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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/1767/2005 - EX[DB]

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

Appellant

C.C.E. JAIPUR I

Vs

Respondent

M/S ELECTROLUX KEL VINATOR LTD.

I am directed to transmit herewith a certified copy of **Final order No. 184/ 2010 EX[DB]** dated 09-4-10 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 ELECTROLUX KEL VINATOR LTD.
   SP-I,VIGYAN NAGAR SHAHJHANPUR DISTT.ALWAR RAJASTHAN
2. Adv. / Consult
   NONE

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 30/03/10.

Excise Appeal No. 1767 of 2005

[Arising out of the Order-in-Appeal No. 44 (MPM) CE/JPR-I/2004 dated 03/03/2005 passed by The Commissioner (Appeals-I), Central Excise, Jaipur.]

CCE, Jaipur – I — Appellant

Versus

M/s Electrolux Kelvinator Ltd. — Respondent

Appearance

Shri B.L. Singh, Authorized Representative (SDR) – for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Order No. 184/2010 EX Dated : ____________

ORDER

Per. D.N. Panda :-

The respondent is absent today. Notice has gone in this case on 5th March 2010 fixing the hearing on 30th March 2010. There is also no adjournment application.

2. Revenue being aggrieved by the order passed on 23/2/05 by the learned Commissioner (Appeals) holding that the notice issued for recovery of interest neither being an appealable nor speaking order, appeal of the assessee was to be allowed. Learned DR on behalf of revenue submits that when interest is consequence of law to follow for the amount in default unpaid, that is to be realised through the process of recovery. Therefore, the notice dated 03/12/04 which was subject matter of first appeal should not have been discarded allowing flimsy plea of the respondent.

3. Heard Revenue and perused the record.

4. We have gone through the notice of demand issued to the defaulter vide No. 4890 dated 03/12/2004 issued by the learned Deputy Commissioner as existing at page 8 of the appeal folder. The notice itself is an executable decree through the process of recovery for realisation of the defaulted amount. Learned authority has also given such notice invoking provisions of Section 142 (1) (C) (ii) of the Customs Act, 1962. We are able to understand that power became excisable by the learned Deputy Commissioner consequent upon authorisation issued to him for recovery of the demand unchallenged.

5. Once demand crystallized, process of recovery through the modes prescribed by Section 142 of the Customs Act, 1962 arose. We do not find any infirmity with the notice issued under the applicable provisions of Section 142 (1) (C) (ii) of Customs Act, 1962, when the respondent has not challenged the principal demand unpaid. Accordingly the consequence that follows from the principal demand defaulted is to resort to process of recovery. Thus learned Commissioner has failed to appreciate that notice of attachment issued by the learned Deputy Commissioner was nothing beyond Jurisdiction. We do not find any irregularity or infirmity in the approach of the learned Deputy Commissioner for issuance of attachment notice dated 3/12/2004 as aforesaid. Demand stated in the table of the notice is an enforceable demand which arose in consequence of principal demand remained unpaid. Therefore, we set aside the first appellate order and uphold the action of the learned Deputy Commissioner, who was correct in law to issue the demand notice. We do appreciate this for the reason that Section 142 of the Customs Act, 1962 in its beginning phraseology states that "when any sum payable by any person under this Act including the amount required to be paid to the credit of the Central Government ...." and clearly throws light that the recovery procedure is implicit in the law by Section 142 of the Customs Act itself. When confirmation of the demand was not challenged, recovery thereof with interest becomes unchallengeable bringing that to the first appellate forum.

6. In the result, we allow the appeal of revenue.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK