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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/5981/2004 - EX[DB] Date 29/09/2009

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

To :
M/S PERFETTI VAN MELLE INDIA PVT.LTD.
47TH MILESTONE DELHI JAIPUR HIGHWAY
MANESAR GURGAON
M/S PERFETTI VAN MELLE INDIA PVT.LTD. Appellant

Vs

C.C.E.DELHI-III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 729/ 2009 EX[DB] dated 17-9-09

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.DELHI-III
   UDYOG MINAR VANIJYA NIKUNJ,UDYOG VIHAR PHASE-V,GURGAON
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3 C.D.R
~~J.C.D.R.~~
Bar association, CESTAT, New Delhi
irector Publications, Customs, Excise. I.P. Estate, New Delhi
M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 17.09.2009

**Excise Appeal No. 5981 of 2004**
[Arising out of order in original No. 24/2004 dated 31.8.2004 passed by the Commissioner of Central Excise, Delhi-III]

M/s Perfetti Van Melle India Pvt. Ltd., Appellant

Vs.

CCE, Delhi-III Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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? | Yes |

Appearance:

Appeared for the Appellant – Shri Ravi Raghavan, Advocate

Appeared for the Respondent –Shri R. K. Verma, DR

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

FINAL Oral Order No. 729/09-EX

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 24/2004 dated 31.8.2004

2. Heard both sides.

3. Learned Advocate for the appellant submits that the issue in this appeal relates to admissibility of cenvat credit of duty paid on the tattoos which were used by the assessee under the sales promotion scheme in respect of finished goods. The present dispute relates to the period from April 2003 to December 2003. The very same issue relating to the same appellant for the period from October 2001 to March 2003 came before the Tribunal and it has been held by the order dated 04.07.2008 reported in 2009 (235) ELT 850 (Tri. Del.), that the appellant was not eligible for the credit on merits but the duty was demandable only within the normal period of limitation and that no penalty was imposable. In the present case, it is submitted that the duty demand is within the normal period of limitation. The learned Advocate seeks vacation of the penalty imposed on them.

4. Learned DR agrees that the facts of the present case are identical to the facts of their case decided by the Tribunal on 04.07.2008 cited supra.

5. Following the reasons stated in the earlier order dated 04.07.2008 of the Tribunal, we hold that the demand of duty is sustainable but the penalty is not imposable.

6. Accordingly, the appeal is rejected in so far as demand of duty and interest is concerned. As far as the penalty is concerned, the same is set aside.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/