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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

Date 12/04/2010

Appeal No. E/302 /2006 - EX[DB]

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

To :
POLYTRON & FRAGRANCES INDUSTRIES (P) LTD.
B-70, SECTOR-57, NOIDA

POLYTRON & FRAGRANCES INDUSTRIES (P) LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 180/2010 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
   C.C.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.S.D.GAUR
   SB-108, SHASTRI NAGAR, GHAZIABAD.

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
NEW DELHI

COURT NO. II

Excise Appeal No. 302 of 2006-Ex.

(Arising out of Order-in-Appeal No. 132/CE/APPL/NOIDA/05 dated 23.12.2005 passed by the Commissioner (Appeals), Central Excise, Noida)

M/s Polytron & Fragrances Industries (P) Ltd. — Appellant

Vs.

CCE, Noida — Respondent

Date of Hearing: 7.4.2010

Appearance :

Appeared for Appellant - Shri S.D. Gaur, Consultant
Appeared for Respondent - Shri Vijai Kumar, DR

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. S.K. GAULE, TECHNICAL MEMBER

FINAL Order No. 180/2010 EX dated............

Per D.N. Panda:

The short dispute in this case is whether cost of printing of the cylinder shall form part of assessable value along with cost of cylinder. The assessee did not include the cost of cylinders with the printing cost of lamination done. Therefore, Revenue raised duty demand of Rs.3,11,247/- followed by interest and penalty.

2. Ld. Consultant Shri Gaur appearing on behalf of Appellant submits that when there was Board circular No. 170/4/96-Cx. dated 23.1.96 to amortise the cost of cylinder, there is no necessity to add cylinder cost to the cost of printing laminates for determining the assessable value.

3. On the other hand, the contention of Revenue is that Apex Court having decided in the case of **Paper Products Ltd. Vs. CCE** reported in 2007 (214) ELT 161 (SC) holding that value of all the goods shall be what that contributes to make the same capable of being marketable, cost of cylinder should be added to cost of lamination to determine assessable value of goods cleared. Consequently the order passed by the Authorities below is correct.

4. Heard both sides and perused the record.

5. There is no dispute by either side that the cylinder was the medium for laminating and marketing the goods. It is also a settled position on record that the cylinders were purchased by the appellant and those were designed according to specification prescribed by the customer. Record does not speak that the cylinders ~~that~~ were supplied by the customers. So what that comes out from record is that the designed laminated cylinders being cleared in terms of certain documents called debit notes. One such sample could be seen from record describing the particulars of goods reading as "manufacturing charges of printing cylinder of following items Baba Elaichi small" (at page-35) of the appeal folder. The appellant has no where pleaded

before the Authority below that they have only provided service for which the amortised cost of cylinder shall be spread over the goods cleared and duty payable on this spread over value. In absence of any pleading to this effect, there is no scope to agree with the Appellant in respect of intention conveyed by the Board in its circular relied by ld. Consultant as aforesaid. We do not differ with the Authorities below on the leviability of duty in the present case but there is no material to hold that the Appellant was guilty to face penalty. Nowhere in the order essential ingredients of penalty under Section 11AC of Central Excise Act, 1944 comes out. Therefore we waive penalty levied on the Appellant ~~only~~ but confirm the appellate order passed by the ld. Appellate Authority below on other aspects.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(S.K. GAULE)
TECHNICAL MEMBER

RM