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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/221 /2006 - EX[DB]   Date 12/04/2010

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

To :
M/S FLEX LAMINATORS
A-1, SECTOR-60 (EXCISE)NOIDA
201301

M/S FLEX LAMINATORS   Appellant
Vs
C.C.E. NOIDA   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 179/ 2010 EX[DB]** dated 08-4-10 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.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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)
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Assistant Registrar
(Excise Appeal Branch)

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

E/Appeal No.221/2006-Ex

(Arising out of order in original No.27-31/Comm/Noida/2005 dated 25.10.2005 passed by the Commissioner of Central Excise, Noida)

M/s Flex Industries Ltd — Appellant

Vs

CCE, Noida — Respondent

Appeared for the Appellant : Shri B.L. Narasimhan, Advocate

Appeared for the Respondent : Shri Sumit Kumar, SDR

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. S.K. Gaule, Technical Member

Date of Hearing: 7.4.2010

FINAL Order No. 179/2010 EX /2010

Per D.N. Panda:

The point raised by the learned Counsel Shri Narasimhan is that the Tribunal shall be handicapped to reach to a conclusion when a finding on limitation is not recorded by the learned Commissioner who was required to do so in accordance with the direction of the Apex Court by Order dated 4.2.2005 passed in Civil Appeal No. D/25683/2005. He concedes that he has every right to agitate the matter before the Tribunal but he is fair to state that in absence of a finding by learned Adjudicating Authority, it would be difficult for the final Court of Facts to record a proper finding to service interest of justice. According to him, the particular question of limitation goes to the root of the matter and shall reach its logical conclusion on appraisal and evaluation of facts and evidence on record as well by application of law. Since a case has been made under proviso to Section 11-A of Central Excise Act, 1944, the essential ingredients of that proviso are determining factors for decision on the point of limitation. Therefore, he prays that without wasting time of the Tribunal, the adjudicating authority should decide the issue so that the Appellant shall have an additional forum to carry its grievance, if any. He submits that the appellant will cooperate with the learned Adjudicating Authority and shall file all necessary documents with evidence alongwith factual and legal pleadings so that the matter shall be decided.

2. To the above proposition of the appellant, serious objection is raised by Shri Sumit Kumar, learned DR submitting that the entire fact recorded by the learned Commissioner in para 3.3 of the denovo adjudication is in order. He rightly followed the order of the Tribunal in the past and left the matter to be untouched in view of no dispute on that issue. Therefore, there is no point for grant of further opportunity of hearing to the appellant.

3. Heard both sides and perused the record.

4. We have understood the intent and spirit of the order of the Apex Court passed on 4.2.2005 in Civil Appeal No. D/25683/2005 in the case of present appellant. We have great regard to say that the Apex Court intended that the appellant should not be remediless. Therefore, two alternative remedies were given to the appellant by the Apex Court. The first one is that the appellant had to approach the learned Commissioner for resolution of the disputes and the second one is if he is unable to re-adjudicate the

issue, the appellant has again opportunity to carry the matter to the Tribunal. In view of such proposition, we do appreciate the submission of the appellant that learned Commissioner should first decide the issue on limitation issue so that the Tribunal being a Final Court of fact shall not be handicapped to come to an appropriate conclusion.

5. In view of the aforesaid circumstances, without making the appellant remediless, we allow an opportunity to it to appear before the learned Adjudicating Authority to decide the limited issue on the point of limitation, taking entire factual matrix and pleadings of the Appellant into consideration. The appellant if chooses to file necessary documents in evidence and pleadings if any, they shall file the same by end of April, 2010 before learned Adjudicating Authority so that the learned Commissioner shall be able to go through the documents and fix the date of hearing. Both sides agree that they shall cooperate with each other before the learned Adjudicating Authority and the matter should come to a conclusion by 31.7.2010. The Authority shall pass a reasoned and speaking order so that there will be resolution of the dispute.

6. In the result, the matter is remanded with the aforesaid direction on the limited issue of limitation.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*

(S.K. Gaule)
Technical Member