRANWALA TOWN, DELHI - 33

19. ANURAG GUPTA
S/O SH PRAMOD GUPTA, B-11, MAHENDRU ENCLAVE, OPP GUJRANWALA TOWN, DELHI. - 33

20. VIKAS GUPTA
S/O SH PRAMOD GUPTA, B-11, MAHENDRU ENCLAVE, OPP GUJRANWALA TOWN, DELHI. - 33

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal Nos. 4006-4010 of 2006

[Arising out of the Order-in-Original No. 63/Commissioner/ Meerut-I/2006 dated 30/08/2006 passed by The Commissioner of Central Excise, Meerut.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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?	:
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?	:

M/s P.G. International & Ors. Appellant

Versus

CCE, Meerut – I Respondent

Appearance

Shri A.R.M. Rao, Advocate – for the appellant.

Shri H.K. Thakur, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 10/09/2008.

FINAL Order No. 725-733/08-EX. Dated : ____________

Per. Rakesh Kumar :-

Notification No. 50/03-CE dated 10/06/03 exempts the goods specified in the 1st Schedule and 2nd Schedule to the Central Excise Tariff Act, 1985, other than the goods specified in Annexure I to this notification and cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial area or commercial estate or Scheme area, as the case may be, as specified in Annexure II to this notification, of Uttranchal and Himachal Pradesh, from the whole of the duty of excise and Additional duty of excise leviable thereon, subject to the conditions mentioned in the 1st Proviso to the Notification. S. No. 1 (5) (B) of Annexure II of the notification mentions the 'Proposed Industrial Area/Estates of District Haridwar in the

State of Uttranchal' and against S. No. 11 of the 'Proposed Industrial Area/Estates' of District Haridwar', Khasra No. 104 to 220 of Village Raipur are mentioned. The Appellants, have set up a plant for manufacture of color/B&W Television sets and Air Conditioners on Khasra No. 174 Village Raipur, Tehsil Roorkee, Distt. Haridwar. They submitted the declaration required under 1st proviso to the Notification on 30/07/04 and started commercial production on 05/08/04, and 1st clearances were on 04/09/04. However, the Industrial Development Department of Uttranchal Government notified Khasra No. 174 of Village Raipur as "Industrial area" only on 10/11/04 vide O.M. No. 939/Ind.Dev./07-Ind./04 dated 10/11/04. During the period starting from 04/09/04 to 09/11/04, the Appellants effected clearances of excisable goods involving duty and education cess amounting to Rs. 6,31,16,456/-. The point of dispute is as to whether the Appellants are eligible for exemption under this notification from the date of declaration i.e. 30/07/04 or only w.e.f. 10/11/04, the date on which this Khasra No. of Village Raipur was, notified as the "Industrial area". The Commissioner by the impugned order has held that the Appellants are eligible for exemption only w.e.f. 10/11/04 and not for earlier period and has accordingly –

(a) confirmed the duty demand of Rs. 6,31,16,456/- alongwith interest on this duty under Section 11AB ;

(b) imposed penalty of Rs. 6,31,16,456/- on the Appellants under Section 11 AC and

(c) imposed penalty of Rs. 5 lakhs each on Shri Pramod Gupta, Shri Anurag Gupta, Shri Vishal Gupta and Shri Vikas Gupta, partners of the Appellant company, under Rule 26 of the Central Excise Act, 2002.

1.1 It is against this order that these five appeals have been filed.

2. Heard both the sides.

2.1 Shri A.R.M. Rao, Advocate, the learned counsel on behalf of the Appellants, pleaded that when all the condition specified in the notification have been satisfied by the Appellants, the benefit of this notification cannot be denied, that when the goods other than those specified in Annexure I to this notification have been produced in a unit located in a

Khasra number in a Village which is specified in Annexure II to the notification, other conditions specified in 1st Proviso to the notification are satisfied and the unit is eligible for exemption in terms of the conditions laid down in para 2 of the notification, the duty exemption can not be denied just on the ground that the Khasra No. has not been notified by the State Government as Industrial area, as there is no such condition in the notification, that there is no stipulation in the Notificaiton No. 50/03-CE that exemption to the units located in the list of "proposed Industrial Area" will be available only when such area is notified as an "Industrial area" by the Director of Industries, Government of Uttranchal, that in absence of such a restriction, both 'existing' and 'Proposed' Industrial areas/Estates specified in Annexure II to the Notification are to be construed to be covered by the Notification and in this regard, reliance is placed on Tribunal's judgment in case of **Uttranchal Steels Pvt. Ltd. vs. CCE, Meerut**-I reported in **2007 (208) E.L.T. – 562** and that as held by Hon'ble Supreme Court in case of **Hemraj Gordhandas vs. H.H. Dave** reported in **1978 (2) E.L.T. – page 350** and **CCE vs. Rukmani Pakkwell Traders** reported in **2004 (165) E.L.T. 481 (S.C.)**, an exemption notification has to be construed according to its wordings and department cannot read anything into the notification by way of avowed intention or practice.

2.2 Shri H.K. Thakur, the learned Jt. CDR pointed out that the notification did not cover the Industrial areas/Estates, which had not been notified by the State Government and that the exemption is available only to the eligible existing or new units located in the existing industrial areas/Estates.

3. We have carefully considered the submissions from both the sides. The main point of dispute is as to whether during the period from 04/09/04 to 09/11/04, the period when the Khasra No. 174 of Village Raipur had not been notified as 'Industrial area' by the Uttranchal Government, the goods cleared from this unit was eligible for exemption under Notification No. 50/03-CE. This notification exempts from Central Excise Duty and Additional excise duty – "the goods specified in 1st as well as 2nd Schedule to the Central Excise Tariff Act, 1985, other than those mentioned in Annexure I to this notification and cleared from a unit located in Industrial

areas/Estates, Industrial Growth Centres specified in Annexure II. Annexure II specifies existing Industrial Areas/Estates, as well as 'Proposed Industrial Areas/Estates' and "non-Industrial areas, to be notified alongwith extension". There is no stipulation in the notification that exemption to the units located in "proposed Industrial areas" or "non-Industrial area to be notified" will be available only when such areas are notified as Industrial area/Estate by the State Government. It would not be correct to read into this exemption notification the condition regarding notification of a particular area mentioned in Annexure II as Industrial area by the State Government, when such condition is not there in it. As held by the Hon'ble Supreme court in case of CCE vs. Rukmani Pakkwell Traders (Supra) and Hemraj Gordhandas vs. H.H. Dave (Supra), an exemption notification has to be construed on the basis of its own wordings. Therefore, the units located in the Khasras, of the Villages mentioned under 'Proposed Industrial Area/Estate' in Annexure II to the Notification No. 50/03-CE will be eligible for duty exemption under this notification, if they satisfy other conditions of the notification and for this purpose, the issue of notification by the State Government notifying these Khasras as Industrial areas/Estates is not relevant. We are supported in this view by the Tribunal's judgment in case of **Uttranchal Steels Pvt. Ltd. vs. CCE, Meerut I** reported in **2007 (208) E.L.T. 562 (Tri. – Del.)**, where an identical issue was involved.

4. In view of the above, the impugned order is not sustainable and the same is set aside. The appeals are allowed.

(Operative part of the order pronounced in the open court.)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK