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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/117 /2006 - EX[DB] Date 06/11/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant
Vs
M/S JBJ PERFUMES PVT. LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 869/ 2009 EX[DB]** dated 04-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S JBJ PERFUMES PVT. LTD
   #52, FAUJI COMPLEX, BADDI, DISTT. SOLAN (HP)
2. Adv. / Consult
   MR.V.R.SETTI,ADV., C/O RESPONDENT

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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 28.10.2009

Central Excise Appeal No.117 of 2006

Arising out of the order in appeal No.373-CE/CHD/2005 daed 18.10.2005 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
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

C.C.E., Chandigarh .... Appellant

Vs.

M/s J.B.J. Perfumes Pvt. Ltd. .... Respondent

Appearance:

Shri S.R.Meena, Authorized Departmental Representative (SDR) for the Revenue and Shri V.R. Sethi, Advocate for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, Member (Judicial)

FINAL Oral Order No. 869/09-EX

Per D .N. Panda:

Notice was issued by Superintendent on 8.6.2005 proposing the goods to be covered under Chapter Sub-Heading No.3303.00.50 with effect from 1.3.2005. By such proposition, the goods which were manufactured and earlier classified under Chapter 33 by the respondent became liable to excise duty at the rate of 16% on MRP basis. Against that notice, the respondent filed appeal before the learned Commissioner(Appeals) claiming entitlement to the benefit of Notification No.50/2003-CE dated 10.6.2003 contending that even if the goods manufactured by them are classifiable under Chapter Sub-Heading 3303.00.50 by new tariff list, Such benefit cannot be denied. Learned Commissioner (Appeals) without having any technical report before him and also without any examination in detail, abruptly came to the conclusion that the respondent is entitled to the Notification benefit as claimed by the respondent.

2. For the above conclusion of the learned Commissioner (Appeals), Revenue is in appeal before us today.

3. Revenue's principal grievance is that the product calls for classification under Sub-Heading 3303.00.50 with effect from 1.3.2005. Such legislative mandate cannot be ignored without testing material on the touchstone of law. But the respondent supports order of learned Appellate Authority below. When the learned Commissioner(Appeals) did not examine the material goods technically and did not find the nature of substance/ingredient used therein and also not examined the conditions of the Notification, conclusion drawn in favour of the respondent is unsustainable. Therefore, the matter calls for testing in the light of the legislative mandate for classification of the goods appropriately under Sub-Heading 3303.00.50 with effect from 1.3.2005. We may state that the Appellate order being cryptic, we are compelled to remand the matter to the learned Adjudicating Authority/Assistant Commissioner/Deputy Commissioner as the case may be to grant fair opportunity of hearing to the respondent and examine threadbare contents of the product of the respondent. If necessary the authority may call for technical test report and ascertain proper classification according to law. If that is done, applicability of Notification benefit shall be subsequent question for his decision. He should put the Notification benefit into test and call for the defence of the respondent if any for appropriate classification of the goods.

3. In the result, we remand the matter to the learned Adjudicating authority/Assistant Commissioner/Deputy Commissioner as the case may be for completing the adjudication, following due process of law. Respondent is at liberty to raise all legal pleas permissible in the course of fresh adjudication. Consequently, the impugned order is set aside and the appeal is allowed by way of remand.

(M. Veeraiyan)
Member (Technical)

(D.N.Panda)
Member (Judicial)

scd/