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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/3931/2004 - EX[DB] Date 15/01/2009

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

To :
M/S KAJARIA CERAMICS LTD.
M/S KAJARIA CERAMICS LTD., BHIWADI-ALWAR
ROAD, VILL- GAILPUR, EISTT. ALWAR
M/S KAJARIA CERAMICS LTD. Appellant

Vs

C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 37/2009- **EX[DB]** dated 13-1-09 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. JAIPUR
   THE COMMISSIONER OF CENTRAL EXCISE, JAIPUR, NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 3931 of 2004-Ex.

(Arising out of Order-in-Appeal No. 202(SN)CE/JPR-I/2004 dated 2.6.2000 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Kajaria Ceramics Ltd. — Appellant
Shri K.K. Anand, Advocate

Vs.

CCE, Jaipur-I — Respondent
Shri A.K. Rastogi, DR

Date of Hearing: 7.1.2009

CORAM: HON'BLE MR. D.N. PANDA, MEMBER (JUDICIAL)
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL Order No. 37/09-EX dated............

Per D.N. Panda:

Ld. counsel for the appellant submits that tiles were in the course of movement for export and those were assessed for clearance with duty liability under Section 4A of Central Excise Act 1944 (hereinafter referred to as "the Act"). He submits that whatever the goods that could not be exported, the appellant has paid duty under Section 4A since the goods (unbroken) tiles were subject to provision of that section being notified goods under that section. He submits that the broken tiles not being marketable that should not suffer the duty.

2. Ld. DR submits that the goods being in the course of export were cleared under Section 4A of Central Excise Act, 1944. When the goods came back that shall have same characteristic for the purpose of Section 4A. Therefore, the appellant should also pay duty on the broken tiles under Section 4A of the Act.

3. Heard both sides and perused the record.

4. We fail to understand when Revenue has not brought out its case that the broken tiles were marketable how that shall be exigible to duty. We notice that to invoke Section 4A of the Act, the goods in question should have been notified for the purpose of that section. It is also our third observation that the broken tiles are not pleaded to be dutiable goods. In view of all these three observations, we are of the view that broken tiles should not suffer duty under Section 4A of Central Excise Act 1944. We therefore allow the appeal of the appellant setting aside the impugned order. The appellant is entitled to consequential relief if any, that shall follow in accordance with law.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM