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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/2557/2001 - EX[DB]

Date 22/09/2009

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

To :
CCE. FARIDABAD
C.G.O.COMPLEX FARIDABAD(HARYANA)

CCE. FARIDABAD — Appellant

Vs

POLYMER PAPERS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 692/2009 EX[DB]** dated 08-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   POLYMER PAPERS LTD.
   12/6 MATHURA ROAD, FARIDABAD(HARYANA)
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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.2557 of 2001-Ex.(Br.)

[Arising out of the order-in-appeal No.923-CE/DLH/2001 dated 1.10.2001 passed by the Commissioner of Central Excise (Appeals), New Delhi.]

For Approval and Signature:

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

1	Whether Press Reporter 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 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

Commissioner of Central Excise
Delhi II

Appellants
[Rep. by Shri Surender Shah, SDR]

Vs.

M/s Polymer Papers Ltd.

Respondent
[Rep. by Shri K.K.Anand, Advocate]

CORAM:

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

Date of Hearing/decision : 8.9.2009

FINAL **ORAL ORDER NO. 692/09-Ex**

Per Mr. M. Veeraiyan (for the Bench):

This is an appeal filed by the Department against the order of the Commissioner (Appeals) No. 923-CE/DLH/2001 dated 1.10.2001. This appeal was earlier decided by the Tribunal and the matter went before the Hon'ble Supreme Court and Hon'ble Supreme Court vide order dated

26.3.08 set aside the order of the Tribunal and remanded the matter for reconsideration of the Tribunal with the following observations/ directions:-

> **"Learned Additional Solicitor General appearing for the Revenue fairly concedes that the impugned order of the Customs, Excise and Gold (Control) Appellate Tribunal ('the Tribunal') requires to be set aside and the case remitted to the Tribunal for deciding the matter afresh as the Tribunal has failed to consider the real issue involved in the present case, viz., whether the product in question was 'sheets of paper compressed together' or only simple sheet of paper'.**
>
> **In view of the statement made by the learned Additional Solicitor General, we set aside the impugned order of the Tribunal and remand the matter back to it for deciding the points raised in the matter, including the point indicated above afresh in accordance with law. All contentions are left open.**
>
> **The appeal is disposed of accordingly."**

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents are manufacturers of, inter-alia, impregnated filter paper falling under chapter heading 4811. The respondents availed the benefit of notification No.18/95 dated 16.3.95 for the period ~~from~~ prior to 22.7.96 and the benefit of notification 8/96 dated 23.7.96 up to 28.2.97 and thereafter consequent to changes in the Budget claimed the classification under 4811.39. The department issued 10 show cause notices on various dates starting from 1.5.1997 to 27.4.2000 covering the period from October, 1996 to February, 2000 alleging that the impregnated filter paper cleared by them is not covered by the Notification No. 18/95, 8/96 and for the later period it does not fall under 4811.39 on the ground that the said filter paper has been manufactured out of base filter

paper which is impregnated with synthetic resin solvent and other special additives. Accordingly, the show cause notices proposed demands of varying amounts. Original authority held that they were not eligible for the exemption up to 27.2.97 and that from 1.3.97 the goods cleared by them fell under 4811.31, and accordingly confirmed the demand of Rs.1,43,54,479.92 and also imposed a penalty of Rs.10 lakh under Rule 173 Q of Central Excise Rules, 1944. On appeal, the Commissioner (Appeals) set aside the order of the original authority.

4. Learned DR submits that the order of the Commissioner (Appeals) is not legal. He submits that according to the Chemical examiner's reports dated 17.11.97 and 26.11.97, the subject goods were impregnated with phenolic resin and also sample weighed 288.1 gram per M(GSM) Therefore, the products fall under heading 4811.31 from 1.3.97 and for the earlier period they were not eligible for the benefit of notification No. 8/96 dated 23.7.96 . He relies on the description of the heading No. 4811.31 of HSN and relevant portion of the explanatory in support of his claim.

5. Learned advocate for the respondent submits that they are impregnating filter paper; they have never put two or more sheets of paper together and no compression of sheets was involved; This submission has been taken by them in their reply to the show cause notice. He also submits that the original authority erred in holding that the Tariff entry 4811 was fully aligned with HSN. He also draws our attention to the show cause notices which seeks to deny the benefit of notification only on the ground that the filter paper was impregnated and thus it proceeded on the ground that mere impregnation of the filter paper would disentitle them to avail the benefit of the notification. He also submits that similar is the position when

the exemption notification was replaced by separate entry for identical goods providing for concessional rate of duty under 4811.39.

6. We have carefully considered the submissions from both the sides, in the light of the observations and directions of the Hon'ble Supreme Court vide order dated 26.3.08. The relevant portions of the notification 8/96 read as follows:

S.No.	Chapter/Heading or Sub-heading No.	Description of the goods	Rate	Condition
22 48.11	**4811.30 or 4823.90**	**All goods other than the following, namely: (a) Products consisting of sheets of paper or paper board impregnated, coated or covered with plastics (including thermoset resin or mixture thereof or chemical formulations containing melamine, phenol, urea or formaldehyde with or without curing agents or catalysts), compressed together in one or more operations; or (b) Products known commercially as 'decorative laminates'**	**20% Adv.**	

7. The description of tariff entry 4811.39 for the period 1.3.97 to date is identical in wording to the description in the notification as above. The learned advocate for the respondent does not dispute that the filter paper in question has been impregnated. His contention is that for exclusion from notification No. 8/96, mere impregnation is not sufficient and the same should have more than one sheet compressed together. We find this submission is acceptable. The show cause notice has sought to deny the exemption merely on the ground that the filter paper has been impregnated with resins, solvents and other special additives. It did not rely on any

evidence that two sheets of paper or paper board "compressed together in one or more operations". Only in such cases, the product gets excluded from the exemption mentioned above. Similarly, for the period 1.3.97 the tariff entry itself refers to " products consisting of sheets of paper .... compressed together in one or more operations." This condition has not been fulfilled. Therefore, we do not find any error in the order of the Commissioner (Appeals). The order is well reasoned and we are not been shown any valid ground to interfere with the same.

8. In view of the above, the appeal filed by the department is rejected.

9. At this stage, the learned advocate for the respondent submits that they have filed a cross objection which is merely in support of the order of the Commissioner (Appeals). The said cross objection has not been listed before us and is also not found in the records of the appeal. However, in the light of the decision taken, it will not make any difference and being so, the cross objection is deemed to have been disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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