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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/6147/2004 - EX[DB]

Date 23/04/2009

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

To :
M/S GAURAV PACKAGING
132,SECTOR-15 A,FARIDABAD

M/S GAURAV PACKAGING — Appellant

Vs

C.C.E.DELHI-IV,FARIDABAD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 266 /2009 EX [DB] dated 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-IV,FARIDABAD
NEW CGO COMPLEX,FARIDABAD
2. Adv. / Consult

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4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
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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.
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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-110066.
Principal Bench, New Delhi.

E/6147/04

(Arising out of order-in-Appeal No.67-CE/Appl/Divn.V/DLH-IV/200 dt.17.11.04 passed by Commissioner(Appeals), Faridabad)

M/s. Gaurav Packaging Appellant

Versus

CCE, Faridabad Respondent

Appearance
None for Appellant

Shri Amit Jain, Authorised Departmental Representative(DR)
For Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 23.3.09
FINAL Order No. 266/09-EV

Per D.N.Panda:

None present for the appellant. It was stated by the Ld. DR in the course of hearing that the appellant was given an opportunity by the Court on the last occasion i.e. on 23.2.09 to satisfy the Bench in respect of its appeal. For that reason, the matter was adjourned to 23.3.09. Noticing that the appellant has no concern to pursue its remedy, we dispose of the matter ex-parte as stated above.

2. Ld. DR Shri Amit Jain submits that the appellant could not succeed before the lower authority for the reason that they failed to produce the evidence as to whether they are covered under Rule 34(b) of the Standard of Weight & Measures Package Commodity Rules,1977 and in absence of evidence whether the goods were sold by them by weight or measure, Rule 34(b) is not ~~ascertainable.~~ applicable.

3. We have carefully considered the submissions of the Ld. DR and perused the records. In this case, part of goods have been cleared under Section 4A of Central Excise Act,1944 and part of the goods cleared under Section 4 of the Central Excise Act,1944. The issue before the ld. appellate authority was whether the pouches being less than 2 gms each were exempt from declaring the MRP under Rule 34(b) of the Standard of Weight & Measures Package Commodity Rules,1977 and whether valuation could be done under Section 4 of the Central Excise Act,1944. Rule 34(b) of the Standard of Weight & Measures Package Commodity Rules,1994 states that nothing contained in these Rules shall apply to any package containing a commodity if the net weight or measurer of the commodity is 10 gms. or ten milliliters or less, if sold by weight or measure. Ld. Commissioner(Appeals) has held Rule 34(b) to be in-applicable

on the ground that marketing pattern of the Appellant reveals that the packages had not been sold by them either by weight or measure and hence their claim for assessment under Section 4 and not under Section 4A, is not acceptable. From a photo copy of the packages placed on record, it is clearly seen that the net weight ~~is~~ printed on the package ~~is~~ 2 gms and besides this, the words "not for sale" ~~is~~ and also printed on the packages. Hon'ble Supreme Court in the case of CCE, Vapi vs Kraftech Products reported in 2008(224)ELT.504(SC) has held when ~~not only~~ the weight of each sachet is printed on the packet, the intention of the manufacturer to sell the commodity by weight is explicit and that exemption clause under Rule 34(b) would apply if the commodity is sold by weight and measure and net weight of the commodity ~~on~~ packed is 10 gms or less. The Board's circular No.625/16/2002-CX dt.28.2.02 has clarified that in respect of all the goods (whether notified under Section 4A or not) where there is no statutory requirement to print/declare the retail sale price on the packages under the provisions of the Standards of Weight & Measure Act,1976 or the Rules made there under or any other law for the time being in force, valuation will be done under Section 4 of the Central Excise Act,1944 or under Section 3(2) of Central Excise Act,1944, if the tariff value has been fixed for the commodity. Hon'ble Supreme Court in another case of Jayanti Food Processing(P) Ltd. & Others vs CCE, Rajasthan reported in 2007(82)RLT.239(SC) has held that goods/packages covered by Rule 29 or 34 of Standards of Weights & Measures (Packaged Commodities)Rules,1977 are not covered by Section 4A. We find that in this case, Commissioner(Appeals) has not given any clear finding as to why the goods are not covered by the exemption clause under Rule 34(b) of Standards of Weights & Measures(Packaged Commodities)Rules,1977 when weight of the contents is clearly printed on each packet and the same is 2 gms and when words "not for sale" are also printed on each packet, implying that the goods are not for sale.

5. In view of the above discussion, the matter is remanded to the Commissioner(Appeals) for denovo examination in the light of the Hon'ble Supreme Court's judgements in the cases of CCE, Vapi vs Kraftech Product(supra) and Jayanti Food Processing(P) Ltd. & Ors.(supra)

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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