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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/5517/2004 - EX[DB]

Date 24/09/2008

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

To :
M/S ELOFIC INDUSTRIES LTD
14/4, MATHURA ROAD, FARIDABAD

M/S ELOFIC INDUSTRIES LTD — Appellant

Vs

C.C.E FARIDABAD — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 722/08-EX EX[BR] dated 8-9-08

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 FARIDABAD
   NH-IV, DELHI-IV FARIDABAD
2. Adv. / Consult SH. B.L. NARISHMAN & MUNISH KUMAR, ADV.,
   B-6/10, S.J. ENCLAVE,
   N. DELHI-29
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 - 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). Thyagarava Road. T. Nagar.Chenna
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. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

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 No. 5517 of 2004

[Arising out of the Order-in-Original No. 21 to 23/RH/Adj./2004 dated 20/08/2004 passed by The Commissioner Central Excise, Delhi – IV, Faridabad.]

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 Elofic Industries Limited Appellant

Versus

CCE, Faridabad Respondent

Appearance

S/Shri B.L. Narishmen and Munish Kumar, Advocates – for the appellant.

Shri B.S. Suhag, Authorized Representative (DR) – for the Respondent.

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

DATE OF HEARING : 08/09/2008.

Final Order No. 722/08-EX Dated : ____________

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order passed by the Commissioner of Central Excise, whereby demand of Rs. 7,96,315/- was confirmed on the ground that depot charges collected by the appellant from the buyers are includable in the assessable value of the goods. Penalties were also imposed. During argument, the appellant are not contesting the demand on merit, the only contention of appellant is that demand is time barred as the same was confirmed after invoking extended period of limitation on the ground of suppression. The show cause notice was issued on 13/04/2000 demanding duty for the period April 1995 to December 1999.

2. The contention of the appellant is that appellant filed necessary declaration which has been specifically mentioned that appellant were collecting 2% on account of post manufacture charges for freight, octroi, cartage and for the maintenance of depot. Contention is as the appellant filed necessary declaration by declaring that they are also collecting charges for maintenance of depot, therefore, the allegation that appellant suppressed the facts with intend to evade payment of duty ~~are~~ not sustainable. The contention is also that this fact was highlighted by the appellant in the written submissions filed in continuation to reply to show cause notice dated 28/11/01. This fact was specifically mentioned in para 27 and also annexed the copy of the declaration. In spite of this, the Commissioner of Central Excise, while confirming the demand had not taken into consideration the submission of the appellant on the time bar aspect.

3. Contention of revenue is that appellant were clearing their goods from their depots and they are charging the depot expenses from the customers which are liable to be included

in the assessable value of the goods. On the time bar, the contention is also that the declaration now relied upon in respect of only one Ludhiana depot, whereas appellant were clearing goods ~~on~~ the other depots also. In these circumstances, the extended period is rightly invoked.

4. In reply, the contention of appellant is that in the year 1994, the appellant were clearing the goods only from Ludhiana depot and subsequently they started the other depots and the revenue was aware of the fact that appellant were collecting some amount in respect of depot expenses.

5. In this case, appellant challenge the demand only on limitation. Appellant filed necessary declaration which was to the ~~fact~~ that appellant was charging depot expenses from their customers. This fact was specifically mentioned in the written submissions filed by the appellant with the copy of declaration before the Adjudicating Authority. The Commissioner of Central Excise had not gone into the aspect of limitation as pleaded by the appellant. In these circumstances, we find it is a fit case for re-consideration by the Commissioner of Central Excise. In the impugned order is

set aside and matter is remanded to the Jurisdictional Commissioner of Central Excise to decide the issue of limitation after giving an opportunity of personal hearing to appellant. Appeal is disposed of by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK