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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/674 /2005 - EX[DB]

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011 — Appellant
C.C.E BHOPAL

Vs

M/S BURN STANDARD CO. LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1401/ 2009 EX[DB]** dated 20-10-09 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 BURN STANDARD CO. LTD.
JABALPUR (M.P)
2. Adv. / Consult M/S. MITHILESH KR. SINGH & ASSOCIATES
C-8/299, YAMUNA VIHAR, DELHI-53
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.

19. REVENUE SECRETARY GOVT. OF INDIA
20. CHAIRMAN C.B.E.C. BOARD

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

COURT - I

Excise Appeal No. E/674/05

[Arising out of Order-in-Appeal No.254/RPR-I (JBP)/2004 dated 28.09.2004 passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur].

Date of Hearing:20.10.2009
Date of decision:20.10.2009

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 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, Bhopal ...Appellant

Vs.

M/s. Burn Standard Co. Ltd. ....Respondent

Present for the Appellant : Shri S.Gautam, DR
Present for the Respondent : None

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

FINAL **ORAL ORDER NO.** 1401/09-EX **DATED:20.10.2009**

PER: JUSTICE R.M.S.KHANDEPARKAR

Heard. Shri.S.Gautam, Departmental Representative present for the appellant. None present for the respondents.

2. This is an appeal against the order dated 28th September 2004 passed by the Commissioner (Appeals), Raipur whereby the appeal filed by the respondent against the order of the original authority was allowed and order passed by the original authority on 27.6.97 was set aside.

3. The respondents were engaged in the manufacture of excisable goods falling under Chapter 69, 38 and 25 of Central Excise Tariff Act 1985 and they had filed the declaration in respect thereof as unglazed acid resistant clay bricks for different sizes and shapes classifiable under subheading 6902.90 and had claimed benefit of exemption under Notification No.8/96-CE dated 23rd July 1996. The declaration was to be effective from 23rd July, 1996. A show cause notice came to be issued seeking to deny the benefit of exemption under Notification No.8/96 -CE. The notice was contested by the respondents.

4. The Asstt. Commissioner, Jabalpur by its order dated 27.6.1997 rejected the defence of the respondents and denied the claim of benefit of exemption under Notification No. 8/96-CE and, thereby, directed payment of duty. Aggrieved by the said order, the respondents carried the matter in an appeal before the Commissioner (Appeals) Raipur, on the following grounds:-

> "*(i) that the Acid Resistant Bricks are made of low fusion clay. It is not made from fire clay. These bricks are used for flooring subject to acid attack, lining of chambers and towers in chemical plants,*

lining of sewers carrying industrial effluents to prevent the deterioration of the surface by acid attack. These bricks are primarily designed for use in chemical and allied industries and normally used with chemical resistant mortars.

(ii) that A R Bricks are unable to withstand temperature higher than 1500 degree C while the Fire clay bricks can withstand temperature higher than 1500 degree C. AR Bricks loose its shape an start breaking and melting at the temperature above 1000 degree C.

(iii) that as per Harmonized System of Nomenclature (HSN), the AR Bricks can not be regarded as fire clay bricks. They also submitted the opinion of the Central Glass and Ceramic Research Institute Ahmadabad's advice dated 25.06.1992 under which it is opined that the product can not be classified as fire clay bricks as it can not withstand high temperature application and can be classified as acid resistant (clay) bricks.

(iv) that the benefit of exemption of the AR Bricks was always available to them in past under various notifications which granted exemption to clay bricks other than fire clay bricks. They claimed that they are eligible for the exemption under Notification No.8/96-CE dated 23.07.1996. They cited a number of case laws in their favour."

4. The appeal came to be allowed by the impugned order. Revenue filed this appeal.

5. Shri.S.Gautam, DR appearing for the appellant drew our attention to the memo of appeal and reiterated the grounds under No.2, 4 and 6, which read thus:

> *"(2) The Appellate Authority has failed to appreciate that clay has got a very broad meaning and the clays which are used for Acid Resistance bricks do essentially fall in the fire clay range as these clays have a distorted kaolinitic structure which makes them suitable to withstand high temperature. Thus, acid resistant bricks are nothing but bricks made from low fusion fire clay, which can be vitrified at low firing temperature.*
>
> *(4) In this case the impugned bricks are charged in the kiln for firing at lower temperature of around 900-1000 degree centigrade. After this vitrification process, the goods as required under IS specification IS 4860 i.e. acid resistant bricks are obtained. Firebricks are vitrified at 1280 to 1350 degree centigrade at the time of firing in the kiln to withstand temperature of 1250 degree centigrade.*
>
> *(6) As acid resistance bricks manufactured by the Respondent admittedly comprise of fire clays, though verified only up to temperature of 900-1000 degree centigrade, the same were correctly categorized as 'fire-clay bricks'. Hon'ble Tribunal may be pleased to hold that as acid resistance bricks are nothing but fire-clay bricks even though not fire bricks of refractory quality. Therefore the bricks are not eligible for exemption under Notification No.8/96-CE dated 23.7.96."*

6. To a specific query, as to the supporting material with reference to the said grounds, the Departmental Representative submitted that, there is no material in support of ground No. 2 and 4 but as far as ground No.6 is concerned, the same finds support from the submissions made by the respondent before the Commissioner (Appeals) and in that regard he drew our attention to para 3 (ii) of the impugned order which reads thus:

> *"3 Being aggrieved with the impugned order, the appellant have filed this appeal. The main contention of the appellant is summarized as under:-*
>
> *(ii) that A R Bricks are unable to withstand temperature higher than 1500 degree C while the Fire clay bricks can withstand temperature higher than 1500 degree C. AR Bricks loose its shape and start breaking and melting at the temperature above 1000 degree C.*

7. Plain reading of ground No.6 and the submissions reproduced by the Commissioner (Appeals) in para 3 (ii) would disclose that the said submission nowhere supports the ground No.6. On the contrary, if the submission of the respondents as quoted by the Commissioner (Appeals) are to be accepted, then ground of challenge referred to in para No.6 is to be totally rejected. While agreeing with the submission of the respondents before the Commissioner (Appeals), the lower appellate authority has observed that the bricks in question are unable to withstand in temperature higher than 1500 degree C

while the fire clay bricks can withstand in temperature higher than 1500 Degree C and that the bricks in question would loose its shape and start breaking and melting at a temperature above 1000 Degree C. As against this the ground No.6 contents that bricks in question admittedly comprises of fire clays, though verified only upto temperature of 900 to 1000 degree centigrade, the same were correctly categorized by the Asstt. Commissioner as 'fire clay bricks'. One fails to understand how the Departmental Representative could contend that this ground gets support from the above quoted submission by the respondents.

8. It is also surprising that the Departmental Representative himself states that the ground Nos.2 & 4 are baseless. In the course of the argument, it appeared as if Departmental Representative was not fully ready with the facts of the case.

9. Matters before the Tribunals involve revenue running into Crores of rupees and, therefore, Government is expected to give necessary assistance to the Tribunal to decide the matter efficiently, effectively, expeditiously and correctly in accordance with provisions of law. In the absence of proper assistance, it may result in disposal of matters prejudicial to the interest of the revenue. It is high time for the Government to realize the same and to take appropriate steps in that regard.

10. Registry is, therefore, directed to send a copy of this order to the Revenue Secretary to the Govt. of India and the Chairman of the Board, and compliance of this direction be placed before the President within eight days thereof.

11. For the reasons stated above, as no case is made out to interfere with the order of the Commissioner (Appeals), the appeal fails and is hereby dismissed.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita