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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/5980/2004 - EX[DB] Date 19/01/2009

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

To :
M/S NESTLE INDIA LTD.
P.B. NO.-11,-LUDHIANA-FEROZPUR ROAD, MOGA

M/S NESTLE INDIA LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 40/2009- **EX[DB]** dated 15-1-09

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. LUDHIANA
   F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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. 5980 of 2004-Ex.

(Arising out of Order-in-Appeal No. 545-CE/Appeal/Ldh/04 dated 31.8.2004 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

M/s Nestle India Ltd. Appellant

Vs.

CCE, Ludhiana Respondent

Appeared for Appellant : Shri B.L. Narasimhan, Advocate
Appeared for Respondent: Shri Amit Jain, DR

Date of Hearing: 7.1.2009

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

Final Order No. 40/09-EX. dated............

Per D.N. Panda:

Ld. counsel Shri Narasimhan argues that once authorities have held that the goods are classifiable under Heading 2101.10, the goods themselves submit for assessability under Section 4A of Central Excise Act 1944. Section 4A being an independent machinery for determining the assessable value, the appellant satisfied the authority for the legitimate levy. Ld. Commissioner (Appeals) and the adjudicating authority should not have proceeded on a presumption that the appellant could not have satisfied for assessability under Section 4A. He relied on the decision of the Tribunal in its own case reported as 2004 (169) ELT 22 and submits that the matter may go back for examining afresh.

2. Ld. DR appearing for Revenue submits that when the appellant has cleared the goods on the assessable value determined by them under Section 4 of Central Excise Act 1944, they failed to establish their case under Section 4A. Therefore, both the authorities have correctly proceeded against the appellant.

3. Heard both sides and perused the record.

4. Both sides have rivalry contentions on the issue of determination of assessable value. Whether under Section 4 or 4A of Central Excise Act, 1944, we hold that if a notification has been issued under Section 4A in respect of goods of the appellant, the adjudicating authority is free to assess the appellant under that section only. We noticed that the classification issue having been resolved, it would be convenient for the adjudicating authority to look into the notification so as to bringing the goods to the purview of Section 4A if the facts of the case of the appellant so submit. If he is satisfied that essential ingredients of Section 4A is fulfilled by the appellant, the appellant should be unambiguously assessed under that section. If that is done, the appellant may not have grievance and they may be entitled to consequential relief, if any. Ld. assessing authority is also free to decide the consequential relief if any as admissible under law to the appellant. Ld. counsel

prays that the ld. adjudicating authority may be directed to examine whether any Modvat is admissible to the appellant. We direct if the authority is satisfied in respect of such claim and that is permissible under the law, the appellant should not be disentitled unless otherwise deniable.

5. In the result the appeal is remanded setting aside the impugned order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM