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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/417 /2006-420 /2006 - EX[DB] Date 09/09/2009

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

To :
M/S GURU NANAK SAW MILLS
JWALAPUR, HARIDWAR
M/S GURU NANAK SAW MILLS Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 635-638/2009- **EX[DB]** dated 01-9-09

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. MEERUT I
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2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,N.DELHI

3 S.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
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Assistant Registrar
(Excise Appeal Branch)

18. ASHOK SETHI, PARTNER
JWALAPUR, HARIDWAR

19. M/S SETHI FURNISHERS
JWALAPUR, HARIDWAR

20. VIJAY SETHI,PARTNER
JAWALAPUR, HARIDWAR

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 417 of 2006-Ex.

(Arising out of Order-in-Appeal No. 185-88-CE/2005 dated 30.9.2005 dated 10.10.2005 passed by the Commissioner of Central Excise & Customs, Meerut)

M/s Guru Nanak Saw Mills — Appellant

Vs.

CCE, Meerut — Respondent

Excise Appeal No. 418 of 2006-Ex.

(Arising out of Order-in-Appeal No. 185-88-CE/2005 dated 30.9.2005 passed by the Commissioner of Central Excise & Customs, Meerut)

M/s Sethi Furnishers — Appellant

Vs.

CCE, Meerut — Respondent

Excise Appeal No. 419 of 2006-Ex.

(Arising out of Order-in-Appeal No. 185-88-CE/2005 dated 30.9.2005 passed by the Commissioner of Central Excise & Customs, Meerut)

Shri Ashok Sethi, Partner — Appellant

Vs.

CCE, Meerut — Respondent

Excise Appeal No. 420 of 2006-Ex.

(Arising out of Order-in-Appeal No. 185-88-CE/2005 dated 30.9.2005 passed by the Commissioner of Central Excise & Customs, Meerut)

Shri Vijay Sethi, Partner Appellant

Vs.

CCE, Meerut Respondent

Appearance :

Appeared for Appellant : Shri Piyush Kumar, Advocate & Shri Chinmay Seth, Advocate

Appeared for Respondent : Shri Vijai Kumar, DR

Date of Hearing: 25.8.2009

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

FINAL Order No. 635-38/09-EX dated............

Per D.N. Panda:

These Appeals involve two issues : (1) whether the goods in question was "handicraft" to avail the benefit of Notification No. 76/86-CE dated 10.2.1986 and (2) whether clubbing of clearance is called for. It may be stated that if the goods are held to be "handicraft" that shall squarely fall under the ambit of Notification and shall be exempted from Excise duty. Secondly if the goods were to be held as excisable without being a handicraft whether there shall be clubbing of the clearances by two units of the Appellant.

2. Ld. Counsel Shri Piyush Kumar submits that the goods manufactured were hand made furniture. Those were decorative works with graceful look and artistic feature present therein. Therefore the goods in question shall be called as handicraft while there is no dispute that such goods were hand made without being pre-dominantly made by machine. He submits that the ratio laid down by the Apex Court in the case of **CCE Vs. Louis Shoppe** reported in 1996 (83) ELT 13 (SC) fully brings goods of the Appellant to the category of "handicraft" and Notification No. 76/86-CE dated 10.2.1986 shall be available to the Appellant without calling for clubbing of the clearances.

3. Ld. DR Shri Vijai Kumar seriously opposes the contention of the learned Counsel for Appellant, relying on the observation of ld. Adjudicating Authority appearing at page 34 and 35 of the Appeal folder. According to Revenue, both the Authorities concurrently held that the goods in question were not "handicrafts" for the reasons that those were not artistic work and does not satisfy one of the criteria laid down by the Apex Court in **Louis Shoppe** case (supra). When one of the criteria is not fulfilled, the Appellant cannot be said to have manufactured handicraft. What that is claimed as handicraft by the Appellant was only furniture but not the handicraft and when those goods were distinctly understood by common parlance theory, the Appellant should not get benefit of handicraft notification.

4. Heard both sides and perused the record.

5. A very useful and precise judgment of the Apex Court laying down law decides the issue involved in this Appeal. Hon'ble Supreme Court has provided answer in para-2 holding as under :-

> "The question is whether wooden furniture by itself can be treated as "handicrafts" within the meaning of Notification No. 76 of 1986 dated February 10, 1986? It must be said straightaway that furniture as such does not qualify as handicrafts. It may be characterised as "handicrafts" if the following tests are satisfied:
>
> "(1) it must be predominantly made by hand. It does not matter if some machinery is also used in the process.
>
> (2) It must be graced with visual appeal in the nature of ornamentation or in-lay work or some similar work lending it an element of artistic improvement. Such ornamentation must be of a substantial nature and not a mere pretence."

6. Carefully looking to the criteria laid down by the Apex court, one can perceive that hand made goods without being pre-dominantly made by machine and providing graceful visual look with artistic feature in such goods bring the same to the class of "handicraft." There is no dispute by Revenue that the goods in question were predominantly made by hand. Therefore what that was required to be looked into was whether the goods provided graceful look with artistic feature therein. There was no enquiry made by Authorities about such aspect objectively in respect of each clearance. No pedantic approach is desirable to apply ratio laid down by the Apex Court in the aforesaid decision. In the course of hearing, we were given understand by the ld. Counsel that

there were artistic feature present for the features pleaded before Authority below as appearing at page 76 and 77 of the Appeal folder. Relevant portion as appearing in those pages are re-reproduced below for convenience of reading :-

"The process of manufacture of such wooden furniture which comprise of wooden sofa sets, dressing tables, centre tables, beds, artistic wooden doors, revolving chairs, dining chips, wood carved porticos & frames, wooden ceilings, almirahs, wooden side tables etc. The process of manufacture of all these wooden furniture is outlined as under :-

(i) Wooden logs purchased from open market/forests are first cut into smaller logs on vendor's saw mill.

(ii) The cutting at saw mills is also done as per requirements of the final product and thereafter, hand tools available at the workshops of the notices are used to further cut by hand into smaller sizes of logs. The hand tools comprised of Hand Planner, Chheni, Hand saw, Hand drill, Hammer, Hand plas etc.

(iii) Thereafter the craftsman manufacture the parts of different furnitures by hand as per specific artistic design of the customer. The different skilled craftsman make table topes, different portions of charis, Legs of tables and chairs, sofa base fittings of various structures to sofas, cloth, velvet, rubber, foam, affixation on the sofa etc. as per designs and requirement of the customers etc.

(iv) The raw structure of the various wooden furniture is thereafter smoothed and levelled by hand planner by means of sand papers (the noticees are even not using any mechanical device for smoothing and levelling of surfaces). The Panchnama can also be verified to prove this fact that no machine whatsoever found at the side during search operation on 10.9.96.

(v) The carving and inlay work is done on the wood by use of chistle and hammer also operated manually as per requirement of customers. The copper, brass/sleek knobs are thereafter put manually.

(vi) Polishing of the furniture is also done by hand by skilled craftsman (there is no allegation or evidence of any machine for spray painting etc. as is evident from the panchnama on 10.9.96."

7. In view of the crafts involved as above we are not inclined to narrowly view the goods when artistic feature has been pleaded by the Appellant beginning from the Adjudication stage. Therefore there is no iota of doubt that the goods shall fall into the category of handicraft. By this, we do not say that all the furniture shall be handicraft. We make it abundantly clear that the furniture, only satisfying the criteria of handicraft laid down by Apex Court in the aforesaid case shall only answer to the notification benefit depending on the facts and circumstances of the case.

8. In the result, we hold that the goods manufactured by the Appellant was handicraft and entitled to the benefit of Notification No. 76/86-CE dated 10.2.1986 and this entitles the appellant to exemption of duty without calling for clubbing of the clearances.

9. In the result, Appeals are allowed with consequential relief, if any, as admissible in accordance with law.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM