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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/68 /2005 - EX[DB]

Date 28/04/2009

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

To :
C.C.E.INDORE
P.B.NO-10 MANIK BAGH PALACE INDORE M.P

C.C.E.INDORE

Appellant
Vs
Respondent

M/S ESSBEE INDUSTRIES LTD.

I am directed to transmit herewith a certified copy of **Final order No**.276/2009- **EX[DB]** dated 22-4-09

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 ESSBEE INDUSTRIES LTD.
339 SHIVAJI NAGAR INDORE M.P.
2. Adv. / Consult SH.B.L.NARASIMHAN,
B-6/10,S.J.ENCLAVE,N.DELHI-29

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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 68 of 2005

[Arising out of Order-in-Appeal No. IND-I/383/2004 dated 30.7.2004 passed by Commissioner (Appeals I) Customs & Central Excise, Indore.]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	:	No

Commissioner of Customs & Central Excise, Indore — Appellant

Vs.

M/s. ESSBEE Industries Ltd. — Respondent

Appearance:

Mr. B.S. Suhag, DR for the Appellant
Mr. B. L. Narasimhan, Advocate for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 16.4.2009

FINAL **ORAL ORDER NO. 276/09-EX**

Per Justice R.M.S. Khandeparkar (for the Bench):

Heard. This appeal arises from order dated 30.7.04 passed by the Commissioner (Appeals), Indore. By the impugned order, the classification of the goods manufactured by the respondents namely, Water proofed canvas cloth and Tarpauline was confirmed to be falling under heading 52.07 by rejecting the contention of the Department that the same are classifiable under 59.06.

2. The said order is sought to be challenged only on the ground that the said classification has been confirmed by the Commissioner solely on the ground that in earlier case by the said party in relation to same product, the classification was confirmed under heading 52.07, without analysing all the aspects of the matter.

3. The learned Advocate appearing for the respondents placed on record the order passed by this Tribunal on 31.1.05 in Appeal No. 1899/04 wherein the earlier order of the Commissioner (Appeals) based on which the impugned order was passed has been confirmed and the appeal filed by the Department against the said earlier order was dismissed. Referring to the same, it was sought to be contended that as the impugned order is sought to be challenged solely on the ground that same is based on the order dated 27.11.02 in earlier case between the parties in relation to the same goods, and the said order dated 27.11.02 already stands confirmed persuant to

dismissal of appeal against the same, the present appeal is also liable to be dismissed.

4. Perusal of the impugned order indeed discloses that the classification in relation to goods confirmed under heading 52.07 on the basis of order passed by the Commissioner earlier dated 27.11.02 in relation to the same goods and in a dispute arising out of same parties. The order dated 31.1.05 passed in Appeal No. 1899/04 by the Tribunal clearly discloses that the challenge to the said order by the Department was rejected thereby classification of the goods of the respondents under heading 52.07 stood confirmed by the Tribunal.

5. As the impugned order was sought to be challenged solely on the ground that Commissioner (Appeals) had confirmed the classification under heading 52.07 solely on the basis of order dated 27.11.02 and the said order dated 31.1.05 have already been confirmed by the Tribunal and there is no ground disclosed to challenge this order, the appeal is liable to be dismissed as contended by the respondents.

6. For the reasons abovementioned, the appeal fails and hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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