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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/3801/2006-SM[BR] Date 05/06/2008

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

To :
M/S ECLIPS INDUSTRIES
A-30, MAYA PURI INDL AREA, PHASE-II, N.DELHI

M/S ECLIPS INDUSTRIES Appellant
Vs
C.C.E.DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 854 /2008 –SM[BR] dated 16.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E.DELHI II
C.R. BUILDING, I.P.ESTATE, N. DELHI.
2. Adv. / Consult
MR.NAVEEN MULLICK
B-388, MERA BAGH, NEW DELHI-63.
3. S.D.R.
~~4. J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No. 3801 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.60-62-CE/DLH/2006 dated 31.8.2006 passed by the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:16.4.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s.Eclips Industries ...Appellants
[Rep. by Shri Naveen Mullick, Advocate]

Vs.

CCE, Delhi-II Respondent
[Rep. by Mr. S. Gautam, Authorized Representative (DR)]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.854/08-SM(BR)/Dated:16.4.2008

Per P.K. Das:

Heard both sides and perused the records.

2. The Appellant filed this appeal against confiscation of finished goods loaded in the vehicle and the finished goods and raw materials

were lying unaccounted in the Appellant's factory and also imposed redemption fine of Rs.75,000/-, demand of duty of Rs.7,928/- and penalty of Rs.1,69,170.00/ under Section 11 AC of the Central Excise Act, 1944.

3. Ld. Advocate submits that the Appellant is a SSI Unit. The Appellant has been manufacturing branded and un-branded goods at their factory. The Central Excise Officers seized finished goods bearing brand name of other person loaded in the vehicle without accompanying any duty paying documents. I find that the Central Excise Officers seized branded goods loaded in the vehicle, which is dutiable and, therefore, the demand of duty of Rs.7,928/- is justified and penalty of equal amount of duty is imposable under Section 11 AC of the Central Excise Act, 1944.

4. Regarding confiscation of the goods, ld. Advocate submits that raw materials and finished goods were lying at their factory. The adjudicating authority confiscated for non-accountal of raw materials and finished goods at their factory. He further submits that the Tribunal in the case of Dayal Industries Vs. CCE reported in 2006 (199) ELT 237 (T-D) and in the case of M/s. Booster Industries Vs. CCE reported in 2008 (221) ELT 412 (T-D) held that confiscation and penalty are not justified for non-accountal of goods by the SSI Unit. In the present case, I find that the Appellant is manufacturing branded and un-branded goods at their factory and they are liable to pay the duty on the branded goods and, therefore, the case laws cited by the ld. Advocate are not applicable herein. In any event, I find that the confiscation of the branded goods

loaded in the vehicle valued at Rs.57,000/- approximately is justified. As the Appellant is manufacturing both the dutiable and exempted goods, therefore, they are liable to maintain the account properly. However, in this case, the seized finished goods are bearing the Appellant's own brand name, which are exempted from duty.

5. In view of the above, the demand of duty of Rs,7,928/-, confiscation of goods and penalty are upheld. However, considering the facts and circumstances of the case, redemption fine is reduced to Rs.35,000/- (Rupees Thirty Five Thousand only) and penalty to Rs.20,000/- (Rupees Twenty Thousand only). The appeal is otherwise rejected.

Order dictated & pronounced in open court on 16.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.