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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/684-685 /2006 - EX[DB] Date 07/01/2010

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

To :
NUTAN ENTERPRISES.
PLOT NO.33,INDL ESTATE,YAMUNA NAGAR,
HARYANA
NUTAN ENTERPRISES. Appellant

Vs

C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 05-06/ 2010 EX[DB]** dated 25-11-09 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. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.
2. Adv. / Consult
MR.NAVEEN MULLICK
B-388, MERA BAGH, NEW DELHI-63.

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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.684-685/2006-Excise Branch

[Arising out of Order-in-Appeal No.441-442/GRM/PCK/2005 dated 30.11.2005 passed by the Commissioner of Central Excise (Appeals), Delhi-III]

Date of Hearing/ Decision: 25.11.2009

1-2 M/s. Nutan Enterprises & Ors. ...Appellants
(Rep. by Shri Navin Mullick, Advocate)

Vs.

CCE, Panchkula ....Respondents
(Rep. by Shri Vijai Kumar, SDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Technical Member**
Hon'ble Mr. D.N. Panda, Judicial Member

Final Order No. 05-06/2010-EX Dated:25.11.2009

Per D.N. Panda:

The question before the Appellate Authority below in the present appeals was whether the appellant, which has a manufacturing unit and executed supply orders placed before it, was eligible to the SSI exemption benefit in terms of Notification No.8/2003/CE dated 1.3.2003. Ld. Commissioner (Appeals) in para-6 of the order came to the conclusion that the appellant created a bogus unit in the guise of unit adjacent to it called Unit No.1 and claimed notificational benefit. He has noticed that the charges made vide show cause notice dated 11.08.2004 were not rebutted by the appellants.

Per Rakesh Kumar:

The Appellant manufacture Electrical Transformer chargeable to Central Excise Duty under heading 85.04 of the Central Excise Tariff. They supply transformers to various State Electricity Boards. The freight is charged by the Appellants from their buyers on averaged/equalized basis and their invoices mention only the average freight. The point of dispute in these two appeals is as to whether during the period from 1.7.2000 to 1.8.03, the equalized freight was excludible from the assessable value of the goods. The Assistant Commissioner, Central Excise, Division-I, Bhopal vide orders-in-original No.39/AC-I/ADJ/2003 dt.15.9.03 and No.14/AC-I/ADJ/2004 dt.8.6.04 disallowed the deduction of equalized freight for periods from 1.6.02 to 30.6.02 and 1.10.02 to 1.8.03 and confirmed the duty demands of Rs.48,960/- and Rs.49,760/- respectively alongwith interest and imposed penalty of Rs.10,000/- each under Section 25(1) of Central Excise Rules,2002. On appeal to Commissioner(Appeals), the Commissioner(Appeals), vide order-in-appeal No.726-727/CE/BPL/04 dt.28.10.04 upheld the Asstt. Commissioner's orders. It is against this order of the Commissioner(Appeals) that these two appeals have been filed.

2. None appeared for the Appellant while Shri B.L.Soni, the learned DR appeared for the Department. Shri Soni, defending the impugned order-in-appeal pleaded that during

4. We have heard both the sides at length on two occasions. We are unable to satisfy from the materials on record as to the existence of the main unit and Unit No.1 except the existence claimed in the reply to the show cause notice showing the Registration No.ABHPV5742NXM001. Therefore, it has become legal necessity for the Authorities to come out with clear finding as to existence thereof and Unit no.1 having registration as above, whether has any infrastructure facility for manufacture of goods. Nothing is reflected from record as to whether there was any involvement of the Unit No.1 with the main unit. In such situation enquiry as well as examination is required to be made thoroughly. The separate existence of the main unit and unit no.1 should be brought out clearly either by physical examination or from any other possible way of enquiry so as to arrive at the conclusion that the Unit No.1 had infrastructure to carry out any manufacture and whether manufacture was carried out actually. So also the infrastructural facilities if any exists, whether that shall make manufacture capable and feasible. Once clear finding on all these aspects are made, manufacturing activity whether carried out or not can be decided. We make clear that we are unable to understand whether fabrication order placed by L &T requires any machinery and infrastructure. This technical aspect is required to be examined by the learned Adjudicating Authority.

5. Having noticed aforesaid features in the case, we are unable to conceive as to whether claim under the Notification 8/2003-CE shall be allowed at this stage. Therefore, it is ordain of justice to grant an opportunity to the appellant to present its facts and evidence before learned adjudicating authority to satisfy him on pleadings made by the appellant in its reply to show cause notice dated 26.08.2004. Since we are remanding the matter for

thorough examination of the materials to satisfy on aforesaid aspects and admissibility of notificational benefit, it is left to the ld. Adjudicating Authority to consider applicability of the judgements cited by the ld. SDR as above in the course of fresh hearing of the matter.

6. With aforesaid observations, we remand the matter to the ld. Adjudicating Authority to decide the matter afresh after granting proper opportunity of hearing to both sides. While remanding the matter, since we have not expressed any opinion on merits of the case, the matter is to be decided in accordance with law.

7. In the light of our observations as above, both the matters are remanded to the learned Adjudicating Authority to the extent as indicated above.

Order dictated & pronounced in open court on 25.11.2009.

(M. Veeraiyan)
Member (Technical)

(D.N. Panda)
Member (Judicial)

Ckp.