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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 17/09/2009

Appeal No. E/4275/2004 - EX[DB]

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

To :
DR. SHRI KRISHNA YADAV
NATH KI BAGICHI, NEAR POLICE LINE ALWAR
(RAJASTHAN)
DR. SHRI KRISHNA YADAV

Appellant
Vs
Respondent

C.C.E. GURGAON

I am directed to transmit herewith a certified copy of **Final order No. 684 2009 EX[DB]** dated 09-9-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. GURGAON
   UDYOG VIHAR, UDYOG MINAR, VANIJYA NIKUNJ, PHASE V, GURGAON
2. Adv. / Consult
   DR. SHRI KRISHNA YADAV, IN PERSON

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)
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18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 4275 of 2004

(Arising out of Order-in-Appeal No. 204/AKG/GGN/2004 dated 31.05.2004 passed by the Commissioner of Central Excise (Appeals), Gurgaon).

DATE OF HEARING : 09.09.2009
DATE OF DECISION : 09.09.2009

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 ?	Yes
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

Dr. Shri Krishna Yadav .... **Appellant**
(Rep by Dr. Shri Krishna Yadav, in person)

VERSUS

CCE, Gurgaon .... **Respondent**
(Rep. by Sh. Virender Choudhary, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

Final ORAL ORDER NO. 684/09-Ex

PER M. VEERAIYAN :

This is an appeal by Dr. Shri Krishna Yadav against the order of the Commissioner (Appeals) no. 204/AKG/GGN/2004 dated 31.05.2004.

2. Heard the appellant in person and the learned DR for the Department.

3. The relevant facts in brief are that, the appellant received a vehicle Wagon R-AX on payment of concessional rate of duty of 16% as against the normal rate of 40% in terms of Notification No. 6/2000-CE dated 01.03.2000 (serial no. 226) read with its condition no. 44, which reads as under :

> **"If an officer not below the rank of the Deputy Secretary to the Government of India in the Ministry of Industry certifies that the said goods are capable of being used by the physically handicapped persons."**

The vehicle has been cleared on 09.12.2000 based on a certificate dated 31.05.2000 issued to the appellant by the Director in the Ministry of Heavy Industries and Public Enterprises, which reads as under :

"TO WHOM SO EVER IT MAY CONCERN

Subject : **Purchase of Wagon R-AX fitted with Automatic Transmission on concessional excise duty by Dr. Shri Krishna Yadav under condition No. 44 of General Exemption No. 66 of Central Government Notification No. 6/2000-Central Excise dated 1.03.2000**

> **Certified that Wagon R-AX Model fitted Automatic Transmission manufactured by M/s Maruti Udyog Ltd. is capable of being driven by Dr. Shri Krishna Yadav, resident of Nath Ki Baghichi, Near Police line, Alwar (Raj.) – 301 001 who has the following handicap/disability as certified by Sr. Specialist – Orthopedics, General Hospital, Alwar (Raj.)**
>
> **Post Polio Residual Paralysis Right Lower Limb.**
>
> **Accordingly this Certificate is issued only for the purpose of availing concessional Excise duty applicable under condition no. 44 of General Exemption No. 66 of Central Government Notification No. 6/2000-Central Excise dated 01.03.2000."**

Subsequent to the clearance of the vehicle and delivery of the same to the appellant, a show cause notice dated 17.03.2001 has been issued to the manufacturer, M/s Maruti Udyog Ltd., Gurgaon, alleging that the certificate issued by the Ministry of Heavy Industries and Public Enterprises has been withdrawn by the said Ministry and accordingly the clearance under concessional rate of duty was not legal. The original authority confirmed the demand which has been upheld by the Commissioner (Appeals). It is apparent that the differential duty stands paid by M/s Maruti Udyog Ltd. The appellant, as buyer of the vehicle, who has borne the duty burden, has filed the appeal seeking the benefit of Notification No. 6/2000-CE in view of the certificate given to him by the Ministry of Industries and Public Enterprises enabling him to procure a vehicle at concessional rate.

4. The appellant submits that the disability has been certified by the Senior Specialist, Orthopedics Department, General Hospital,

Alwar, and on the basis of the said certificate the Director in the Ministry of Heavy Industries and Public Enterprises has certified that Wagon R-AX Model fitted Automatic Transmission was suitable for use by the appellant and on that basis the vehicle was cleared by M/s Maruti Udyog Ltd. and delivered to him. The subsequent letter/communication dated 05.12.2000 was issued by the Section Officer clarifying that Certificate dated 31.05.2000 issued by the Department in favour of the appellant be treated as cancelled. The said communication is not a valid document as Section Officer has no power to withdraw the certificate issued by the Director of the Ministry. He also submits that the communication does not refer to the decision as having been taken by a competent authority.

5. Learned DR submits that inasmuch as the certificate issued by the Department of Heavy Industry has been withdrawn, the appellant is not eligible for the refund claimed by him and he also reiterates the other grounds taken by the Commissioner (Appeals) in rejecting the appeal.

6. We have carefully considered the submissions from both sides and perused the records. The certificate dated 31.05.2000 has been issued by the competent authority as envisaged in condition no. 44 related to serial no. 226 of the Notification No. 6/2000-CE dated 01.03.2000. It specifically records that the vehicle Wagon R-AX Model fitted with Automatic Transmission is capable of being driven by Dr. Shri Krishna Yadav, the appellant. It also refers to the nature of

disability suffered by the appellant and it also records that the said certificate has been issued for the purpose of extending concessional rate of duty in terms of Notification No. 6/2000 dated 01.03.2000. That being the case, the letter dated 05.12.2000 issued by the Section Officer, does not indicate that the decision has been taken by any higher and competent authority who was competent to cancel the certificate dated 31.05.2000. It also does not reveal the grounds based on which the disability which was considered adequate for the purpose of issue of the certificate dated 31.05.2000 ceases to be adequate to warrant cancellation of the certificate. Therefore, we are of the considered opinion that there is no justification for issue of such communication by an Officer who is not competent to cancel the certificate issued by a higher authority, namely, Director in the Ministry. Further, the condition of the Notification is the production of a certificate from an officer of the rank of the Deputy Secretary and above from the Ministry which has been complied with. Under these circumstances, the excise authority cannot question the certificate dated 31.05.2000 issued by the Director in the Ministry on the basis of subsequent letter issued by the Section Officer. We also find that the appellant has chosen to invest money and procure the vehicle in the light of the concession extended to him by the said certificate and the same could not have been invoked without justifiable reason and without granting opportunity to the said appellant.

7. Therefore, we are unable to sustain the orders of the lower authorities and we set aside the same and allow the appeal with consequential relief, as per law.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay