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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/6193/2004 - EX[DB] Date 06/02/2009

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

To :
M/S AROMATIC & ALLIED CHEMICALS,
B-8,INDUSTRIAL ESTATE,C.B.GANJ,BARELLY

M/S AROMATIC & ALLIED CHEMICALS, Appellant
Vs
C.C.E.MEERUT-II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 106/2009- **EX[DB]** dated 03-2-09 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.MEERUT-II
SAHEED PARK,NEAR ASHOK KI LAT DELHI ROAD,MEERUT-II U.P
2. Adv. / Consult SH. SURENDER GUPTA, 313, CHANAKYA COMPLEX, B-10, SUBHASH CHOWK LAXMI NAGAR, DELHI-92
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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 3.2.2009

Central Excise Appeal No.6193 of 2004

Arising out of the order in appeal No.230/2004 dated 28.9.04 passed by the Commissioner, Central Excise & Customs (Appeals), Meerut II.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants — Respondent

M/s Aromatic & Allied Chemicals vs. C.C.E., Meerut II

Appearance:

Shri Surendra Gupta, Chartered Accountant for the appellants
Shri K.K.Goel, Authorized Departmental Representative (DR) for the Revenue

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No. 106/09-EX.

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 230/2004 dated 28.9.04/

2. Heard both sides.

3. The appellant is a manufacturer of chemical products and during the period April to September 1999, it is claimed that they have exported goods valued about Rs.69 lakhs through merchant exporters and cleared only about 10

lakhs to the domestic market. They were availing the benefit of exemption under Notification No.8/99 dated 28.2.99 and they were also registered with the Central Excise authorities. The original authority confirmed the demand of Rs.2,81,670/- in respect of export clearances claimed by the appellant on the ground that they have not followed the AR-4 procedure and presumably holding that the said clearances as clearances to the domestic market and that they were in excess of exemption limit available to small scale unit.

4. Learned Chartered Accountant appearing for the appellants submits that they are eligible for the benefit of simplified procedure for export prescribed in Board' s Circular No.212/46/96-CX dated 20.5.96. He submits that they had produced Form – H along with copies of shipping bills under which the merchant exporters have exported the consignments procured from them.

5. Learned DR submits that as a registered unit, they ought to have followed AR-4 procedure and the Board Circular is not applicable in their case as held by the original authority and upheld by the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. A simplified procedure for export has been prescribed for small scale units by the Board in their Circular dated 20.5.96.The dispute relates to whether the said circular should have been followed by the appellant or not as claimed by the appellant. However, the core issue is whether goods valued at about Rs.69 lakhs have been exported or not. If the goods have been exported, the demand of duty was not justified. We are of the view that export benefit should not be denied on a procedural violation. However, in the absence of following the procedure prescribed, it is incumbent on the appellant to produce other evidence to show that the exports have ~~been~~ taken place. It was claimed that if an opportunity is given, the evidence will be produced before the authorities. We are inclined to agree with this request. To enable the same, we set aside the orders of the Commissioner (Appeals) and the original authority and remand the matter to the original authority to consider the evidence that shall be produced by the appellant to the effect that the goods cleared from them have been ~~found~~ exported through merchant exporters. The appellant is directed to submit the

evidence relied upon by them, to show that the goods have been sold by them to the Merchant exporters and the same goods have been exported by the Merchant exporters, ~~to the original authority~~ such as realisation particulars of sale proceeds from the merchant exporters and realisation of export sale proceds by the Merchant exporter and other evidences, if any, before the original authority within 45 days. He shall decide the issue after giving reasonable opportunity of hearing to the appellant.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/