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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/4474/2004 - EX[DB] Date 16/07/2009

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

To :
M/S AKASH OPTIFIBERS LTD.
F-1080, INDL. AREA, BHIWADI

M/S AKASH OPTIFIBERS LTD. Appellant
Vs
C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.467/2009-EX[DB]** dated 08-7-09 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. JAIPUR
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult SH. ATUL GUPTA, CS
B-1/1289-A, VASANT KUNJ,
N. DELHI-70
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)

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

Central Excise Appeal No.4474 of 2004

[Arising out of Order-in-Appeal No. 240(SN)/C.E/JPR-I/2004 dated 7.7.2004 passed by Commissioner of Central Excise, Jaipur]

For approval and signature:

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

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. Akash Optifibers Ltd. Appellant

Vs.

Commissioner of Central Excise Respondent
Jaipur

Appearance:

Shri Atul Gupta, Company Secretary for the Appellant
Shri Virender Choudhary, SDR for the Respondent

CORAM:

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

Date of Hearing/decision : 8.7.2009

FINAL **ORAL ORDER NO. 467/09-09**

Per M. Veeraiyan (for the Bench):

This appeal is against the order of the Commissioner (Appeals) No. 240(SN)/C.E/JPR-I/2004 dated 7.7.2000.

2. Heard both sides.

3. The appellant is engaged in the manufacture of optical fibre /optical fibre cables. Based on a visit of audit, a show cause notice dated 19.9.2002 was issued alleging that during November, 1997 to February, 1998, the appellant has removed optical fibre and coloured fibre and rubber cable without payment of duty ~~and accordingly demanded duty~~. Based on said show cause notice, original authority confirmed the demand of Rs.3,76,542/- along with interest and imposed equal amount as penalty. On appeal by the party, the Commissioner (Appeals) reduced the demand to Rs. 3,45,068/- and also penalty to Rs. 3,45,068/- but otherwise confirmed the order of the original authority.

4. Learned Company Secretary appearing for the appellants submits that they were not having R & D facility during the relevant period; they have issued a letter dated 25.6.98 to that effect to the jurisdictional Central Excise authorities. The reliance placed by the Commissioner (Appeals) on an advertisement dated 18.5.2000 to conclude that they were having R &D facility during the period November 1997 to November 1998 is erroneous. During the disputed period they have merely removed waste optical fibre

and cables and from the waste they have recovered ribbons wherever possible and rest have been scraped. The private records indicate that they have only recovered ribbons and whatever recovered ribbons have been exported and to that extent the Commissioner (Appeals) have reduced the duty demand and penalty. Thus they retrieved only ribbons from the waste cables and fibres.

5. Learned SDR submits that the private records were maintained by them; some of the entries referred to 12 Km length or 20 Km of length of cables and the same cannot be considered as a waste. Since the demand is based on private records, in the absence of any satisfactory explanation by the appellant, the order of the Commissioner (Appeals) should be upheld.

6. We have carefully considered the submissions from both the sides. The demand is confirmed based on certain private records. A perusal of the private records indicate that the heading refers to "fibres" used and "ribbon manufactured". Only on certain dates, there is indication of some quantity of ribbon as manufactured. The said private records also indicate removal of colouring fibre to R&D division. It is admitted by the learned SDR that no statement has been taken from the representative of the appellant about the private records. We find that the quantity shown to have been removed are of assorted varieties and of varying lengths. There has been accountal of manufacture of ribbon as indicated. In the absence of any investigation, the conclusion arrived at by the original authority and confirmed by the learned Commissioner (Appeals) lacks foundation. The plea of the appellant that they were only issuing waste material and

recovering ribbon wherever possible has to be accepted in the absence of contrary evidence brought out in any investigation. The reliance placed by the Commissioner on an advertisement dated 18.5.2000 to conclude that R&D facility was available in the disputed period is clearly misplaced. Under these circumstances, we are not able to sustain the order of the lower authorities.

7. The order of the Commissioner (Appeal) is set aside and the appeal is allowed with consequential relief.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan
Member(Technical)

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