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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/5268-5270/2004 - EX[DB] Date 25/11/2008

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

To :
C.C.E.NOIDA
B-123,SECTOR-5,NOIDA

C.C.E.NOIDA Appellant
Vs
M/S CONTROL SWITCHGEAR CONTACTORS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 882-884/2008-**EX[DB]** dated 27-10-08 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 CONTROL SWITCHGEAR
   CONTACTORS LTD.
   C-58 PHASE-II,NOIDA
2. Adv. / Consult SH. P. SHUKLA, ADV.,
   A-345(FF) DEFENCE COLONY,
   N. DELHI-24
3. CDR
~~4 JCDR~~
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,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.5268 to 5270/2004-[redacted]

(Arising out of order in appeal No.215, to 217/CE/Appl/Noida/04 dated 23.7.04 passed by the Commissioner of Central Excise (Appeals), Noida)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial)
Hon'ble Mr. 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 should 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 Departmental authorities?

CCE, Noida — Appellant
(Rep. by Shri Amit Jain, SDR)

Vs

M/s Control Switchgear Connectors — Respondent
(Rep. by Shri Prakash Shukla, Advocate)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)
Hon'ble Mr. Rakesh Kumar, Member(Technical)

Date of Hearing: 27.10.08

Final Order No. 882-884 | 08-84 /2008-[redacted](BR)

Per P.K. Das:

The relevant facts of the case are that the respondents are engaged in the manufacture of Contractor, Overhead relays, Electrical Timers and

Accessories classifiable under sub heading 8536.90 of the schedule to Central Excise Tariff Act, 1985. Show cause notices were issued proposing demand of duty and penalty assessing the goods under Section 4 A of Central Excise Act, 1944. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount. The Commissioner (Appeals) reduced the amount of penalty. Revenue filed these appeals against the order of Commissioner (Appeals) for enhancement of penalty.

2. The ld. Advocate on behalf of the respondents submits that the respondents also filed appeal before the Tribunal against the order of Commissioner (Appeal) in respect of demand of duty and penalty. By Final Order No. 165 to 168/05-NBA dated 01.02.2005, the Tribunal allowed the appeals and set aside the impugned orders. The relevant portion of the order of the Tribunal in reproduced below:-

> "In this case appellants are not challenging the classification of the goods. The contention of the appellants is that these goods are not for retail sale. Therefore, are exempted under Rule 34 of Standards of Weights and Measures Act, 1976. We find that Rule 34 of Standards of Weights and Measures Act (Packaged Commodities) Rules, 1997 provides exemption in respect of certain packages if the making of the packages un-ambiguously indicate that it has been specially packed for exclusive use of any industries as raw material or for purpose of servicing of any industries. We find in the present case that on each package, it was specifically mentioned that it is specially packed for

exclusive use of industries as raw material and it is only for industrial use and not intended to be displayed for sale at a retail outlet. The Revenue had not produced any evidence to show that the goods in question are meant for retail sale. In these circumstances, we find merit in the arguments of the appellants that goods are liable for assessment for the purpose of excise duty under Section 4 of the Central Excise Act. The impugned orders are set aside and the appeals are allowed".

3. The ld. DR on behalf of the Revenue submits that the Revenue had not accepted the Order of the Tribunal and filed appeal before the Hon'ble Supreme Court. By Order dated 20.02.2006 the Hon'ble Supreme Court admitted appeals.

4. After hearing both the sides and on perusal of the record, we find that the Tribunal by Final Order dated 01.02.05 set aside the impugned order. There is no stay order against the Order of the Tribunal. Accordingly, the appeals filed by the Revenue are dismissed..

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial

MPS*

(Rakesh Kumar)
Member(Technical)