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

Appeal No. E/5383/2004 - EX[DB]   Date 16/12/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SECTOR-17-C, CHANDIGARH

C.C.E. CHANDIGARH   Appellant
Vs
M/S NEKON INDS.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 928/2008-**EX[DB]** dated 02-12-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S NEKON INDS.
   PLOT NO 29, INDL. AREA BADDI, DISTT. SOLAN (HP)
2. Adv. / Consult SH. B.L. NARASIMHAN, ADV., B-6/10, S.J. ENC., N. DELHI-29
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 - 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.5383/2004-Ex(Br)

(Arising out of order in appeal No.583/CE/Chd/04 dated 6.8.04 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

CCE, Chandigarh

Appellant
(Rep. by Shri A. Khanna, DR)

Vs

M/s Nekon Industries

Respondent
(Rep. by Shri B.L. Narasimhan, Advocate)

Coram: Hon'ble Mr.D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing:17 .11.08

FINAL Order No. 928/08-EX/20~~08-Ex(BR~~)

Per D.N. Panda:

Revenue has come in appeal being aggrieved by. the order passed by the appellate authority below. Firstly, it was held by that Authority that the appellant has suffered duty for clearance of branded goods and department was free to enquire about the status of the clearance of branded goods. Secondly, the respondent got relief on limitation holding that demand raised was barred ~~bared by~~ limitation.

2. Learned DR appearing on behalf of Revenue submits that the respondent kept the department in dark as to their manner of clearance of branded goods and unbranded goods. Show cause notice was therefore issued. The respondent did not provide any figure to the assessing authority

as to branded and unbranded goods and pleaded before the learned appellate authority to hold that the branded goods were cleared on payment of duty and unbranded goods without payment of duty. The case ought to have been examined by learned Appellate Authority thoroughly before granting relief to the Respondents.

3. Learned Counsel Shri B.L. Narasimhan, appearing on behalf of the respondent submits that learned appellate authority fairly came to the conclusion that branded and unbranded goods were manufactured by the appellants. Branded goods were cleared on payment of duty and unbranded goods have enjoyed SSI exemption. The order of adjudication unjustly debarred the Respondent without proper examination holding that the appellant had not manufactured branded goods. Further, he submits that even on limitation, the Appellate Authority was right to hold that nothing was beyond notice of the department as to method of working of the Respondent. Therefore, the proceeding was rightly held by him to be time barred. Learned Counsel relies on the decision in the case of Kohinoor Elastics Pvt Ltd Vs CCE Indore reported in 2005(188) ELT 3 (SC). Citing this judgment, he pleads that when there was branded goods and that has suffered duty and unbranded goods enjoyed exemption and material facts of the present case shows such fact, authorities cannot act otherwise.

4. Heard both sides and perused the record and gone through the citations.

5. We are unable to find how the learned Assessing Authority failed to notice about the clearance of the branded goods since the entire duty paid was in his record as found by learned Appellate Authority. The record shows that branded goods were cleared on payment of duty. We are unable

to notice why a contrary observation was made by learned Adjudicating Authority which did not get sanction by lower Appellate Authority. Therefore, we are of the opinion that the conclusion of the learned appellate authority in respect of the factual finding as to dutiablity of branded and unbranded goods remains untouched in absence of any contrary evidence on record.

6. The limitation issue was a question of law, and when the show cause notice was issued on limitation issue also that called for determination by learned Adjudicating Authority to hold whether the proceedings was time barred. In absence of any material contrary to submission of the learned Counsel, the respondent also succeeded on limitation. In view of our aforesaid decision, we dismiss the appeal of Revenue on both counts.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*