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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. C/753 /2007-SM[BR] Date 27/06/2008

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

To :
M/S SAKATA INX (INDIA) LTD.
10TH FLOOR, DEVIKA TOWER, 6, NEHRU PLACE,
NEW DELHI
110019

M/S SAKATA INX (INDIA) LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1017 /2008 –SM[BR] dated 11.3.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.S.C. KAMRA & CO.
   B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

C /Appeal No.753/2007-SM

(Arising out of order in appeal No.CC(A)/Cus/139-40/ICD/D.II/07 dated 17.9.07 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:

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

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the 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?

No

M/s Sakata Inx (India) Ltd — Appellant
(Rep. by Shri S.C. Kamra, Advocate)
Shri G.K. Mahajan, Advocate

Vs

CC(ICD), New Delhi — Respondent
(Rep. by Shri S.L.Meena, DR)

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

Date of Hearing: 11.3.2008

Final Order No. 1017 /2008-SM(BR)

Per P.K. Das:

The appellants filed this appeal against confiscation of imported goods namely Polyurethane Resin and imposition of redemption fine and penalty. The issue involved in this case is as to whether the imported goods are hazardous chemicals listed in Part II of Schedule I of the Management, Storage and Import of Hazardous Chemicals Rules, 1989 and the appellant violated the provision of Rule 18(2) of the said Rules.

2. It has been alleged that the composition of imported goods is Polyurethane Resin, Ethyl Acetate and Isopropyl Alcohol. It is also alleged that Ethyl Acetate and Isopropyl Alcohol are mentioned at Sl No. 247 and 334 of Part II of Schedule I of the Hazardous Chemical Rules, 1989 and the appellants were required to comply with the provisions of Rule 18(2) of the said Rules.

3. After hearing both the sides and on perusal of record, Rule 18(2) of the said Rules provides that any person responsible for importing hazardous chemicals in India shall provide the information pertaining to the product before 30 days or as reasonable possible but not later than the date of import. The definition of hazardous chemicals under Rule 2(e) of the said Rules is as under:-

"(e) "hazardous chemical" means, -

> *(i) any chemical which satisfies any of the criteria laid down in Part I of [Schedule 1 or] listed in column 2 of the Part II of this Schedule;*
>
> *(ii) any chemical listed in column 2 of Schedule 2;*
>
> *(iii) any chemical listed in column 2 of Schedule 3;"*

There is no dispute between the parties that the appellants imported Polyurethane Resin which is not listed in the Schedule to the said Rules. In my view, the composition of the chemical is not the relevant factor, it would be looked into as to whether the imported chemical is listed in the Schedule.

In the present case, the imported chemical is not listed in the Schedule and cannot be treated as Hazardous Chemicals under the said Rules. It is noted that there is no provision in the said Rules that composition of the chemical would be included in the list.

4. In addition to that, the learned Counsel submits that Polyurethane Resin is a binder to the ink used by the importer in their factory for manufacture of ink. He also submits that the ingredients as mentioned in the Schedule to the said Rules are solvents which are not imported by them

5. In view of the above discussion, I find that the imported chemical is not mentioned in the Schedule and therefore, confiscation of the imported goods is not justified. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*