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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/1156/2009,1225/2009-1226/2009 - EX[DB] Date 03/07/2009
E/S/1139,1205&1207/2009-EX

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

To :
M/S RAHUL PARIKH, DIRECTOR
M/S FUCON TECHNOLOGIES LTD. 71/4, SHIVAJI
MARG, NAJAFGARH ROAD,
NEW DELHI.
M/S RAHUL PARIKH, DIRECTOR Appellant

Vs

C.C.E. DELHI I STAY ORDER NO.676-678/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 442-444/2009- **EX[DB]** dated 30-6-09

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 I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

2. SH, L.P. ASTHANA, ADV,
R-163, IIND FLOOR,
G.K. PART-I, N. DELHI-48

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
19. M/S GLOSSY COLOR & PAINTS PVT. LTD.
50-A & B, SHIVAJI MARG, NEW DELHI-110015.
20. SH. MAN MOHAN SACHDEV, DIRECTOR
M/S GLOSSY COLOR & PAINTS PVT. LTD. 50-A& B SHIVAJI
MARG, NEW DELHI-110015.

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:30.6.2009

Stay Application No.1139 of 2009 and Central Excise Appeal No.1156 of 2009

Arising out of the order in original No.31/2008 dated 31.12.2008 passed by the Commissioner of Central Excise, New Delhi.

Rahul Parikh .... Appellant/applicant

Vs.

C.C.E., Delhi I .... Respondent

Stay Application No.1205 of 2009 and Central Excise Appeal No.1225 of 2009

Arising out of the order in original No.31/2008 dated 31.12.2008 passed by the Commissioner of Central Excise, New Delhi.

M/s Glossy Color & Paints Pvt. Ltd. .... Appellant/applicant

Vs.

C.C.E., Delhi I .... Respondent

Stay Application No.1207 of 2009 and Central Excise Appeal No.1226 of 2009

Arising out of the order in original No.31/2008 dated 31.12.2008 passed by the Commissioner of Central Excise, New Delhi.

Sh. Man Mohan Sachdev, Director .... Appellant/applicant

Vs.

C.C.E., Delhi I .... Respondent

Appearance:

S/Shri R.K. Hasija, Advocate, L.P. Asthana, Advocate with Ms. Reena Khair, Advocate for the appellants/applicants
Shri P.K. Singh, Authorized Departmental Representative (DR) for the Revenue

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

STAY Oral Order No. 676-678/09-EX
FINAL ORDER NO. 442-444/09-EX

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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

Per M. Veeraiyan:

After hearing both sides on the stay petitions for a while, it has been felt expedient to decide the appeals finally. Accordingly, the appeals were directed to be placed for final decision. We waive pre-deposit of the dues as per impugned order on all the applicants and dispose of the appeals finally.

2.1 The relevant facts, in brief, are that M/s Glossy Color & Paints Pvt. Ltd. are manufacturer of Anti Rust Preparations and PU Coating preparation and the said products are being cleared in different packings. They are supplying these products to M/s Fucon Technologies Ltd. and Auto Technology with the brand name 'Fucot' and ' Auto +' respectively. The latter parties during the relevant period supplied the containers for packing these products. On the basis of investigation, allegations have been made that M/s Glossy Color & Paints Pvt. Ltd. have not paid the correct amount of duty in respect of clearances made to M/s Auto Technology and Fucon Technologies Ltd. The commodities were notified under Section 4A for the purpose of valuation. However, the appellant M/s Glossy Color & Paints Pvt. Ltd. either did not print the MRP in respect of clearances made to the said parties or printed the MRP, in certain cases, lower than their sale price to the said parties.

2.2 Commissioner, on adjudication, has ordered recovery of excise duty amounting to Rs.80,35,231/- from M/s Glossy Color & Paints Pvt. Ltd. along with interest and imposed equal penalty under Section 11AC read with Rule 25 of Central Excise Rules, 2002. He also imposed penalty of Rs.20 lakhs on Shri Man Mohan Sachdeva, Director of Glossy Color & Paints Pvt. Ltd. He also imposed penaty of Rs.10 lakhs on Shri Rahul Parikh, Director of M/s Fucon Technologies Ltd. and Proprietor of M/s Auto Technology. He also imposed penalty of Rs.5,000/- each on M/s Glossy Color & Paints Pvt. Ltd., M/s Fucon Technologies Ltd. and M/s Auto Technology under Rule 27 of the Central Excise Rules, 2002.

3.1 After hearing both sides and on perusal of the records, we find that certain facts have not been clearly brought out in the order of the Commissioner. For example, there is reference to M/s Fucon Technologies Ltd. supplying oil/lubricants to M/s Delco India Pvt. Ltd.in bulk packings of 200 lts, 35 ltrs. And 946 ml., and the relevancy of the same has not been dealt with.

3.2 In para 10 of the order in original the gist of the statement of Shri Man Mohan Sachdeva, Director of M/s Glossy Color & paints Pvt. Ltd. has been noted according to which, for certain varieties of PU coatings, they were collecting Rs.59.68 from Fucon Technologies Ltd. and Auto Technology and MRP printed was only Rs.51. Whether similar was the position in respect of other packing sizes of PU Coatings and also for other products namely, anti rust preparations is not clear.

3.3 In para 30 of the order -in-original , there is a finding that Glossy Color & paints Pvt. Ltd. never affixed the MRP on the products. However, there is a contrary finding in para 33 holidng that the goods were actually sold at a price higher than the MRP. There is apparent contradiction which has not been reconciled by the original authority.

3.4 We also do not find proper analysis of the evidence and no categorical finding on various relevant issues like (a) whether the MRP was affixed or not (b) if MRP was affixed, how it was different from what ought to have been the correct MRP for each variety of product in question (c) if MRP was not affixed , how the MRP based on which the assessable value was determined /assessed.

3.5. Commissioner's findings are also not supported by reasoning.

4. In view of the above, we deem it appropriate to set aside the order of the Commissioner and remand the matter for fresh consideration in the light

of our observations and after giving reasonable opportunity of hearing to all the appellants. We leave all issues open for consideration.

5. The appeals are allowed by way of remand. Stay petitions are also disposed of.

(Justice R.M.S. Knandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/