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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/37 /2005, - EX[DB] Date 24/06/2009

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

To :
M/S LOK NATH PRASAD GUPTA
R.K.DEV PATH, TITAGARH: 24-PARGANAS (NORTH),
KOLKATA
700119

M/S LOK NATH PRASAD GUPTA Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 421/2009- **EX[DB]** dated 17-6-09

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. DELHI II
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult SH. S.K. BAGARIA SR. ADV. WITH
   SH. S.K. ROY CHOUDHARY &
   GOPAL DAS, ADV.,
   CHAMBER: 87/16/1, BOSE PUKUR ROAD,
   KOLKATA-700042
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

Assistant Registrar
(Excise Appeal Branch)

(1)

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

Excise Appeal No. 37 of 2005

[Arising out of Order-in-Original No.29/ 2004 dated 29.10.2004 passed by the Commissioner of Central Excise, Delhi II].

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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. Lok Nath Prasad Gupta — Appellant

Vs.

Commissioner of Central Excise
Delhi II — Respondent

Appearance:

Mr. S.K. Bagaria Sr. Advocate with Shri S.K.Roy Choudhary and Gopal Das, Advocates for the Appellant
Mr. Virender Choudhary, SDR for the Respondent

CORAM:

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

Date of Hearing/Decision: 17.6.2009

Final **ORAL ORDER NO. 421/09-EX**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner No. 29/2004 dated 29.10.04.

2. Heard both sides. The appellant is manufacturing chewing tobacco under the brand name of Raja Khaini in pouches of 5gms and 9 gms and Raja Zarda Supreme in pouches of 2.5gms. The Commissioner has confirmed the demand of differential duty holding that the said goods should be assessed in terms of section 4A of the Central Excise Act, 1944 and also imposed penalty.

3.1 Learned advocate for the appellant submits that the appellant had multi location units and in respect of their unit at Calcutta, the very same issue was raised and the Tribunal vide order reported in [2006 (204) ELT 412] has held that such pouches are to be assessed in terms of section 4 and not in terms of section 4A.

3.2 Relevant portion of the order of the Tribunal is reproduced below:-

"**2.** 26 such unit pouches in case of 9 gms and 48 unit pouches of 5 gms unit in strip form are then packed in polyethylene packets, which are marked "Wholesale Package (to be opened and sold loose)". There is no indication on this polythene packages as regards MRP or any other price. These polythene packs are thereafter packed in gunny bags each comprising of 104 wholesale packages, which are sold to wholesale dealers/distributors/stockists on principal to principal basis, who in turn sell the goods in polythene packages to various retailers who will sell individual pouches to consumer. The goods falling under Heading 2414.41 are notified by the Central Government under Section 4A of the Central Excise Act, 1944 by amending Notification 10/2003-C.E.(N.T.).

6. The polythene bags containing 26 units pouches of 9 gms and 48 unit pouches of 5 gms were wholesale packages under the meaning of Rule 2(x) of the 1977 Rules, when the definition of the wholesale package as prescribed therein is that and since these polythene packages did not satisfied the definition of multi piece packages under Rule 2(j) of the 1977 Rules has to be covered under the multi piece packages or labelled pieces of the same quantity or identical quantity must be intended for retail. The present pouches are not intended for retail sale when packed in polythene packages. This provision when read with Rule 17 of the 1977 Rules would indicate that non marking of MRP on the packages would not be violation of the provisions of the 1977 Rules or the Act under which the Rule was framed.

7. The appellants have obtained a certificate from the Controller, Legal Metrology who have confirmed that the said packages in declarations were required under 1976 Act or 1977 Rules, and this was as provided in Board's Circular to 625/16/2002-CX dated 28-2-2002. In this view of the matter, we find no reason to arrive at any provision of law applicable to declare the MRP on the said packages, which were wholesale packages as defined. Therefore, the plea that the Commissioner has arbitrarily and illegally ignored the clarification given by the appropriate authority as prescribed

by the Board's circular has to be upheld. Any order passed in such fashion is required to be set aside."

3.3 Learned Advocate fairly submits that the department has filed civil appeal against the above order and the matter is pending before the Supreme Court. However, he also relied on the ratio of decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Vapi Vs. M/s. Kraftech Products [2008 (224) ELT 504 (SC)] of which para 26 is reproduced below:

> "**26.** The assessee manufactures Shampoo which is packed in sachets. Each sachet contains shampoo below 10 ml. It is packed in a carton containing more than 500 pieces. Such carton, according to the Revenue, is a multi-piece package.
>
> When a lip smoother or a shampoo is packed in a carton keeping in view the quantity contained therein, the same cannot be said to be for retail sale. No person would ordinarily purchase for one's own use 72 lip smoothers or 500 pieces of shampoo."

4. We find that the very same issue relating to the same assessee has been decided by the Tribunal vide decision cited supra. Therefore, the appeal is allowed with consequential relief following the decision of the Tribunal in appellant's own case.

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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