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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

Date 01/10/2009

Appeal No. E/186 /2006-187 /2006 - EX[DB]

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

To :
CRYSTEL CORPN,
B-17, HIND SAURASHTRA INDL. ANDHERI KURLA
ROAD, ANDHERI (EAST), MUMBAI-59

Appellant

CRYSTEL CORPN,

Vs

Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No. 750-751/ 2009 EX[DB]** dated 29-9-09

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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.D.K.TYAGI
C-605, CHAWLA COLONY, BALLABGARH(FARIDABAD)
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)

18. MAHENDER KUMAR
B-17, HIND SAURASHTRA INDL. ANDHERI KURLA
ROAD,ANDHERI (EAST), MUMBAI-59

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 186-187/2006-Ex(Br)

(Arising out of order in appeal No.369-701/MPM/CE/JPR.I/2005 dated 6.10.2005 passed by the Commissioner of Central Excise(Appeals), Jaipur).

1. M/s Mahender Kumar Appellant
2. M/s Crystal Corporation

Vs

CCE, Jaipur Respondent

Appeared for the Appellant : Shri D.K. Tyagi, Advocate
Appeared for the Respondent : Shri Fateh Singh, DR

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 2.9.09

FINAL Order No. 750-751/09 ~~/2009~~ 09

Per D.N. Panda:

Learned Counsel Shri D.K.Tyagi submits that the process carried out at site is purely a works contract not amounting to manufacture. Learned Commissioner (Appeals) while passing the order on 28.3.05 has found that the appellant had although brought out duty paid materials for use in the work, that does not amount to manufacture without a different name or character for being put to use as a different goods. It is coming out from paragraph 6 of his order read with paragraph 2, 4 of the said order. Similarly, learned Commissioner (Appeals), Delhi-I by order dated 31.10.2006 in Appeal case No.97-98/2006 has also equally held that affixing of duty paid processed and precut glasses supplied by the client to the duty paid aluminium ~~farnes~~ frames/panels with the help of sealant, no new product comes into existence with new identity, character and use distinct from inputs i.e. glasses cut to size as aluminium frames of required dimensions. This has been brought out in paragraph 4 of his order.

2. Relying on the second decision of the learned Commissioner (Appeal), learned Counsel submits that learned Commissioner (Appeals) who passed the impugned order had no advantage of reading of above two ~~documents~~ orders for which he stated in his order that no evidence was produced before him. But today we find contention of the learned Counsel is supported by two appellate orders of the learned first appellate authority below.

3. Learned Counsel submits that if these two orders are taken into consideration, he shall be entitled to enjoy the benefit of Notification No.9/2001 dated 1.3.2001 since the value of goods at site which was subject matter of aforesaid two appellate orders, shall be excluded for the purpose of computation of ceiling. Therefore, he prays that the appeal may be allowed with consequential relief, if any.

4. Learned DR Shri Fateh Singh submits that when the appellant claims benefit of notification, he has to satisfy conditions thereof. He therefore, supports the order of the learned Commissioner (Appeals).

5. Heard both the sides and perused the record.

6. We are satisfied with the order passed by the learned Commissioner (Appeals) on 28.3.2005 and 31.10.2006 holding that there was no manufacture carried out by the appellants under their jurisdiction. We have not found as to whether those two orders have been reversed or stayed by any higher Court. It

clearly establishes that the matter has reached to finality by the order of learned Commissioner (Appeals) by these two orders. Once this factual position comes to light, learned authority should take into consideration these two orders to examine the benefit of Notification No. 9/2001 dated 1.3.2001 and pass appropriate order. It appears that the appellant deserves to be properly dealt by the learned Commissioner (Appeals) when two appellate orders of different jurisdiction have been brought to our notice. The conclusion of the learned Commissioner (Appeals) as has been made in para 7 calls for reversal. Therefore, without being influenced by the impugned order, the learned adjudicating authority shall independently decide the matter afresh on the basis of materials placed before him and also considering the appeal order dated 28.3.2005 and 31.10.2006 passed by the learned Commissioner (Appeals), granting fair opportunity of hearing. A reasoned and speaking order is expected to be passed by the learned adjudicating authority in both the appeals.

7. In the result, we remand both the appeals to learned adjudicating authority with aforesaid observations and finding, setting aside the impugned order.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*