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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/2106/2005 - EX[DB] Date 12/04/2010

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant
Vs
M/S USHA IMPEX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 166/ 2010 EX[DB]** dated 07-4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S USHA IMPEX
   B-XXX-4402, OPPOSITE VARDHMAN SPINNING MILLS, CHANDIGARH ROAD, LUDHIANA
2. Adv. / Consult SH. RAVI RAGHAVAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 2106/05-Ex

(Arising out of order in appeal No.138/CE/Appl/Ldh/05 dated 15.3.2005 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

CCE Ludhiana — Appellant

Vs

M/s Usha Impex — Respondent

Appeared for the Appellant : Shri Sansar Chand, DR
Appeared for the Respondent : Shri Ravi Raghavan, Advocate

Coram: **Hon'ble Mr. D.N. Panda, Judicial Member**
Hon'ble Rakesh Kumar, Technical Member

Date of Hearing: 10.3.2010

FINAL Order No. 166/2010 EX /2010

Per D.N. Panda:

Revenue has come in appeal being aggrieved by the order passed by the learned Commissioner (Appeals) on 15.3.2005 holding that Brass Pellets manufactured by the appellants shall be classifiable under sub heading 7419.99 while order of Adjudication held that to be classifiable under heading 7403.21. The Adjudicating Authority has decided the issue against the Respondent-assessee. While deciding the issue, the finding of that Adjudicating Authority was that there is no specific entry in Chapter 74 in respect the item manufactured and cleared by the Respondent. So he examined the meaning of Brass Pellets with the help of dictionary and took help of the statement of M/s Hero

Cycles Ltd. He was of the view that brass billets were used for Dip Brazing. Therefore, the impugned goods shall not fall under Chapter 7403.21 but shall submit to 7403.21. According to him the moment the goods are classifiable under 7403.21, the assessee respondent shall not get SSI exemption benefit.

2. Learned DR submits that the learned Adjudicating Authority has rightly decided the issue looking to the entry 7403.21 which deals with goods "Copper-zinc base alloys (brass)". His further submission is that when the goods manufactured by the appellants have the characteristics of 7403.21 that shall not be called as other goods.

3. Learned Counsel Shri Ravi Raghavan appearing for the Respondent submits that the goods manufactured were brass pellets (granules) and used for dip brazing by buyers. To establish the goods to be granules, that should be of similar nature as described in sub heading 72.05.90 belonging to iron and steel family under Chapter 72. The term granules is not defined under Chapter 74. But Characteristics of both types of metal is same. Therefore, the goods of respondent shall be held as such under Sub Heading 7419.99 as other goods for no definition under chapter 74.

4. Further submission of Respondent is that the goods manufactured and cleared by Respondent were of class as claimed by Revenue is without any technical test report. Revenue cannot simply classify the goods under Sub heading 7403.21 without discharging their burden of proof. Therefore, for proper understanding of the classification of the goods and its

characteristics, Revenue should have conducted technical test before classification. There is nothing hidden to the Department about the nature of the goods manufactured by Appellant for which the appellant is entitled to the benefit of time bar under the law. His prayer is to dismiss the appeal of Revenue for well reasoned order passed by the learned Commissioner (Appeals).

4. Heard both sides and perused the record.

5. We are able to comprehend the difference of both sides. There is no doubt that legislature has brought out an Entry under Chapter 72 to take care of granules manufactured from iron and other like goods of the class mentioned in Chapter 72. But there is no such definition or specific category available under chapter 74. Chapter 74 deals with copper and articles thereof. The expression Copper Zinc base alloys is defined by Sub Heading note and the expression copper alloys is defined by Chapter note under Chapter 74. Revenue's submission is that Sub heading 7403.21 specifically cover Copper Zinc base alloys (Brass) in its fold and brass pellets are of such nature as that is dealt by Chapter 74. The goods as manufactured by the respondent assessee has not been subjected to any technical test. Resorting to the dictionary meaning is not safe when technical details and test outcome shall be decisive.

6. To resolve the issue, it would be proper to conduct a technical test of the goods in question to find out the composition of the goods so that the classification shall become possible unambiguously. We make it clear that we have not influenced the authority below by our order aforesaid. He shall independently

decide the matter in controversy taking the outcome of test and confronting such outcome for rebuttal as well as considering guiding principles of HSN classification. While deciding the issue, it is left open to the assessee to plead on time bar if any. That authority shall also decide such issue.

7. In the result, the matter is remanded to the learned adjudicating authority to do the needful as directed above, setting aside both the orders.

(order dictated in the open Court.)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*