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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/607 /2008 - EX[DB] Date 31/03/2010

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

To :
C.C.E. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.
C.C.E. MEERUT I Appellant

Vs

M/S UTKARSH ENTERPRISES, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 118/ 2010 EX[DB]** 23-2-10 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 UTKARSH ENTERPRISES,

PARTAPUR,
MEERUT

2. Adv. / Consult

SH. S. K. GAUR, ADV., C/O RESPONDENT

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 607 of 2008

(Arising out of Order-in-Original No. 63-66/Commr/Mrt-I/2007 dated 26.12.2007 passed by the Commissioner of Central Excise, Meerut-I).

DATE OF HEARING : 23.02.2010
DATE OF DECISION : 23.02.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

1.	Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	No
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?	Y

CCE, Meerut-I ..... **Appellant**
(Rep by Sh. Nitin Anand, DR)

VERSUS

M/s Utkarsh Enterprises ..... **Respondents**
(Rep. by Shri S.K. Gaur, Adv.)

CORAM : **HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT**
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL ~~ORAL~~ ORDER NO. 118/10-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

This appeal arises against the order dated 26.12.2007 passed by the Commissioner whereby the proceedings initiated against the respondents by issuing show cause notices dated 31st March, 2002, 31st July, 2002, 4th July, 2003 and 30th January, 2004 were dropped. Under the said show cause notices demand of Rs. 72,48,386/- was sought to be recovered from the respondents. The issue involved in the matter was, whether the products produced and cleared by the noticee were classifiable as 'Motor Spirit' under Chapter Heading 2710 of the Central Excise Tariff Act, 1985 and, therefore, duty was recoverable from the respondents on such goods cleared during the period from March, 2001 to August, 2003.

2. The respondents herein are engaged in the manufacture of Special Solvents/Chemicals, filed declaration on 06th March, 2000 under Rule 173B of the Central Excise Rules, 1944 seeking classification of their products under Chapter Heading 2710.90 and claiming SSI exemption under Notification No. 9/99 dated 28.02.1999.

3. The learned Commissioner had observed that, the products in question, on being subjected to chemical examination by C.R.C.L., New Delhi, the report thereof discloses that the samples were in the form of clear colourless liquid and wholly composed of hydrocarbon (petroleum) oil having their flash points below 25°C. As regards the suitability of any of the products for

the use thereof as fuel in the spark ignition engine itself or in admixture with any other substance, the same could not be examined as the laboratory wherein tests were conducted had no equipments required for such test and that, therefore, the Chemical Examiner's report was inconclusive as regards the second requirement of the product to be classified as 'Motor Spirit'.

4. The Chapter sub-heading 27.10 of the Central Excise Tariff Act, 1985, reads as under :

> **"27.10 Petroleum oils and oils obtained from bituminous minerals, other than crude; Preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basis constituents of the preparations**
>
> - ***Motor spirit, that is to say, any hydrocarbon oil (excluding crude mineral oil) which has its flash point below 25°C, and which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines:"***

5. As rightly pointed out by the learned advocate for the respondents, the issue was discussed in the matter of **Commissioner of Central Excise, Belapur vs Sun Coats & Chemicals (I) Ltd.,** reported in 2008 (231) ELT 531, and after taking note of various decisions of the Tribunal, including the one which was confirmed by the Apex Court, it was held that in view of the Chemical Examiner's report being inconclusive, the burden

casts upon the Revenue does not stand discharged and hence no duty liability can be fastened upon the assessee.

6. In fact, similar view was taken in the matter of **M/s Jagdamba Petroleum P. Ltd. vs Commissioner of Central Excise, Noida,** reported in 2004 (163) ELT 88, and the appeal carried against the same was dismissed by the Apex Court and the order in that regard is reported as **Commissioner vs Jagdamba Petroleum P. Ltd.** in 2007 (212) ELT 112. The Apex Court therein has clearly observed that, "In view of the fact that admittedly the report of the Chemical Examiner is inconclusive, the Revenue has not been able to discharge its onus of proof that the classification of the excisable article by the assessee was wrong." The facts in the case in hand are similar to those in **Jagdamba Petroleum P. Ltd.**'s case (supra) and **Sun Coats & Chemicals (I) Ltd.**'s case (supra) and, therefore, there is no justification for finding fault with the impugned order and hence the appeal fails and is hereby dismissed.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay