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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/3675, 3313/2005 - EX[DB] &245/06 & 979-980/07 Date 10/11/2008

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

To :
1. M/S MIRAJ PRODUCTS PVT LTD
UPALI ODEN, NATHDWARA, DISTRICT
RAJSAMAND, RAJASTHAN
M/S MIRAJ PRODUCTS PVT LTD Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 861-865/2008- **EX[DB]** dated 07-11-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registra
(Excise Appeal Branch

Copy to :
1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR
302005
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3 CD.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 -
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.Chenr
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.Ahmedabac
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Assistant Registr
(Excise Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NOS. 3675, 3313/05 & 245 OF 2006 AND 979-80 OF 2007

[Arising out of Order-in-Original No. 31-32/CE/JPR-II/2005/651 dated 19.7.2005 passed by the Commissioner of Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
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 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 Departmental authorities?	

M/s. Miraj Products Pvt. Ltd., Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Shri B.L. Narasimhan & Shri Ravi Raghavan, advocates for the appellants,
Shri H.K. Thakur, Jt.CDR, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 29th September, 2008

FINAL ORDER NO. 961-965/08-EX dated 7/11/08

Per S.S. Kang:

Heard both sides. Since common issued involved in these appeals, therefore, they are being taken up together.

2. The appellants are engaged in the manufacture of chewing tobacco. Manufactured tobacco is being sold to various dealers. The appellants are clearing chewing tobacco in pouches of 6 gms. and the same are further packed into poly pack of 33/35 pouches. 30 pouches of 2.5 gms. are further packed into poly pack and is cleared to various dealers. The appellants are paying central excise duty in respect of these pouches based on transaction value under Section 4 of Central Excise Act. Show cause notices were issued to the appellants on the ground that pouches manufactured and cleared by the appellants are assessable under Section 4A of the Central Excise Act and not under Section 4 as poly pack containing small pouches was to be assessed as multi-pieces package. The adjudicating authority confirmed the demand after assessing the goods in question under Section 4A of Central Excise Act and imposed the penalties.

3. The contention of the appellants is that commodity, in question is chewing tobacco and not small pouches which are mere packages. The contention of the appellants is that this issue is covered by the decision of the Hon'ble Supreme Court in the case of CCE vs. Kraftech Products Inc., reported in 2008 (224) ELT 504. The contention is that the Hon'ble Supreme Court in similar situation held that commodity packed in sachet is less than the quantity mentioned under the exemption provided under Rule 34 of Standard Weight & Measure (Packaged
and therefore, is assessable under Section 4(1) Excise Act
Commodity) Rules, 1977 (SWMR). The contention of the appellants is that in the instant case there is no reason to hold that the product, in question, is not sold by weight. Weight is mentioned on each sachet. Therefore, they are entitled for exemption under Rule 34 of SWMR as pouches are weighing less than 10 gms. It is also submitted that poly pack containing small pouches of chewing tobacco cannot be considered as group package or multi-pieces packages. Group package is a package containing two or more individual packages where the package is meant for sale through retail sale agency for consumption by individual or by other consumer. Package is qualified as group package only if the package is meant for consumption by the individual or group individual or any other consumer. In the present case poly pack containing small package cannot be considered as group package since it is not intended for retail sale. Poly packs are containing small

packages were sold to various retailers and at the end of retailer the sale to ultimate consumer is in respect of small pouches.

4. Revenue relied upon the decision of the Hon'ble Madras High Court in the case of Varnica Herbs vs. C.B.E. & C., reported in 2004 (163) ELT 160 (Mad.) to submit that in similar situation the Hon'ble High Court held that goods in question are assessable under Section 4A of the Central Excise Act.

5. We find that in the impugned order the adjudicating authority relied upon the decision of the Madras High Court in the case of Varnica Herbs (supra). The Larger Bench of the Tribunal in the caswe of CCE vs. Urison Cosmetics Ltd. held that the pouches less than 10 gms. which are sold in multi-pack are assessable under Section 4 of the Central Excise Act. The Larger Bench also hold that the decision of Hon'ble High Court has been rendered per incuriam, without noticing the specific legal requirement to sell cosmetics by weight or volume, can not be followed as a binding precedent. This view was upheld by the Hon'ble Supreme Court in the case of CCE vs. Kraftech Products Inc., reported in 2008 (224) ELT 504 (SC). The Hon'ble Supreme Court held that the reasoning adopted by the Hon'ble Madras High Court in Varnica Herbs does not appeals to us. The Hon'ble Supreme Court further agreed with the view taken by the Larger Bench of the Tribunal in the case of Urison Cosmetics Ltd. (supra). The Hon'ble Supreme Court has held as under:-

"23. We have noticed hereinbefore that each package offered to sell to the customer contains three sachets. Net weight of all the three sachets are stated thereon. It is a "multi-piece package" which is capable of being offered to sell as such only because a package is a "multi-piece package", the same cannot be taken out of the umbrage of exemption clause contained in Rule 34 of the Rules. Why the commodity cannot independently be sold either by weight or measure is beyond our comprehension particularly when Rule 12(2) permits the same. The illustration appended to Rule 2(j) bring out a clear picture. It states that the combined net weight shall be taken into consideration for the purposes mentioned therein. After combined weight is taken into consideration for the purpose of applicability of the Rules, there is no reason as to why the said purpose shall not be considered to be a relevant factor for applying the exemption provision. Assuming Rule 2(j) was otherwise vague or unambiguous, illustration appended thereto brings out the true meaning and purport thereof. The reasoning adopted by the Madras High Court in Varnica Herbs (supra) does not appeal to us.

24. It was rendered per incuriam. It was held to be so in Urison Cosmetics Ltd. (supra) by a Larger Bench of the Customs Excise and Service Tax Appellate Tribunal. We agree with the said opinion of the Tribunal."

In view of the above decision of the Hon'ble Supreme Court the impugned orders are set aside and appeals are allowed.

(Pronounced on 07-11-2008)

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

Dated 29th October, 2008
RK

प्रमाणित प्रति/Certified True Copy
18.11.08
सहायक पंजीकार/Asstt.
सीमाशुल्क, उत्पादशुल्क
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