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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 16/12/2009

Appeal No. E/2807/2004 - EX[DB]

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

To :
M/S FAIBANKS MORSE INDIA LTD.
28-A,SITA-IV,INDUSTRIAL AREA SAHIBABAD
(GHAZIABAD)
201010

M/S FAIBANKS MORSE INDIA LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1378/2009 **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
   C.C.E. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD
   201302
2. Adv. / Consult SH. B.L. NARSIMHAN, ADV., B-6/10, S.J. 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 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.2807/04

[Arising out of Order-in-Appeal No.29-CE/GZB/2004 dt.8.3.04 passed by the Commissioner(Appeals),Ghaziabad)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. P.Karthikeyan, 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 would 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 Department Authorities:	:	Yes

M/s. Fairbanks Morse India Ltd. Appellant

Versus

CCE, Ghaziabad Respondent

Appearance

Sh. B.L.Narsimhan, Adv. for Appellant

Sh. R.K.Verma, Authorised Departmental Representative(DR) For Respondent

Date of decision: 4.11.09
FINAL Oral Order No. 1378/09-EX

Per Justice RMS Khandeparkar:

Heard learned Advocate for the appellants and learned DR for the respondent. The appellant challenges order dt.8.3.2004 passed by the Commissioner(Appeals), Ghaziabad whereby the appeal filed by the appellants against the order dt.2.4.2002 passed by the Dy. Commissioner, Ghaziabad has been disposed of by rejecting the contentions which are sought to be raised by the appellants and confirming the order of the adjudicating authority in relation to the classification of the parts of P.D.Pumps.

2. Learned Advocate for the appellants at the outset has fairly drawn our attention to the decision in the appellant's own case in Appeal Nos.E/4010 & 4021/2003 delivered by this Tribunal on 11.1.05 and reported in 2006(197)ELT.81 stating that the matter in hand is on identical facts and only difference being that in the earlier matter apart from classification, exemption notification was also involved. Learned Advocate further submits that though the main issue is involved in the earlier appeal related to the claim of exemption, the issue of classification was very much involved and the contention which was sought to be raised on behalf of the Department about the applicability of Section Note 2(a) to Section XVI was accepted by the Tribunal and the same view has been taken by the Commissioner(Appeals) in the impugned order while confirming the classification of different parts of the P.D.Pumps and modifying the classification in relation to seven items thereof under the impugned order. Being so according to the learned Advocate, the matter in question is covered by the earlier decision as the principle which was applied for adopting the classification of the different parts of

P.D.Pumps has also been applied in case of other similar parts of pump. He further submitted that the appellants aggrieved by the said decision of the Tribunal has already challenged the matter before the High Court. However, no purpose would be served by keeping this matter pending till the final disposal of the case before the High Court. In the circumstances according to learned Advocate, the Tribunal should dispose of the matter taking note of the earlier decision of the Tribunal in the appellant's own case.

3. On the other hand learned DR submitted that the issue involved in the earlier matter was different from the one in hand in-as-much as that the issue therein related to the claim of exemption whereas the issue in the present matter relates to the classification . Secondly, in the earlier matter the dispute related to few parts of the P.D.Pumps which were different from the parts which are subject matter of the classification in the case in hand.

4. It is true that the parts which were subject matter of claim of exemption in the earlier matter were different from those involved in relation to the claim of classification in the case in hand. However, as rightly submitted by the learned Advocate, the principle which was adopted while confirming the classification in the earlier case and the one adopted in the case in hand is one and the same and that relates to the principles embodied in Section Note 2(a) of Section XVI, i.e. parts which are the goods included in any of the headings of Chapter 84 or Chapter 85(other than heading Nos.84.85 and

85.48) are in all cases to be classified in their respective headings.

5. Undisputedly the decision delivered by the Tribunal is under challenge before the High Court. All the issues involved in the case in hand are bound to be covered by the decision by the High Court as the principle adopted in relation to the classification in the present matter as well as in the earlier matter is same. Being so, as rightly submitted by the learned Advocate for the appellants, without further elaboration of the discussion on the issue raised in the matter in hand, same can be disposed of by applying the same reasoning which were applied by the Tribunal while disposing the earlier matter and we do accordingly dispose of the appeal in the same grounds, and therefore, hold that there is no case for interference in the impugned order. The appeal is accordingly disposed of in the above terms.

(Justice R.M.S.Khandeparkar)
President

(P. Karthikeyan)
Member Technical

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