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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/6081/2004-6084/2004 - EX[DB]
E/C.O.NO.61/2005

Date 10/11/2009

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

To :
C.C.E.MEERUT-I
UNIVERSITY ROAD,MANGAL PANDAY NAGAR
MEERUT-I
C.C.E.MEERUT-I

Appellant
Vs
M/S GARDEN PERFUMS PVT.LTD.

Respondent

I am directed to transmit herewith a certified copy of **Final order No. 880-883/2009 EX[DB]** dated 13-10-09 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 GARDEN PERFUMS PVT.LTD.
GARH ROAD,MEERUT-I
2. Adv. / Consult SH. O.P. BATHLA, CON.
MD-57, ELDECO MANSIONZ,
SECTOR-48, GURGAON
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)

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

Date of hearing: 13.10.2009
Date of decision: 13.10.2009

Excise Appeal No. 6081, 6082, 6083 & 6084 of 2004 with C.O. No. 61/2005-Ex.
[Arising out of order in Appeal No. 563-566-CE/MRT-I/2004 dated 20.09.2004 passed by the Commissioner (Appeals) Central Excise, Meerut-I]

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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Meerut Appellant

Vs.

M/s Garden Perfumes (P) Ltd., Respondent

Appearance:

Appeared for the Appellant – Shri M. Rastogi, DR
Appeared for the Respondent –Shri O.P. Bathla, Consultant

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

Final Oral Order No. 880 to 883/09

Per Shri Justice R.M.S. Khandeparkar:

Heard at length the learned DR for the appellants and learned Advocate for the respondents.

2. Since common questions of law and facts arise in all these four appeals, they were heard together and are being disposed of by this common order.

3. The appellants challenge orders dated 20.09.2004 passed by the Commissioner (Appeals) in four appeals filed by the respondents against the four orders passed by the Additional Commissioner on 05.04.2004. By the impugned order, the Commissioner (Appeals) has allowed the appeals filed by the respondents and has set aside the orders passed by the Additional Commissioner. In terms of the order passed by the adjudicating authority on 05.04.2004, the respondents were required to pay total duty to the tune of Rs.2246.60 on account of freight and handling charges recovered from their buyers and the same was demanded in exercise of powers under Section 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944, further amount of duty of Rs. 58,340.10 against the overdrawal amount due to excess utilization of money credit was demanded under Section 9(2) in the said Act read with Section 11A of the said Act and further total amount of penalty of Rs. 42,000/- was imposed in exercise of powers under Rule 173Q of the said Rules.

4. The challenge to the impugned order is on the ground that the Commissioner (Appeals) has ignored the direction issued by the Tribunal under its order dated 12.03.1998 in Appeal No. E/2219/92-A and has set aside the order passed by the adjudicating authority only on the ground that the issues involved in the matter stand concluded in terms of order dated 29.1.93 passed by the Commissioner (Appeals) in Appeal No. 70/93.

5. The Cross-objection is on the ground that there is no scope for interference in the impugned order as the same is passed on the basis of the earlier order passed in Appeal No. 70/93 by the Commissioner (Appeals) between the parties to the proceedings and on the same subject matter in relation to the same issues involved in the matter.

6. Facts in brief relevant for the decision are that the respondents are engaged in manufacture of toilet soaps falling under Central Excise sub-heading No.

3401.12 of the Central Excise Tariff Act, 1985. It is the case of the appellants that the respondents did not include freight and handling charges in the assessable value to compute aggregate value of clearance under Notification No. 175/86-CE dated 1.3.86 and the same was revealed on scrutiny of invoices raised for the period November 1987. The respondents had shown the value of clearance as Rs. 5,25,875.80 whereas upon inclusion of the freight and handling charges of Rs.11,934/-, according to the appellants, value would have been Rs.5,37,809.80 and, therefore, the duty involved on differential value would have been Rs.596.70. Similar is the case in relation to the other three appeals. It is also the case of the appellants that the money credited under Rule 57K was sought to be availed of in contravention of the law inasmuch as there was no sufficient balance at the end of the November 1987, yet the respondents proceeded to avail the credit to the tune of Rs.26,293.79 for the month of December 87. Four show cause notices came to be issued to the respondents which were contested by the respondents. The proceedings were disposed of by order dated 28.08.1992. Being aggrieved, the matter was carried in appeals which came to be disposed of confirming the order passed by the adjudicating authority. Matter was then carried in appeal before this Tribunal which came to be disposed of by order dated 12.03.98.

7. While disposing the appeal, Tribunal after taking note of the order passed by the Commissioner (Appeals) in Appeal No. 70/93 dated 29.01.93 remanded the matter to the Additional Commissioner with the specific direction to examine as to whether handling charges incurred by the respondent outside the factory gate or not, as also to the issue relating to the claim under money credit scheme, while observing that the authority could take into consideration while deciding the same the order passed by the Commissioner (Appeals) in the earlier matter, after hearing the parties.

8. Perusal of the orders passed by the Additional Commissioner pursuant to the remand discloses due consideration of both the issues and analysis of the material on record in that regard. It has been clearly observed by the Additional Commissioner in his order that no evidence was produced by the respondents to substantiate their claim that the non-inclusion of cost of freight and handling charges in assessable value of goods related to the expenditure incurred in loading and unloading outside the factory gate and, therefore, the plea in that regard was not sustainable. As regards the second issue relating to excess utilization of money credit, it has been observed that the respondents did not submit any specific reason and therefore the credit utilized in excess was in contravention of the condition No. (iv) attached to Notification No.192/87-CE dated 12.8.1987. It is a clear finding arrived at that in the month of November 1987 the party utilized the credit upto the extent of Rs.26293.79 against the nil balance of credit available for utilization which became short for payment of duty and thus overdrawal amount.

9. It was sought to be argued on behalf of the respondents that the respondents did submit before the adjudicating authority that both the issues were fully covered by the decision of Commissioner (Appeals) in the earlier matter namely Appeal No.70/93 dated 29.1.93 and further that the credit which was available for the month of August 97 was carried forward and utilized in the month of December 1987 and this fact was not considered. However, the learned Advocate could not point out any material on record which could disclose that in support of such submission any material was placed on record before the adjudicating authority. It was admitted that after remand, no evidence as such was produced before the adjudicating authority in support of the claim putforth by the respondent. In other words, no fault could have been found with the findings arrived at by the Additional Commissioner for having rejected the contention which was sought to be raised by the respondents. However, after rejection of the contention of the respondents, the Commissioner (Appeals) merely referring to the order passed by

the Commissioner (Appeals) in earlier Appeal No. 70/93 dated 29.1.93 set aside the order passed by the Additional Commissioner.

10. It is pertinent to note that the Tribunal while disposing the matter on 12.03.1998 had taken note of the order passed by the Commissioner (Appeals) in Appeal No. 70/93 dated 29.1.93 and had directed the authorities below to take into consideration the said order but to decide the matter afresh on the basis of the facts established from the records. In other words, the Tribunal had made it very clear to the authorities below that the matter in hand was required to be decided on the basis of the factual matrix placed on record and while doing so the authorities could certainly refer to the decision by the Commissioner (Appeals) in Appeal No. 70/93 dated 29.1.93. In other words, it was abundantly made clear to the authorities below that the decision in Appeal No. 70/93 dated 29.1.93 cannot be a substitute for disposal the matter in hand, though the said decision could be taken note of while deciding the dispute. Mere reading of the order passed by the Commissioner (Appeals) discloses that inspite of complying with the direction issued by the Tribunal by merely referring to the Appeal No. 70/93 dated 29.1.93, it has disposed of all the four matters by setting aside the order passed by the Additional Commissioner without ascertaining as to whether the findings arrived at by the Additional Commissioner were borne out from the records or not. It discloses non application of mind to the facts of the case as well as non-compliance of the directions issued by the Tribunal in its earlier order. In such circumstances, the impugned order cannot be sustained and is liable to be set aside.

11. As no material which would justify interference in the orders passed by the Additional Commissioner has been brought to the notice, needless to say that on setting aside of the order passed by the Commissioner (Appeals), the order passed by the Additional Commissioner has to be restored and is required to be confirmed.

12. All the four appeals are allowed. The impugned orders are set aside, and the Orders passed by the Additional Commissioner are restored. The Appeals stand disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/