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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. E/2442/2007 – SM[BR] Date 16/12/2009

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

To :
M/S MEGHDOOT GRAM UDYOG
SEVA SANTHAN, 303, CHANDRALOK COLONY,
ALIGANJ, LUCKNOW, U.P.

M/S MEGHDOOT GRAM UDYOG Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1528 / 2009 –SM[BR] dated 10.12.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.S.D.GAUR
   SB-108, SHASTRI NAGAR, GHAZIABAD.
3. S.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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:10.12.2009

Central Excise Appeal No2442 of 2007

Arising out of the order in appeal No.02-CE/07 dated 30.1.2007 passed by the ommissioner(Appeals), Customs, Excise & Service Tax, Lucknow.

For Approval and Signature:

Hon'ble Mr. 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

M/s Meghdoot Gram Udyog ... Appellant

Vs.

C.C.E., Lucknow ... Respondent

Appearance:

Shri S.D. Gaur, Consultant for the appellant
Shri V.K. Saxena, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram : Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 1528/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 02-CE/07 dated 30.1.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant manufactures Sat Reetha, Herbal Sat, Neem Sat and Meghdoot Herbal Powder and Bringraj Tel Trifla Brahmi Tel which were held not dutiable as they were classifiable under 3003 as ayurvedic medicines and preparations. As a result, the appellant sought for refund paid by them amounting to Rs.5,51,739/- relating to the period 1.7.03 to 30.4.04. The refund claim was found to be admissible on merits by the original authority but the same was not paid to the appellant on the ground of unjust enrichment and the entire amount was ordered to be credited to the Consumer Welfare Fund constituted under Section 12C of the Central Excise Act, 1944. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Consultant appearing for the appellant submits that it has been settled by the Hon'ble Supreme Court that the impugned goods are not chargeable to duty at all. Therefore, the levy itself was not legal. The levy collected without authority of law cannot be retained on any grounds. Further, the prices of the products before levy of duty prior to 1.7.03 and prices of the products when they started paying duty remained the same; therefore, they have absorbed the duty burden and did not pass on the burden of duty on the dealers; they have also issued letters dated 4.9.03 and 10.10.03 to the dealers in this regard. In other words, they have reduced the prices by giving additional discount and the prices remained the same which proved that they have not passed on the burden of duty to the customers.

5. Learned Jt.CDR drawing attention to the finding of the original authority in para 11 submits that central excise duty was taken into account by them while fixing the prices and therefore, the burden of duty stands passed on the buyers. At this stage, the learned Consultant submits that the chart was prepared only for the purpose of of claiming the refund and dose not imply that the said duty was not passed on to the buyers.

6. I have carefully considered the submissions from both sides and perused the records. There is no dispute that, on merits, the appellants are eligible for the refund claimed by them. In fact, the refund has been sanctioned and credited to

the Consumer Welfare Fund. The letters addressed to the dealers (according to the learned Consultant they are representative in nature) show that as if consequent to payment of duty the appellants were absorbing the burden of duty and the prices remained the same as it was prior to the period when the duty was not being paid. Provocation for issue of such letters is not furnished . There is no reference in the said letters of any resistance of the buyers to buy the goods with the element of duty. After all, the central excise duty is an indirect tax and the role of the manufacturer and the dealer down the chain of sale is to pass on the burden to the ultimate consumer. No evidence whatsoever has been produced that there was any such stiff resistance from the consumers and the dealers which resulted in increasing the discount to upset the duty element and that the same resulted in absorption of the duty burden by the appellant themselves. Mere submission that in view of stiff competition in the market they were forced to absorb the duty burden is not sufficient proof that the appellant did not pass on the duty burden to the consumers. It is settled that the prices remaining the same prior to or after introduction of duty does not imply that the burden of duty is not passed on to the consumers as held by the Hon'ble Supreme Court in the case of C.C.E. vs. Allied Photographics Ltd. as reported in 2004 (166) ELT 3 (SC) which judgment has been relied upon by the Commissioner (Appeals). The decision in the case of C.C.E., Calcutta vs. Panihati Rubber Ltd. reported in 2006 (76) RLT 541 (SC) relied upon by the appellant is not applicable to the facts of the present case.

7. In view of the above, decision of the authorities below in holding that the appellants have not discharged the burden to prove that the duty burden has not been passed on the dealers cannot be found fault with. I do not find any merits in the appeal filed by the party.

8. The appeal is, therefore, rejected.

(M. Veeraiyan)
Member (Technical)