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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/4556/2004-4557/2004 - EX[DB] Date 23/06/2009

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

To :
M/S VEDA RESEARCH LABS (P) LTD.
D-97,98,105, & 106, PHASE-II, EXTENSION, NOIDA

M/S VEDA RESEARCH LABS (P) LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 419-420/2009- **EX[DB]** dated 28-5-09

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. NOIDA
C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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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Assistant Registrar
(Excise Appeal Branch)

# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
## WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

## COURT – III

## CENTRAL EXCISE APPEAL NO. 4556-4557 OF 2004-EX

[Arising out of Order-in-Original No. 18-19/Commissioner/Noida/2004 dated 30.4.2004 passed by the Commissioner, Customs & Central Excise, Noida]

**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? | NO |
| 2. | Whether it would be released under Rule 27 of the 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 |

M/s. Veda Research Labs Pvt. Ltd., Appellants

Vs.

CCE, Noida Respondent

**Appearance:**

Shri K.K. Anand, Advocate for the Appellants;
Shri B.S. Suhag, D.R. for the Revenue

**Coram:**

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

**Date of hearing/decision: 28th May, 2009**

Final **ORAL ORDER NO.** 419-420/2009-EX **dated** ________

## Per M. Veeraiyan:

Both the appeals are arising out of common Order-in-Original No. 18-19/Commissioner/Noida/2004 dated 30.4.2004.

2. Heard both sides.

3. Relevant facts, in brief, are that the appellant is a manufacturer of Toilet Soap and Cosmetics which are notified goods for the purpose of Section 4A of the Central Excise Act, 1944. The appellant sells the said products through dealers' network and valuation under Section 4A is being adopted for the same and there is no dispute in this regard. However, they are also selling their products in bulk to hotels, like ITC Welcome Group, Imperial Hotel. The Department held that sales made to such hotels are also covered for valuation in terms of Section 4A inasmuch as the packages supplied to the said hotels contained M.R.P. printed on them and, accordingly, confirmed a demand of Rs. 18,02,736/- along with interest and imposed consolidated penalty of Rs. 18 lakhs under Rule 25 of Central Excise Rules, read with Section 11AC.

4. Learned Advocate submits that they are making supplies to the hotels on the basis of bulk orders placed by them; that individual packs carries the name and emblem of the concerned hotels; that though, they printed M.R.P. on the individual packages the same was really not necessary; that the hotels are not selling them and using them by distributing to the guests staying in the hotels. The Commissioner has relied upon the decision of the Tribunal in the case of Jayanti Foods Processing (P) Ltd. vs. CCE, reported in 2002 (141) ELT (T) and the said decision has been over-ruled by the Hon'ble Supreme Court by their decision, reported in 2007 (215) ELT 327 (S.C.).

5. Learned D.R. relying upon the decision of the Hon'ble Supreme Court in the case of Jayanti Food Processing (P) Ltd., particularly Para 33, submits that nature of sale is not relevant. If the products are procured in bulk quantities and the products are in retail packs with M.R.P. affixed, they are capable of being sold in the market to the individual customer. As they have printed M.R.P. the products are capable of being sold in the retail market. When the supplies are made to the customers, it could be held that there can be free of cost as they are supplied to the guests.

6. We have carefully considered the submissions from both sides. The submission of learned Advocate that the supplies made to the hotels contained name and emblem of the concerned hotel is not reflected in the

order of the Commissioner. The submission of the learned Advocate that the products are not sold by the hotels in spite of the fact that they had M.R.P. printed on them is only assumption and presumption. No evidence appears to have been placed before the Commissioner in this regard. The Commissioner has arrived at the decision based on appreciation of facts considered relevant during the relevant time. The decision of Hon'ble Supreme Court in the case of Jayanti Food Processing (P) Ltd. vs. CCE, Rajasthan (supra) is being relied by both sides. The Commissioner did not have the opportunity to go into the facts and submissions now raised before us.

7. Therefore, we deem it proper to set aside the order of the Commissioner and remand the matter back to him to consider the issue afresh in the light of submissions made by both sides and, in the light of law laid down by the Supreme Court in the case of Jayanti Food Processing (P) Ltd. (supra). All the issues are kept open.

8. Both the appeals are allowed by way of remand.

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK