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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/277 /2005 - EX[DB] Date 18/12/2009

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

To :
M/S VARANASI FAN INDUSTRIES (P) LTD.
195, BIG INDUSTRIAL ESTATE CHANDPUR
VARANASI
221106

M/S VARANASI FAN INDUSTRIES (P) LTD. Appellant
Vs
C.C.E. GWALIOR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1392/ 2009 EX[DB]** dated 01-12-09 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. GWALIOR
   19/1265, CITY CENTRE, OPP. TOUCHTEL, GWALIOR (M.P) 474011
2. Adv. / Consult
   MR.B.L.NARSIMHAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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
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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.277/05

[Arising out of Order-in-Appeal No.GWL/677-679 dt.28.10.04 passed by the Commissioner(Appeals),Gwalior)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
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. Varanasi Fan Industries(P) Ltd. Appellants

Versus

CCE, Gwalior Respondent

Appearance

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

Sh. B.L.Soni, Authorised Departmental Representative(DR) For Respondent

Date of decision: 1.12.09
FINAL Oral Order No. 1392/09-Ex

Per Justice RMS Khandeparkar:

Heard Shri B.L.Narsimhan, learned Advocate appearing for the appellants and Shri B.L.Soni, learned DR for the respondent. The appellants challenge the order dated 28.10.04 passed by the Commissioner(Appeals), Gwalior in relation to three adjudication orders passed by Asstt. Commissioner on 21.11.03, 2.12.03 & 3.12.03 relating to the period from April to June'98, July'98 and April'96 to June'96 respectively.

2. The appellants are manufacturing electric fans falling under sub-heading 8421.20 and are marketing the same through their related concern M/s. Ravi Marketing Ltd. The adjudicating authority had confirmed differential duty that was found to have been short paid by the appellants in relation to the price declaration, claiming deduction on account of average freight, advance payment discount octroi and dharamada and had also imposed penalty.

3. The Commissioner(Appeals) while disposing three appeals filed against three different orders passed by the adjudicating authority held thus –

> "I have considered the oral and written submission made by the Appellant. The appeals are being disposed of after dispensing with pre-deposit of duty and penalty amounts. On examining the matter, I find that the demand of duty has been confirmed by the Adjudicating Authority in the present appeals in relation to the approval of the price declarations vide order-in-original No.29/96/Val/AC dated 29.2.1996 and letter C.No. letter V(84)17-54/pt.I/6261 dated 26.9.1996. By the order-in-original dated 29.2.1996 the Adjudicating Authority had

allowed the various deduction claimed by the Appellants except that relating to 'average interest on sundry debtors'. The appeal filed by the Appellants against this order has been disposed of by this office vide order-in-appeal No.GWL/600-601/2004 dated 20.9.04, in the matter of the Appellants and another party, laying down the principle on which deduction on account of interest on debtors or receivable was to be regulated, keeping in view of the ratio of the judgments in the case of UOI v. Madras Rubber Factory - 1995(77)ELT.433(SC) and Gomti Carbon Dioxide v. CCE - 2000(119)ELT.565(T). In the present appeals, so far as the question of demand of duty in respect of interest on debtors is concerned, the principle laid down in the cases Madras Rubber Factory and Gomti Carbon Dioxide (supra), which were followed while passing the order-in-appeal No.GWL/600-601/2004 dated 20.9.2004, shall be followed and the Appellants would be liable to pay duty so determined. Deduction on account of 'Dharmada' is not a permissible deduction as held by the Hon'ble Supreme Court in the case of CCE vs Panchmukhi Engineering Works - 2003 (158)ELT.550(SC). As regard the differential amount of duty on account of wrong availment of deductions in respect of the other deductions viz average freight and transit insurance and average cash/advance payment discount, the Appellants were found to have short paid duty in relation to the prices approved vide other order-in-original No.29/96/Val/AC dated 29.2.96. Since the said order has attained finality in respect of the deductions other then interest on debtors receivable, the duty demanded and confirmed in relation to the approved price declarations is in order and upheld. The amount of penalty, being reasonable, is not interfered with".

4. Learned Advocate for the appellants taking into consideration the law laid down under various decisions fairly submits that the appellants may not have a case in relation to the claim pertaining to the deduction on account of Dharmada as the Commissioner(Appeals) held in the impugned order. However, the lower appellate authority erred in rejecting the claim regarding other deductions which included average freight and transit insurance and average cash/advance payment discount.

Drawing our attention to para 4 of the impugned order quoted as above, learned Advocate submitted the impugned order apparently discloses total non-application of mind by the lower appellant authority to the issues which were sought to be raised and the manner the same has been disposed thereof. Being the appellate authority, it is also a court of facts and therefore, it was necessary for the Commissioner(Appeals) to deal with the issues in detail taking into consideration the facts on record and to arrive at the conclusions on proper analysis of all the materials on record. Having failed to do so, the impugned order so far as it relates to other deductions which include average freight and transit insurance and average cash/advance payment discount, should not be sustained and should be set aside and matter should be remanded for proper consideration of the issues in accordance with provisions of law. He further submitted that the non-application of mind is evident from the fact that the Commissioner(Appeals) has referred to the order-in-original No.29/96/VAL/AC dated 29.2.1996 in the matter of the appellants themselves when in fact there was no such order passed in case of appellants either of the number quoted in the order or on the date mentioned therein. On the other hand, there is an order passed in the matter of Rewa Fan Industries which disclose No.29/96/VAL/AC dated 27/29.2.96 wherein Asstt. Commissioner had allowed the deductions on the said dates. Learned Advocate has also drawn our attention to the decision of this Tribunal in the matter of M/s. Ravi Fans Pvt. Ltd. vs CCE, Allahabad as well as in the appellant's own case which was delivered under Order No.539-542/09-Ex. which related to the claim relating to the deductions on account of average freight charges and average prompt payment discount. According to the learned Advocate, the Commissioner(Appeals) ought to have taken into consideration the provisions of law while passing the impugned order.

5. On the other hand learned DR submitted that considering the fact that the adjudicating authority had dealt with the issue in detail merely because the Commissioner(Appeals) did not refer to all the materials on record that would not be a justification for interference in the impugned order.

6. Plain reading of the impugned order as rightly pointed out by the Advocate discloses that the order on the claim regarding other deductions namely average freight and transit insurance and advance payment discount has been passed without analysis of the materials on record and in a criptic manner. Learned Advocate also pointed out that the order passed by the lower authority in the matter of M/s. Rewa Fan Industries is contrary to the finding arrived at by the lower appellate authority which apparently discloses failure on the part of the lower appellate authority to apply its mind properly to the matter in issue. Needless to say that being an appellate authority, the Commissioner(Appeals) is also a court of facts and therefore,

while disposing of the appeal, it is necessary for the Commissioner(Appeals) to deal with the points which are sought to be raised by referring to all the relevant materials on record and on analysis thereof to arrive at a logical conclusion. It is not permissible for the Commissioner(Appeals) to dispose of the matter in a criptic manner. It has been disposed of without taking into consideration the points which were sought to be raised against the order passed by the adjudicating authority in relation to the matter in issue. Perusal of the appeal memo before the Commissioner(Appeals) and the written submissions which had been filed before him discloses that the appellants had raised various points in relation to the said issue and therefore, it was necessary for the Commissioner(Appeals) to deal with all those points. However, the impugned order does not disclose any such exercise having been done by the Commissioner(Appeals). Undoubtedly as regards the matter pertaining to the Dharmada, as fairly submitted by the Advocate the same was rightly rejected. As regards other deductions namely average freight and transit insurance and advance payment discount, the Commissioner(Appeals) has failed to consider all the points which were sought to be raised. The Commissioner(Appeals) has also to take into consideration the order passed by the Tribunal in Ravi Fans Ltd.'s matter as well as in the appellant's own case vide final order No.539-542/09-Ex.

7. In the result thereof, the appeal succeeds on limited ground as stated above. The same is allowed in above terms with direction to Commissioner(Appeals) to dispose of the appeal as expeditiously as possible after hearing the parties by passing a reasoned order.

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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