

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/537 /2005 - EX[DB]

Date 21/10/2009

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

To :
C.C.E. DELHI III

UDYOG MIN* R, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)
C.C.E. DELHI III

Appellant

Vs

Respondent

M/S STELLA INDUSTRIES PVT. LTD.

I am directed to transmit herewith a certified copy of Final order No. 785/

2009 EX[DB] dated 07-10-09

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 STELLA INDUSTRIES PVT. LTD.

KHIRKI, DHAULA, OLD KHASRTA ROAD, DISTRICT GURGAON, HARYANA

2. Adv. / Consult

SH. B. L. NARSHIMHAN, ADV,

B-6/10, S.T. ENCLAVE,

N. DELHI - 29

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 Publications 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 Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

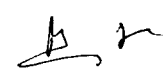
14 Easy Service Tax Online Dot Com Pvt Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing: 07.10.2009
Date of decision: 07.10.2009

Excise Appeal No. 537 of 2005

[Arising out of Order-in-Appeal No. 463/AKG/GGN/2004 dated 06.12.2004 passed by the Commissioner (Appeals) Central Excise, Delhi]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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.	Yes
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?	See
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Delhi-III

Appellant

Vs.

M/s Stella Industries Pvt. Limited

Respondent

Appearance:

Appeared for the Appellant – Shri M.K. Rastogi, DR

Appeared for the Respondent – Shri B.L. Narshimhan, Advocate

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

FINAL Oral Order No. 785/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard.

2. This appeal arises from order dated 06.12.2004 passed by Commissioner (Appeals) Gurgaon. By the impugned order, the appeal filed by the respondent against the order-in-original passed by the Deputy Commissioner on 01.06.2000 has been set aside. Under order dated 01.06.2000, the Deputy Commissioner, Gurgaon had held that the perfume manufactured by the respondent is classifiable under chapter heading 3307.90 and would attract duty @ 30% and, therefore, had confirmed the demand to the tune of Rs. 10,13,334/- in terms of show cause notice dated 22.06.99 and for Rs. 5,25,071/- in terms of show cause notice dated 03.11.99, besides imposing penalty of Rs. 1 lakh. By the impugned order, the order-in-original has been set aside and the respondent's claim that the product in question is classifiable under sub-heading 3303.00 has been upheld and the same is held to be ~~not~~ entitled for exemption in terms of the Notification No. 167/86-CE dated 01.03.1996.

3. The respondents are engaged in manufacture of Aerosol products including dress perfumes since 1998. The respondents have been classifying the product in question under chapter heading 3303.00 from 01.02.1999. Prior to that the product was being classified under heading 3307.49 and the respondents were paying excise duty @ 18% adv. Pursuant to the revised declaration filed on 01.02.99 under Rule 173B of the Central Excise Rules, 1944 the classification of dress perfumes was claimed under chapter heading 3303.00 and further exemption was sought to be claimed in terms of Notification No. 167/86-CE dated 01.03.1996. Show cause notices dated 22.06.99 and 03.11.99 came to be issued to the respondents and after hearing the parties, the said order came to be passed by the Deputy Commissioner as stated above.

4. While assailing the impugned order, learned DR submitted that HSN notes to chapter heading 3303.00 clearly clarify that the said heading covers the perfumes which are designed to give fragrance to the human body, whereas the product in question cannot be used on human body and, therefore, the product

could not have been classified under heading 3303.00 as claimed by the respondent. According to the learned DR chapter heading 3307 is a residuary heading which covers all types of perfumes which are not elsewhere specified and, therefore, the product in question has to be classified under heading 3307.90. The Commissioner (Appeals) having ignoring the same, erred in allowing the appeal merely on the basis of its earlier decision.

5. Learned Advocate appearing for the respondents on the other hand submitted that the earlier decision in the respondent's case itself was subjected to appeal before the Tribunal and by order dated 22.07.2008 passed in Central Excise Appeal No. 3467 of 2004 Tribunal dismissed the said appeal while confirming order passed by the Commissioner (Appeals) on 05.04.2004 on the basis of which the impugned order has been passed. He further submitted that HSN notes nowhere states that chapter heading 3303 refers exclusively to the perfumes which are used on the human body. But it merely states that the heading covers perfumes which are designed to give fragrance primarily to the human body and, therefore, even assuming that the product in question can not be used primarily on the human body that would not be a justification to exclude the product from its classification under chapter heading 3303.

6. To a specific query as to whether the decision of the Tribunal in Central Excise Appeal No. 3467 of 2004 dated 22.07.2008 has been subjected to any further appeal by the Department or not, the learned DR is unable to give any information in that regard.

7. Perusal of the impugned order discloses that the similar dispute in relation to the same product for the subsequent period was decided before the Commissioner (Appeals) in favour of the respondent thereby confirming the classification under chapter heading 3303.00. The said decision was subjected to appeal before the Tribunal without any success. Nothing is placed before us which could reveal any additional material so as to justify a view different from the view taken by the authorities and the Tribunal in the earlier case in relation to

subsequent period but pertaining to the same product. On this ground itself, the appeal would be liable to be dismissed.

8. Even otherwise, the contention on the basis of HSN note to assail the impugned order is devoid of any substance. The HSN notes read thus-

“This heading covers perfumes in liquid, cream or solid form (including sticks), and toilet waters, designed to give fragrance primarily to the human body”.

The note merely states that the heading covers perfumes which are designed to give fragrance primarily to the human body. The note does not speak about the object on which the perfume could be used or is meant to be used. It merely clarifies that the perfume should be such that it should be designed to give fragrance primarily to the human body. It does not rule out the possibility of use of such product on some different object but which could help to transmit the fragrance to the human body. In such circumstances, the said HSN can be of no help to contend that the product can be classifiable under chapter heading 3303, it should necessarily be used on the human body.

9. As no other grounds is canvassed to assail the impugned order, the appeal fails and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/