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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/397 /2006 - EX[DB] Date 28/08/2009

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

To :
M/S RAJA RAM CON PRODUCTS LTD.
KOTHI NO. 17, SECTOR 4,CHANDIGARH

M/S RAJA RAM CON PRODUCTS LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 550/2009- **EX[DB]** dated 27-8-09

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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.HIEMANT BAJAJ, ADV.
   A-5, BASEMENT, LAJPAT NAGAR-III
   N. 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)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 397 of 2006-Ex.

(Arising out of Order-in-Appeal No. 927/CE/CHD/03 dated 19.9.2003 passed by the Commissioner of Central Excise, (Appeals), Chandigarh)

M/s Raja Ram Corn Products (P) Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance :

Appeared for Appellant : Shri K.K. Anand, Advocate & Shri Hemant Bajaj, Advocate

Appeared for Respondent : Shri Fateh Singh, DR

Date of Hearing: 19.8.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 550/09-EX dated............

Per D.N. Panda:

Ld. Counsel Shri K.K. Anand submits that making an allegation that sale price collected by consignment agent was more than value of goods sold, difference between value of goods and sale price has been brought to tax as assessable value. According to him, when goods were not sold through consignment agent, any expenditure incurred by such agent for delivery of goods in few cases at the request of buyer, without any discrimination to the value of goods removed in other cases, that shall not form part of the assessable values unless there is intimate relation or nexus between the value of goods removed as well as the expenditure. Therefore he prays entire reconciliation having been done and certificate issued by a Chartered Accountant showing nothing extra was realised towards value of goods removed, there was nothing remained for levy of duty. His second contention is that security deposit relating to unreturned ~~contained~~ container is not liable to duty.

2. Ld. DR Shri Fateh Singh submits that difference between the value of goods sold by consignment agent and the sale price, shall be taxable in terms of Section 4 of the Central Excise Act, 1944.

3. Heard both sides and perused the record.

4. We were unable to trace either from Adjudication order or the first Appellate order whether anything over and above Assessable value of goods was realised by the consignment agent proving intimate connection thereof to removal. Ld. Commissioner had gone through certificate of Chartered Accountant. But agreed with the Adjudicating Authority holding that commission and loading and unloading charges are not excludible from assessable value. The calculation of excess sale price made by the Adjudicating Authority does not disclose reason warranting such calculation. Section 4 requires determination of assessable value for each removal. If any expenditure has intimate or proximate connection to the removal of

the goods, in absence of any nexus brought to record, we cannot say that the loading and unloading charges collected in few cases by the consignment agent of the Appellant shall form part of the assessable value.

5. There is another contention by the Appellant that when containers are returnable, in the event of no return of such container, security deposit realised shall not form part of the assessable value. The appellant shall get relief on this count because Tribunal in Appeal case No. 1159-1160 of 1986 on 2.1.1987 has already ~~been~~ decided the issue in favour of the Appellant. Against the said order of the Tribunal, Revenue's Appeal was dismissed by Apex Court in Civil Appeal No. 903-904/87 on 20th July, 1992. If the usual practice of sale of goods is in container and in stray transactions when returnable container do not reach the appellant levy of duty on security deposit is untenable.

6. With the aforesaid finding and observations as well as reasoning, we allow Appeal of the Appellant.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM