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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/5229/2004 - EX[DB] Date 30/03/2009

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

To :
C.C.E. DELHI-I
C.R. BUILDING, I.P. ESTATE, NEW DELHI

C.C.E. DELHI-I Appellant

Vs

M/S ANAND MINCONS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 232/2009- **EX[DB]** dated 26-2-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S ANAND MINCONS
   B-79, NARAINA INDL. AREA, PHASE-II, NEW DELHI
2. Adv. / Consult
   MR.NAVEEN MULLICK
   B-388, MERA BAGH, NEW DELHI-63.

3 C.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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 5229 of 2004

[Arising out of Order-in-Appeal No. 126-CE/DLH/2004 dated 15.7.04 passed by Commissioner of Central Excise (Appeals) New Delhi.]

For approval and signature:

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

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 should 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? : Yes

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Commissioner of Central Excise
Delhi I — Appellant

Vs.

M/s. Anand Mincons — Respondent

Appearance:

Mr. B.S. Suhag , DR for the Appellant
Mr. Naveen Mullick, Advocate for the Respondent

<u>**CORAM**</u>:

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

Date of Hearing/Decision: 26.2.2009

FINAL **ORDER NO . 232/09-Ex**

Per P.K.Das (for the Bench):

Revenue filed this appeal against order-in-appeal No. 126-CE/DLH/2004 dated 15.7.04 passed by the Commissioner (Appeals) New Delhi. The issue involved in this case is as to whether the product "Flexible Ducting and Parts thereof" would be entitled to exemption under Notification No. 6/2000 dated 1.3.2000. Both the authorities below held in favour of the respondents. Hence, the Revenue filed this appeal.

2. Heard both sides and perused the records. Serial No. 67 of the Table appended to Notification No. 6/2000-C E dated 1.3.2000 provides nil rate of duty on "Lay Flat Tubes" classified under heading 39.17. There is no dispute that the product manufactured by the respondent would be classifiable under sub-heading 3917.00. It has been held that the product "Flexible Ducting and Parts thereof" are nothing but Lay Flat Tubes. Relevant portion of the order of Commissioner (Appeals) is reproduced below:-

> "6. I have considered the matter. The basic and prominent issue involved in the case before is whether the product in dispute merited to be exempt from excise duty or not. I find from the facts on record and the Revenue appeal that the product in dispute was rightly classifiable

under tariff entry 39.17 and this fact is not disputed by the Revenue Appellant also. This tariff entry, as can be seen in the Tariff Act, 1985, covers the goods namely tubes, pipes and hoses of plastics and their fittings (not parts). The product of the Respondents by whatsoever name it is called in trade parlance, has undisputably capability of conveying or distributing air which is a sort of gas and it was cleared from the factory of Respondents in the form of lay flat tube. So, the ingredient of chapter note 8 of the Chapter 39 of Tariff Act stand satisfied to say that the flat flexible lay tubing of the Respondents merits to fall under tariff entry 39.17. it is further observed that the Revenue appellant in its appeal has admitted that both the Duct and the tubes fall under tariff entry 39.17 which means that according to view of the department, the duct is covered by the description given against tariff entry 39.17 as "tubes, pipes and hoses". If so, the product in dispute, i.e. lay flat flexible ducting of plastic which is flexible in nature and supplied in the form of lay flat product, cannot be called as pipe or hose and would merit to fall under the meaning of tube only. If so, it being lay flat tubing would certainly attract exemption of duty under said exemption notification. From the dictionary meaning also, I find that meanings of "duct" include "tube" and besides all, the product in dispute, by whatsoever name called is nothing but a sort of lay flat tube of plastic falling within the meaning given in said chapter note no.8. I have also perused the catalogue furnished by the Respondents in appeal proceedings, which clearly show the product in dispute even if used as ducting device, would merit to be called ...

as the lay flat tube and not as pipe or hose, which was not dutiable by virtue of above said exemption notification. It would not be proper to differentiate between the tube and duct in the instant case especially when the Central Excise Tariff Act, 1985 does not define the term tube, pipe or hose with reference to its end use."

3. We find that the Commissioner (Appeals) after examining the description in the tariff heading and exemption notification has held that respondents are eligible for the exemption benefit. We agree with the finding of the Commissioner (Appeals).

4. In view of that, we do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K. Das)
Member(Judicial)

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