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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/3568/2004 - EX[DB] Date 19/05/2009

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

To :
M/S HEM ELECTRIC MANUFACTURING CO. LTD.
17-18, INDUSTRIAL ESTATE, VARANASI
221106

M/S HEM ELECTRIC MANUFACTURING CO. LTD. Appellant
Vs
C.C.E. ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.**366/2009-**EX[DB]** dated 6-5-09 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. ALLAHABAD
   38, M.G. MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult SH. JEEVESH MEHTA, C/O
   MR.SHEKHAR VYAS
   G-13, NIZAMUDDIN WEST, N.DELHI-13
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)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K. Puram, New Delhi - 110066

COURT-I

Date of hearing/pronouncement:6.5.2009

Central Excise Appeal No.3568 of 2004

Arising out of the order in appeal No.447-CE/ALLD/2003 dated 22.1.2004 passed by the Commissioner of Central Excise, (Appeals), Allahabad.

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~~ Yes
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/~~No~~

M/s Hem Electric Manufacturing Co. P. Ltd. ..... Appellant

Vs.

C.C.E., Allahabdad ...... Respondent

Appearance:

Shri Jeevesh Mehta, Advocate for the appellant(s) and
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)

FINAL Oral Order No. 366/09-EA

Per Shri Justice R.M.S. Khandeparkar:

Heard.

2. The appellants challenge the order dated 22.1.2204 passed by the Commissioner (Appeals), Allahabad and the order dated 7.6.98 of the Assistant Commissioner, Varanasi on two grounds – namely, the authorities have totally ignored the specific directions given by this Tribunal under order

dated 15.9.97 in Appeal No.2611/93 and 461/96 and secondly, the authorities have travelled beyond the scope of the show cause notice.

3. Few facts which are necessary to be recorded are that the show cause notice dated 8.9.92 came to be issued to the appellants in relation to classification of the products manufactured by the appellants and which comprised of parts and accessories of locomotive railways and motor vehicles. Further, addendum to the show cause notice came to be issued on 7.1.1993. The products manufactured by the appellant were sought to be classified initially under sub-heading 8607.00. However, by addendum, they were sought to be classified under sub-heading 8531.00. After hearing the parties, the adjudicating authority vide order dated 10.2.93 rejected the contentions sought to be raised on behalf of the appellants and confirmed the demand in terms of the addendum to the show cause notice. Matter was carried in appeal before the Commissioner (Appeals) by the appellants without any success as the appeal was dismissed on 12.7.93 and the appellants thereupon, preferred the appeal before the Tribunal and vide order dated 26.8.97 set aside the order passed by the lower appellate authority and remanded the matter for reconsideration on the basis of the evidence to be produced by the party including the evidence in the nature of technical literature. The relevant part in the said order reads thus:

> ***"7. In the facts and circumstances and in view of the submissions made by both the sides, the main point to be considered in these appeals is whether the above items are of electro mechanical appliances or electro equipments. Further, even assuming that they are electro mechanical appliances or equipments, whether they are excluded from Chapter 85. Since this issue has not been considered properly with this angle and in the absence of the technical literature in respect of each and every item, it is difficult for us to arrive at the proper conclusion in deciding the issue of classification.***
>
> ***Accordingly, we are remanding the matter to the concerned Assistant Commissioner to examine the issue afresh and to give an opportunity to the appellants to adduce evidence/technical literature , if any, in support of their claim that the above items are electro mechanical appliances and however, they do not come under the purview of Chapter 85 and, accordingly, the Assistant Commissioner is directed to pass an appropriate order in accordance with law."***

4. Pursuant to the remand , Assistant Commissioner of Central Excise, Varanasi by his order dated 7.6.98 confirmed the previous order passed by the Assistant Commissioner and ordered recovery of the duty. Being dissatisfied, the appellants preferred the appeal before Commissioner (Appeals). However, the same was dismissed by order dated 22.1.2004 while confirming the view taken by the Assistant Commissioner, Central Excise , Váranasi. Hence the present appeal.

5. Learned DR has submitted that authorities below taking into consideration the direction issued by the Tribunal and on proper analysis of evidence on record held that products manufactured by the appellant are classifiable under Chapter 85 as electrical goods. In that view of the matter, according to him, there is no case for any interference in the impugned orders.

6. As already noted above, the Tribunal vide order dated 26.8.97 had remanded the matter with specific direction to give an opportunity to the appellants to produce further evidence in the form of technical literature. While issuing the said direction, the Tribunal had taken into consideration the fact that in order to classify the goods in question, it was necessary to take into consideration the expert opinion in relation to nature of the goods in question and therefore, the authorities deciding the matter in relation to the classification of such goods for the purpose of levy of excise duty were expected to take into consideration the evidence in the form of expert opinion. Indeed, the Assistant Commissioner was fully aware of this aspect and therefore, he had recorded in his order dated 7.6.98:-

> ***" The Hon'ble CESTAT has further directed the Assistant Commissioner to examine the issue in the light of the technical literature in respect of each and every item. The party submitted certificates from M/s D.L.W., Varanasi and Sri Nawal Kishor, a Chartered Engineer confirming that impugned items are electromechanical equipments."***

However, surprisingly, the Assistant Commissioner has nowhere referred even to the contents of the certificate and opinion of the expert produced by the appellants, in spite of the fact that the said evidence is directly on the point in issue and had been produced by the appellants

persuant
~~personally~~ to the order of the Tribunal. To what extent the said evidence is helpful in deciding the matter of classification is totally different point that could be decided only after consideration of the said evidence.

7. As far as Commissioner (Appeals) is concerned, the order apparently discloses that he was fully aware that the matter was being dealt with at the second round of litigation consequent to remand thereof by the Tribunal. In other words, the Commissioner (Appeals) was fully aware that he was required to consider the appeal bearing in mind the directions issued by this Tribunal under order dated 26.8.97. However, the Commissioner (Appeals) rather than analyzing the evidence in the form of the expert opinion, disposed of the appeal solely on the basis of the opinion expressed by the Assistant Commissioner in spite of the fact that such opinions were based on purely visual inspection of the goods by the Assistant Commissioner.

8. Once the Tribunal had cautioned the lower authorities that the classification was required to be done after taking into consideration the opinion of the experts and on going through the necessary literature in relation to the goods produced by the appellant, we fail to understand as to how the lower authorities could totally ignore the order of the Tribunal and proceed to decide the matter contrary to the directions issued by the Tribunal. It should not be forgotten that proceedings before the lower authority were of the quasi – judicial nature and therefore, the authorities had to observe the judicial discipline. Once the higher authority directs the lower authority to decide a matter by taking into consideration certain materials on record, the lower authority cannot decide the same totally ignoring such direction and cannot adopt totally different course.

9. In the facts and circumstances of the case, therefore, it is not necessary to consider the second ground of challenge.

10. In the result, the appeal succeeds on the above stated ground and the orders passed by the lower authority are hereby set aside and the matter is remanded to Assistant Commissioner, Central Excise to decide the same afresh on the basis of the evidence already available on record and bearing in mind the observations made by the Tribunal in the order within three months

from the date of receipt of this order. Needless to say that before passing the order, the appellant should be heard in the matter.

11. The Appeal accordingly stands disposed of .

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/