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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 22/12/2009

Appeal No. E/665- 667 /2005 - EX[DB]

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

To :
M/S PREMIER PLASTICS
B-3, SITE-B, SIKANDRA INDUSTRIAL AREA

M/S PREMIER PLASTICS — Appellant
Vs
C.C.E. KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1394-1396/ 2009 EX[DB]** dated 12-11-09 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.L.P ASTHANA
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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
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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
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18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

19.M/S ROYAL POLYMERS
G-1-11/48, HATRAS ROAD NARAICH, AGRA

20. SHRI SUDHIR GUPTA.
M/S. ROYAL POLYMERS,
C-36/113,NEHRU NAGAR, AGRA

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.665-667/05

[Arising out of Order-in-Appeal No.468-470/CE/Appl/KNP/04 dt.20.9.04 passed by the Commissioner(Appeals),Kanpur)

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. Premier Plastics
M/s. Royal Polymers
M/s. Sudhir Gupta — Appellants

Versus

CCE, Kanpur — Respondent

Appearance

S/Sh. L.P.Asthana with Abhishek Jaju, Advs. for Appellants

Sh. P.K.Singh, Authorised Departmental Representative(DR) For Respondent

Date of decision: 12.11.09
FINAL Oral Order No. 1394-1396/09-EX

Per Justice RMS Khandeparkar:

Heard learned Advocate for the appellant and learned DR for the respondent. Since common question of law and facts arise in all these three appeals, they were heard together and are being disposed of by this common order.

2. These appeals arise from common order passed by the Commissioner(Appeals), Kanpur on 20.9.04. By the impugned order, the appeals filed by the appellants against the order of the adjudicating authority have been dismissed. The adjudicating authority namely Joint Commissioner, Kanpur by the orders dt.8.9.2000 had confirmed the demand of Rs.4,20,958/- and had imposed penalty of equal amount while refusing benefit of notification No.1/93-CE dt.28.2.93.

3. While assailing the impugned order, learned Counsel submitted that the impugned order apparently discloses total non-application of mind by the appellate authority to the various points which were canvassed before it and also that it is a totally non-speaking order. On another hand, it was submitted that in the facts and circumstances of the case, there is no case for interference in the impugned order.

4. Bare perusal of the impugned order discloses that after summarising the facts of the case, the Commissioner(Appeals) proceeded to dispose of the matter by recording thus –

> "I have carefully gone through the Appeal filed by the Appellants and have noticed it a matter of clubbing the value of clearances of M/s. Royal Polymers, Agra & M/s. Premier Plastics, Agra. On behalf of the Appellants, Shri B.C.Saksena, Consultant appeared in personal hearing on 11.10.01 & 26.7.04, he submitted a written statement he stressed that Section 11AC can not be invoked in this case

as Section 11AC is not attracted prior to 28.9.96. Shri B.C. Saksena, Consultant made various citations in support of the Appeal which were also considered. On going through all the records of the case, I conclude that Shri Sudhir Gupta was a Proprietor of both the units M/s. Royal Polymers, Agra & M/s. Premier Plastics, Agra as admitted by him in his statement dated 30.7.96 & 31.7.96. Thus, the value of clearance should be clubbed for exemption and duty purpose, duty has been rightly confirmed by the Adjudicating Authority. This is a case of suppression of facts, hence penalty is also imposable under Section 11-AC.

Accordingly, I pass the following order:

ORDER

I uphold the Order-in-Original No.29-30/MP/JC/2000 dated 8.9.2000 passed by the Joint Commissioner of Central Excise, Kanpur and reject the Appeals filed by Appellant No.1,2 & 3".

5. As rightly submitted on behalf of the appellants, it is apparent that the impugned order is a totally non-speaking order. It merely records summary of the findings arrived at by the adjudicating authority and thereafter proceeds to record that the appellate authority upholds the order of the lower authority.

6. The issue involved in the matter relates to the allegation of the clubbing of the firms and its effect on the right to enjoy the benefit under exemption notification and consequently the duty liability.

7. Perusal of the impugned order, it not only discloses that the Commissioner(Appeals) has disposed of the matter by passing a totally non-speaking order, but it also discloses total absence of application of mind to the matter in issue. The authority has not even bothered to consider the points which the authority was required to consider before deciding the matter.

8. Needless to say that the decision of the Commissioner(Appeals) can be subjected to further appeal before the Tribunal. Every appellate authority is entitled to know the grounds on which the lower authority has disposed the matter. It is, therefore, necessary for the Commissioner(Appeals) while disposing the matter to record the reasons for taking the view that he or she takes in relation to the issues which are sought to be raised in the matter under consideration. The law in that regard is well settled.

9. The recording of reasons while disposing of a matter is also necessary for the benefit of the aggrieved party. When a statute ensures the right of appeal, the aggrieved party is entitled to know the reasons for deciding the matter contrary to his submissions so that he can effectively persue the matter before the appellate authority. Failure on the part of the authority to record reasons would result in injustice to the aggrieved party.

10. A Commissioner(Appeals), while dealing an appeal against the order passed by the subordinate authority, should always remember that it is also a court of facts. While deciding a matter, it has to consider every fact on record, for and against the assessee, and has to give its findings in a manner which would clearly indicate the questions which had arisen for determination, the evidence on record that has considered and the reasonings applied for arriving at the conclusions which have been arrived at. The conclusions arrived at should not be allowed to be in any manner influenced by irrelevant and extraneous considerations. The

same should be logical conclusions and should reflect the rational analysis of all the materials on records by any prudent adjudicator.

11. In Tata Engineering & Locomotive Co. Ltd. vs Collector of Excise, Pune reported in 2006(203)ELT.360(SC), it was clearly ruled that "By criptic and non-speaking order, the Tribunal has upheld the order passed by the Commissioner by applying the ratio of the decision of the Larger Bench in TISCO Ltd.(supra) without recording a finding of fact that the production carried out by it were not used for repair or maintenance of the machinery installed therein. It is not sufficient in a judgment to give conclusions alone but it is necessary to give reasons in support of the conclusions arrived at".

12. In the case in hand as already stated above, the impugned order is clearly criptic and non-speaking order. While dealing with the appeal, the Commissioner(Appeals) has not taken the note of all the facts of the case. He has failed to consider the rival contentions raised in the matter. He has also not formulated the points which arise for determination. There are no analyses of the materials on record, nor the logical conclusions supported by reasons. The findings do not disclose consideration of all the relevant materials on record. The Commissioner(Appeals) having failed to do the required exercise in the matter in hand, his order cannot be sustained.

13. It would be also worthwhile for the Commissioner(Appeals) to go through a decision of the Apex Court in the matter of Supreme Washers(P) Ltd. vs CCE, Pune reported in 2003(151)ELT.14 wherein the Apex Court held that:-

> "In regard to the second contention of the appellant in Civil Appeal No.6161 of 1999, it is seen from the Circular dated 1.3.1956, which according to the appellants have been reiterated by another subsequent Circular No.6/92, dated 29th of May,1992 by the Central Board of Excise & Customs, New Delhi that a limited company should be treated as a separate entity for the purpose of exemption limit. If that be the position in law, then there may be some justification for the appellant to urge, so far as M/s. Supreme Washers(P) Ltd. is concerned, it being a limited company, its production cannot be clubbed with the other units. However, since this aspect of the case and applicability of the Circulars referred herein above was not brought to the notice of the Tribunal we are in agreement with the suggestion made by the learned Attorney General that it will be just and proper to remand this matter, for this limited purpose, to the Tribunal for examining the applicability of the Circular relied upon by the Appellants, M/s. Supreme Washers(P) Ltd."

14. The Central Board has issued a circular No.6/92 dt.29.5.92 which reads thus -

Value of clearances — Clubbing of

Circular No. 6/92, dated 29-5-1992

[From F. No. 213/15/1992-CX. 6]

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Clubbing of clearances of various firms - Different firms to be treated as different manufacturers for exemption limit - Regarding.

The issue of clubbing of clearances of various firms to arrive at the aggregate value of clearances for the purposes of Notification No. 175/86-C.E., dated 1-3-1986 has been examined by the Board. Similar issue was also examined in the past for the purposes of regulating the exemption from duty granted under the Notification No. CER 8(5)-Central Excise dated 1-3-1956 as under :—

(i) Different firms will be treated as different manufacturers for the purpose of the exemption limit. But if a firm consisting of certain partners say, A, B, & C has got more than one factory, all these factories should, of course, be combined. Limited companies whether public or private are separate entities distinct from shareholders composing it. Hence each limited company is a manufacturer by itself and will be entitled to a separate exemption limit.

(ii) As mentioned above, if there are the two firms with only some of the partners in common each firms is entitled to separate exemption limit, and hence the question of distributing the exemption does not arise. If one firm or one individual owns several factories he or it gets exemption only in respect of one lot of 125 tons and the manufacturer being only one entity there is no question of distributing the exemption.

(iii) If there are more than one mill under the control of one manufacturer there is no question of choosing any 'mill' for the purposes of exemption. The Central Excise department is concerned with a manufacturer which may be an individual, a firm a limited company etc.

Further in the context of Notification No. 176/77, dated 18-6-1977 which exempted units manufacturing goods falling under item 68 Central Excise Tariff upto a value of Rs. 30 lakhs in a year, the similar issue was re-examined. The legal position that emerged was as under :—

The plain meaning of the term 'Manufacturer' in the exemption Notification No. 176/77 dated 18-6-1977 is a person who manufacturers and this applies with greater appropriateness in the context, to a firm engaged in manufacture, than to the individual partners composing it. To the same effect was the view expressed by Kerala High Court in *Rice & Oils Mills Partnership Firm* v. *Deputy Superintendent of Central Excise, Trichirapally* (1960 KL 1087).

The question whether different partnerships having common partners, are treatable as separate manufacturers of the same manufacturer, would be a question of fact in each case to be determined on the basis of such factors among other, like composition of the partnership, existence of the factory, licence, nature of goods manufactured etc. Different firms will be treated as different manufacturers for the purpose of exemption limit. But if a firm consisting of certain partners say A.B. & C. has got more than one factory, all these factories should, of course, be combined. Limited companies whether public or private, are separate entities distinct from the shareholders composing it. Hence each limited company is a manufacturer by itself and will be entitled to a separate exemption limit. If there are two firms with only some of the partners in common, each firm is entitled to separate exemption limit and hence the question of distributing the exemption may not arise. If one firm or one individual owns several factories, he or it gets exemption only in respect of one lot and the manufacturer being only one entity, there will be no question of distributing the exemption. Whether or not in the expression 'by or on behalf of a manufacturer' the expression 'from one or more factories' is added, the effect would be the same if the manufacturer is also the same. The expression 'one or more factories' only further clarified that whether the factory is one or more, it is the clearances by or on behalf of the same manufacturer which is to be taken into consideration for purpose of interpreting the exemption Notification. The matter requires to be viewed accordingly.

The Board had then felt the position as mentioned 2. above including in respect of Notification No. CER-8(5)-CE dated 1-3-1956 was sufficient to deal with the interpretation under Notification No. 176/77 dated 18-6-1977.

Now in exercise of the powers conferred under Section 37B of the Central Excise Act, 1944 (1 of 1944), for the purpose of ensuring uniformity of levy of duties of excise, the Central Board of Excise and Customs have ordered that the general principles as mentioned above in the context of Notification No. 176/77 dated 18-6-1977 will be applicable to Notification No. 175/86 also. The Board have issued the above order on 29-5-1992.

Sub : — The text of the Direction issued under Section 37B is as follows :—

> "In exercise of the powers conferred under Section 37-B of the Central Excise Act, 1944, for the purpose of ensuring uniformity of levy of duties of excise the Central Board of Excise & Customs has ordered that the following general principles will be applicable to Notification No. 175/86-CE :—

(i) The question whether different partnerships having common partners are treatable as separate manufacturers or the same manufacturer, would be a question of fact in each case to be determined on the basis of such factors among other, like composition of the partnership, existence of the factory, licence, nature of goods manufactured etc.

(ii) Different firms will be treated as different manufacturers for the purpose of exemption limit. But if a firm consisting of certain partners say A, B & C, has got more than one factory, all these factories should of course be combined. Limited companies whether public or private are separate entities distinct from the shareholders composing it. Hence each limited company is a manufacturer by itself and will be entitled to a separate exemption limit.

(iii) If there are two firms with only some of the partners in common, each firm is entitled to separate exemption limit and hence the question of distributing the exemption may not arise. If one firm or individual owns several factories, he or it gets exemption only in respect of one individual owns several factories, he or it gets exemption only in respect of one lot and the manufacturer being only one entity there will be no question of distributing the exemption.

(iv) Whether or not in the expression 'by or on behalf of a manufacturer' the expression 'from one or more factories' is added, the effect would be the same if the manufacturer is also the same. The expression 'one or more factories' only further clarifies that whether the factory is one or more, it is the clearances by or on behalf of the same manufacturer which is to be taken into consideration for purposes of interpreting the exemption notification'.

15. In the circumstances, therefore, the impugned order is hereby set aside and the matter is remanded to the Commissioner(Appeals) to decide the appeal in accordance with provisions of law taking into consideration the above referred decision of the Apex Court and the circular quoted above as well as bearing in mind the observations made herein above. Since the matter relates to the period 1995-96, the Commissioner(Appeals) shall dispose of the matter as expeditiously possible after hearing the parties and in any case prior to 31.3.2010. The appeals are disposed of in the above terms.

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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