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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/240 /2006 - CU[DB] Date 17/02/2009

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

To :
M/S. MOSER BAER INDIA LTD.
A-164, SECTOR 80 NOIDA

M/S. MOSER BAER INDIA LTD. Appellant
Vs
COMMISSIONER OF CENTRAL EXCISE, NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/80 2009 CU[DB]** dated 04.02.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
COMMISSIONER OF CENTRAL EXCISE,
B-123, SECTOR 5, NOIDA
2. Adv. / Consult
MR.B.L.NARSIMHAN, ADV.
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110 029
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-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 240 of 2006-Cus.

(Arising out of Order-in-Appeal No. 156/CE/APPL/NOIDA/06 dated 19.1.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Noida)

M/s Moser Baer India Ltd. — Appellant

Vs.

CCE, Noida — Respondent

Appeared for Appellant : Shri B.L. Narasimhan, Advocate

Appeared for Respondent : Shri Vijay Kumar, DR

Date of Hearing: 4.2.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. C/80/09 dated............

Per D.N. Panda:

Ld. counsel Shri Narasimhan argues that the goods imported falls under Sr. No. 17 of Annexure-1 to Notification No. 52/2003-Cus. dated 31.3.2003 and such goods have received clearance of Board of Approval which appears at page-51 of the paper book. Description of the goods appears in a table in that Page. Approval was conveyed on examination of application dated 29.1.03 made by the appellant to the Development Commissioner. The appellant brought out the essential properties of the goods clearly at page 53 and 54 of the paper book and that received consideration of the Board. He submits that the Board of Approval considered the application and entitled the appellant to fall under Sr No. 17 of Annexure-1 to Notification No. 52/2003-Cus dated 31.3.2003. According to him such pertinent evidence was brought to the notice of the learned Adjudicating Authority while replying to the show-cause notice. He refers to para-3 to para-7 appearing at page 82 to 84 of the paper book. Accordingly he pleaded that this appellant having met tests by a Committee of Approval and did not defeat the objects of the notification, it should be entitled to the benefit of notification in question. Once benefit is granted breach of notification cannot be alleged against the appellant.

2. Ld. DR appearing for Revenue submits that Revenue is competent to examine the case of the appellant. The appellant had lost its own case earlier as reported in 2006 (204) ELT 590. The goods were not capital goods for which the appellant is not entitled to the benefits of notification. He relies on decision of apex Court in the case of **Sheshank Sea Foods Pvt. Ltd. Vs. Union of India** reported in 1996 (88) ELT 626 (SC). He particularly relies on para-10 of the Apex Court's judgment and submits that Custom authorities are fully empowered to investigate into the requirement of the notification. Thus supports the order of the authorities below with above submissions.

3.1 Heard both sides and perused the record.

3.2 We have gone through the relevant pages and citations made before us. Only question that comes to our mind is that when the department could not scientifically prove that the goods imported or indigenously procured were not conducive to the process of production or irrelevant, in such a circumstance whether the appellant can be denied of the benefit of the Notification No. 52/2003 dated 31.3.03 read with similar such Notification under Central Excise Act 1944. There is no quarrel between the parties that the decision of the Tribunal in the own case of the appellant reported as 2006 (204) ELT 590 shall prevail over the present case. We have noticed that decision made earlier as reported in 2006 (204) ELT 590 was in a situation when Sr. No. 17 was absent in the notification on the material date of the initiation of the proceeding of the reported case. The present case relates to the year 2003 and by that time Notification No. 52/03-Cus. dated 31.3.03 has seen light of the day. We have noticed from the earlier reported decision of Tribunal as above that Tribunal was unable to be convinced to hold in favour of the appellant even though the appellant had argued that the appellant has a favourable case in terms of Sr. No. 17 of Annexure-1 to the Notification No. 52/03 dated 31.3.03. Tribunal was of view that such serial number cannot be read into the governing facts at the material time in absence of a specific notification. The plea of the appellant was discarded by Tribunal for which ld. counsel clarifies that they are before the apex Court.

4. We noticed that when there is a specific entry in the notification and purport of the notification is very clear entrusting a duty to the committee called Board of Approval, the appellant should not be denied of benefit of the notification No. 52/03 dated 31.3.03 when approval was granted. We do not express any opinion as to the nature, quality and character of the goods but we go by the approval of the Board of Approval which was explained by Appellant to be a Technical Committee empowered to deal a matter. We have noticed that Sr. No. 17 of Annexure-1 of the notification mandates that the goods are entitled to the concession if those are required in relation to production of export goods. Its appears that the Board of Approval has applied their mind by conveying the approval on testing that the goods to be inevitably used for the purpose laid down under Sr. No. 17 of Annexure-1 of the concerned notification. Therefore, there is no need to examine further as to requirement the goods to the production when Revenue has not ruled out by any scientific test or by any expert opinion to the contrary. In the result, we allow the appeal

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM