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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/611 /2009-612 /2009 - EX[DB] Date 19/05/2009
E/S/609-610/2009-EX

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

To :
M/S UNIVERSAL ENTERPRISES ← 2. SH. S. K. GUPTA,

M/S UNIVERSAL ENTERPRISESHAVING ITS
REGISTERED OFFICE AT
408, M.I.E. PART-A, BAHADURGARH
M/S UNIVERSAL ENTERPRISES Appellant

Vs

C.C.E. ROHTAK STAY ORDER NO.438-439/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.**333-334/2009- **EX[DB]** dated 01-5-09

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. ROHTAK
   SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
   MR.VIVEK KOHLI & ASHWANI SHARMA,
   FOR ZEUS LAW ASSOCIATES , R-89, G.K.-I, NEW DELHI-110048
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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18.HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

**COURT-I**

**Date of hearing/decision:1.5.2009**

For Approval and Signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

| | | |
|---|---|---|
| 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? | Yes |
| 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 |

**Stay Application No.609 of 2009 and Central Excise Appeal No.611 of 2009**

Arising out of the order in appeal No.276-277/ANS/GGN/2008 dated 8.12.2008 passed by the Commissioner (Appeals), Central Excise, Delhi III.

M/s Universal Enterprises ... Appellant

Vs.

C.C.E., Rohtak ... Respondent

**Stay Application No.610 of 2009 and Central Excise Appeal No.612 of 2009**

Arising out of the order in appeal No.276-277/ANS/GGN/2008 dated 8.12.2008 passed by the Commissioner (Appeals), Central Excise, Delhi III.

Shri S.K. Gupta ... Appellant

Vs.

C.C.E., Rohtak ... Respondent

Appearance:

Shri Ashwani Sharma with Shri Sudeep Vijayan, Advocates for the appellants
Shri A.K. Rastogi, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

STAY Oral Order No. 438-439/09-EX

FINAL ORDER No 333-334/09-EX

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, we felt that the appeals themselves could be finally disposed of , and accordingly,we waive pre-deposit of the dues as per the impugned order and proceed to dispose of the appeals finally.

2. The appellant firm is a manufacturer of un-branded chewing tobacco and they were availing the benefit of Notification No.8/2003-CE dated 1.3.03 after filing the necessary declaration with the Central Excise authority. A new levy on tobacco product was imposed with effect from 1.3.2005 and by a Notification No.6/2005 dated 1.3.05, the effective rate of duty on chewing tobacco was fixed at 6% (plus education cess as applicable). The appellant, entertained a doubt as to whether the new levy shall be applicable to them as they were availing exemption Notification No.8/03 and they were in correspondence with the Excise authority. On a visit made by the officers preventive wing of the Central Excise department, on 9.4.2006, they were informed that they are reqired to pay the additional levy. They applied for registration on 22.9.06 and also paid an amount of Rs.8,12,869/-. This amount has been arrived at by them after taking into account the benefit under Notification No.6/05. The original authority held that the appellants were not registered during the relevant period and that they have not claimed the exemption under notification No 6/2005, and, therefore, they are not eligible to the benefit of the same notification and accordingly, confirmed the demand of duty of Rs.13,54,780/- (including an amount already deposited ) along with interest and also imposed penalty of Rs.13,54,780/-. He also imposed penalty of Rs.10 ,000/- on Shri S.K. Gutpa, proprietor of the appellant firm. Commissioner (Appeals) upheld the order of the original authority.

3. Learned Advocate for the appellants submits that they were under a bona fide belief that as small scale unit availing the benefit of 8/2003, they are not

required to pay the new levy. On being pointed out by the department, they took the registration and paid dues and the proceedings initiated by the department seeking to deny the benefit of Notification No.6/05 and consequent demand of duty and imposition of penalty are not sustainable. He also submits that penalty of Rs.10,000/- imposed on the proprietor of the firm in addition to the imposition of penalty on the appellant firm is not at all justified. Learned Advocate is not contesting the duty payable at the rate of 6% which has already been paid in terms of the Notification No.6/05.

4. Learned DR reiterates the finding of the Commissioner (Appeals) which has been passed relying on the decision of the Hon'ble Supreme Court in the case of Eagle Flask Industries Ltd. vs. C.C.E.. Pune reported in2004 (171) ELT 296 (SC).

5. We have carefully considered the submissions from both sides. The appellant has filed necessary declaration for the purpose of availing the Notification No.8/2003 in relation to unbranded chewing tobacco manufactured by them. It is not the case where the department was kept in darkness by the appellant about the manufacture of unbranded chewing tobacco as they have filed necessary declaration for the purpose of availing the Notification No.8/2003 for the same product . Further, we find that the appellant has been seeking clarification from the department regarding applicability of new levy. Further, on the basis of clarification given during the visit of the officers, they immediately took the registration and paid up dues as per the effective rate of duty applying the notification. 6/2005. The Notification No.6/2005 does not contain any condition that the benefit under the said Notification is available only to a registered unit. Reliance placed on the decision of the Supreme Court is misplaced as the facts of the present case are entirely different.

6. In the light of the above, we set aside the demand of duty in excess of the duty payable and paid in terms of Notification No.6/05. Penalty imposed on the

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appellant firm and also separate penalty on the proprietor of the appellant firm are not at all justified. We, accordingly, set aside the same.

7. The appeals are disposed of on the above terms. Stay petitions are also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/