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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/4143/2004 - EX[DB] Date 10/11/2008

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

To :
MUNCH FOOD PRODUCTS LTD.
11701, SAT NAGAR, KAROL BAGH, NEW DELHI

MUNCH FOOD PRODUCTS LTD. Appellant
Vs
C.C.E. DELHI-I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 845/2008-**EX[DB]** dated 02-9-08 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. DELHI-I
C.R. BUILDING, I.P. ESTATE, NEW DELHI
2. Adv. / Consult SH. M.S. GUPTA, CON.
B-1, HARI NAGAR,
N. DELHI-64
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). 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
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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. 4143 of 2004

[Arising out of the Order-in-Appeal No. 74-75-CE/DLH/2004 dated 14/05/2004 passed by The Commissioner of Central Excise (Appeals), Delhi-I, New Delhi.]

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 Munch Food Products Ltd. Appellant

Versus

CCE, Delhi – I Respondent

Appearance

Shri M.S. Gupta, Consultant – 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 : 02/09/2008.

Final Order No. 845/08-EX Dated : ____________

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the order-in-appeal passed by Commissioner (Appeals), whereby issue of classification as well as the issue of consequential demand against the appellant.

2. The contention of appellant is that classification claimed by the appellant in respect of product in question was not accepted by the revenue.Revenue issued a show cause notice and the Adjudicating Authority confirmed the classification against the appellant. Appellant filed appeal and Commissioner (Appeals) dismissed their appeal. Against that order of Commissioner (Appeals) deciding classification issue and the appellant filed appeal and the Tribunal vide final order No. 740/99-D dated 18/08/99 remanded the matter to the Commissioner (Appeals).

3. Subsequent to the decision in the classification issue, the Adjudicating Authority also confirmed the demand. The appeal against confirmed demand filed before the Tribunal and Tribunal vide final order No. A/462/03-NB dated 02/09/03 remanded the matter to the Commissioner (Appeals) with the direction to decide the issue of demand alongwith the issue of classification which has already been remanded in the year 1999.

4. The Commissioner (Appeals) issued a notice for hearing to the appellant fixing the hearing on 15/04/04 in respect of the appeal regarding demand of duty. The contention of appellant is that the hearing was attended and it has been pointed out by the appellant that issue in respect of classification is also pending with the Commissioner (Appeals) in view of remand order passed in the year 1999, therefore, both the appeals should be heard together. As the record pertaining to the ~~appeal~~ appeal remanded by the Tribunal vide order dated 18/08/1999 was not before the Commissioner (Appeals), therefore, some documents were supplied by the appellant and subsequently vide letter dated 19/04/04

appellants supplied copies of order-in-appeal and other documents and also made a request that in respect of classification issue the appellant should be heard. Contention is that in spite of this, the Commissioner (Appeals) vide impugned order decided the issue of classification as well as the issue of consequential demand against the appellant. The contention of appellant is that as no notice of hearing in respect of the appeal which was pending with the Commissioner (Appeals) in respect of the classification was issued and the same has been decided without affording an opportunity of hearing to the appellant in respect of the classification claimed by the appellant, therefore, the impugned order is not sustainable.

5. The learned SDR submitted that the issue of classification and the issue of consequential demand both were remanded to the Commissioner (Appeals) and the Commissioner (Appeals) decided both the issues, therefore, the impugned order is rightly passed.

6. We find that appellant produced the notice of hearing which was in respect of the demand proceedings. Appellant had not received any notice in respect of the hearing of the

appeal by the Commissioner (Appeals) in respect of the issue of classification and by impugned order, both the issue have been decided. After the date of hearing, the appellant supplied certain copies of order-in-appeal and other relevant document and made a request to grant hearing in respect of appeal which is pending in respect of classification issue. In these circumstances, we find it is a fit case for remamd. The impugned order is set aside and the matter is remanded back to the Commissioner(Appeals) to decide afresh after affording an opportunity of personal hearing to the appellant.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK