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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. ST/282 /2008 – SM[BR] Date 08/04/2009

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

To :
M/S BALLS & CYLPEBS LTD.(UNIT-II)
A-29/2(1), BIJOLI INDUSTRIAL AREA,POST-
BIJOLI,JHANSI (U.P.)
M/S BALLS & CYLPEBS LTD.(UNIT-II) Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 302 / 2009 –SM[BR] dated 27.3.2009 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.E. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

~~Assistant Registrar~~
(SM ~~Appeal Branch~~)

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066
Principal Bench.

Date of hearing:27.03.2009

Service Tax Appeal No.282 of 2008-SM (BR)

(Arising out of Order-in-Appeal No.101-ST/APPL/KNP/2008 dated 28.02.2008 passed by the Commissioner of Central Excise (Appeals), Kanpur)

For approval and signature:

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

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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

y.N.

M/s. Balls & Cylpebs Ltd. Appellant/Applicant
(Rep. by Ms. Asmita Nayak, Advocate)

Vs.

CCE, Kanpur Respondent
(Rep. by Shri S. Gautam, DR)

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

Final Order No. 302/09-SM (BR) /Dated:27.03.2009

Per: P.K. Das

After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) held that the appellant is eligible to avail credit on mobile phones provided it is used in or in relation to the final products. But the appellant has not produced any evidence on the record.

2. Ld. Advocate submits that the appellant used the mobile phones in relation to their business activities. She also submits that the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs. Excel Crop Care Ltd. Reported in 2008 (12) S.T.R. 436 (Gujarat) held that mobile phones were provided by the respondents to employees, records not showing that activities carried out by employees not relatable to manufacture is eligible for credit. Ld. Advocate also submits that they have produced the evidence on the use of mobile phones by the employees, which was not considered by the Commissioner (Appeals).

3. Ld. DR submits that they have not produced any evidence in support of their contention.

4. In any event, I find that the appellant produced the evidence that the mobile phones were used by the employees. Taking into account the decision of the Hon'ble Gujarat High Court, I find that the matter is required to be verified by the Original Authority. Accordingly, the impugned order is set aside and the matter is remanded back to the Original Authority to decide the case afresh after considering the decision of the High Court and other decisions in accordance with law. The appellant is also directed to produce the evidence in support of their contention. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

Ckp.