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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/4400/2004,4402/2004 Date 27/08/2008

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

To :
ANIL AHUJA
PLOT NO. 12/9, DAMODAR PARK, DILSHAD GARDEN, DELHI
ANIL AHUJA

2, M/s, ELITE CABLES INDUSTRIES,
3. M/S. DINESH INDUSTRIES,
PLOT NO. 12/9, DAMODAR PARK,
DILSHAD GARDEN, DELHI

Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 629-631/08- **Excise** dated 18-8-08

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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.P.C.JAIN
   332, ARAVALI APARTMENTS, ALAKNANDA, NEW DELHI-19
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

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal Nos. 4400 to 4402 of 2004

[Arising out of Order-in-Original No. 8/2003 dated 11.6.2004 passed by Commissioner of Central Excise, Delhi-1.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Technical Member
Hon'ble Mr. D.N.Panda, Judicial Member

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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? : 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

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M/s. Elite Cables Industries
M/s. Dinesh Industries
Shri Anil Ahuja — Appellants

Vs.

Commissioner of Central Excise,
Delhi 1 — Respondent

Appearance: Mr. P.C. Jain, Advocate for the Appellant
Mr. V.Chaudhary, SDR for the Respondent

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

Date of decision : 25.7.2008

FINAL **ORDER NO.** 629-631/08-EX

Per . M. Veeraiyan (for the Bench):

These three appeals arise out of order-in-original No. 8/2003 dated 11.6.04.

2. Heard both sides.

3. Relevant facts ,in brief, are as follows:-

a) In pursuance of search conducted on 14.3.02 and further investigation, show cause notice dated 13.9.02 was issued to the applicants *inter alia* proposing demand of duty of Rs.56,36,513/- from M/s. Elite Cables Industries, proposing demand of duty of Rs.16,67,526/- from M/s. Dinesh Industries, proposing penalties on various persons. Along with the show cause notice, documents as per the annexure (listed as A to O) were enclosed. Listed documents also included duty calculation chart relating to M/s. Elite Cables Industries and duty calculation chart relating to M/s. Dinesh Industries.

b) On behalf of the appellant a letter dated 11.10.02 by M/s. Bhasin Sethi and Associates was issued seeking supply of copies of certain documents also listed as A to O.

c) To the said letter a communication dated 8.11.02 was sent by the Commissionerate advising them to collect the photocopies of the documents. However, the appellant wrote a letter dated 19.11.03 to the Superintendent, Anti Evasion mentioning that "however due to some reasons, we can not collect the same from your office". The reason for not collecting documents has not been specified. Subsequently it was admitted by the appellants that certain documents have been collected. None of the appellants have filed their replies in spite of reminders dated 16.4.03, 4.9.03 and 17.12.03. They were also offered personal hearing which has not been availed.

d) The original authority vide her order dated 11.6.04 confirmed demand of duty of Rs.56,36,513/- from Elite Cable Industries and imposed equal penalty. She also demanded a sum of Rs.16,67,526/- from M/s. Dinesh Industries and imposed equal penalty. There was also confiscation of goods (with option to redeem the goods on payment of fines), imposition of penalties, demand of interest etc by the said order.

4. The learned advocate for the appellants submitted that the order has been passed in violation of principles of natural justice; while photocopies of some of the documents were given, copies of the rest of the documents sought were not given; many times the representative of the appellants were sent back without supply of photocopy of any documents on the ground that commissionerate was undergoing the

process of bifurcation and it was difficult to segregate the records. Now, an affidavit dated 8-9-2004 of Dinesh Ahuja is filed in support of the above submission.

5.1. When the appeal came up for hearing on 23.7.08, the learned advocate was directed to identify the documents which have not been supplied. He drew our attention list of various documents mentioned in their letter dated 11.10.02 which have not been supplied.

5.2. Learned DR submitted that the very same documents which were claimed to have been not received by them were mostly the documents enclosed to the show cause notice. He brought to our notice that the appellants themselves have enclosed them as relied upon documents along with appeal memorandum. Thereupon the learned advocate was asked to submit what documents or what further documents they were expecting from the department and how there was violation of principles of natural justice.

5.3. The learned advocate, on 25-7-2008, filed a list of documents copies of which, according to him, were not supplied to him and which were required so that they could effectively submit their defence. On perusal of the list of documents produced, we, prima facie, felt they include documents recovered from the appellants based on which duty calculation charts have been made and enclosed to the show cause notice. The letter dated 11.10.02 written on behalf of the appellant was not clear and specific about the documents sought for and gave the impression that they were about documents which were already served on the appellants.

5.4. However, we agree that the documents which are now sought for are, prima facie, relevant and they may be required for their defence. We also notice that the appellants kept asking for certain documents; now there is a subsidiary dispute as to the exact documents required by them; if they had grievance in getting the required documents, they ought to have brought the matter to the notice of the adjudicating authority instead of filing belated affidavit dated 8-9-2004, (i.e. after the adjudication was completed) on what had happened. This conduct of appellants who are facing a huge demand is surprising, to say the least.

6.1. However, in the interest of justice, we would like the matter to be examined afresh after giving copies of documents based on which duty calculation charts have been prepared. With this in view, we set aside the order of the original authority and remand the matter for fresh consideration by him.

6.2. As the dispute relates 1999-2002, we would like to remand the matter with the following directions so that the dispute decided with out further delay:-

a) The original authority shall fix a date and the time so that the appellants/ their authorised representatives can first peruse the seized records with the department and indicate the documents for which copies were required.

b) If any of the relied records are bulky registers, not capable of easily being photocopied, then the appellants /authorised representative shall be given reasonable opportunity to inspect and take extract. In respect of other relied records, the department shall provides copies to each of the appellant at the department's costs.

c) The documents not relied upon in the proceedings should be identified and released to the persons from whose custody they were seized.

d) The entire exercise of inspection/ perusal and taking extracts, release of un-relied documents and supply of copies of relied up on documents shall be completed within 45 days from the receipt of this order.

e) The appellants shall submit their replies within one month from the date of receipt of copies of above documents.

f) The original authority shall thereafter decide the case expeditiously within two months from the expiry of time limit given for the reply to the show cause notice. The appellants shall be given reasonable opportunity of hearing before the issue is decided.

g) The appellants are directed to co-operate in the adjudicating proceedings.

7. With out expressing views on the merits of the case, the appeals are allowed by way of remand on the above terms.

(Operative part pronounced in the open Court)

(M. Veeraiyan)
Technical Member

(D.N.Panda)
Judicial Member

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