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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/634 /2006 - EX[DB] Date 09/08/2010

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

To :
HINDUSTAN LEVER LTD.
PB NO.1 TUDLA,FIROZABAD, UTTER PRADESH
HINDUSTAN LEVER LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 541/ **2010 EX[DB]** dated 06-8-10 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.PRADEEP KUMAR MITTAL
   171, CHITRA VIHAR, DELHI-110092
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT.

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. I

Excise Appeal No. 634 of 2006

[Arising out of the Order-in-Appeal No. 646/CE/APPL/KNP/2004 dated 31/12/2004 passed by The Commissioner (Appeals), Central Excise, Kanpur.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Hindustan Lever Ltd. Appellant

Versus

CCE, Kanpur Respondent

<u>Appearance</u>

Shri P.K. Mittal, Advocate – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 01/07/2010.
DATE OF DECISION : 06/08/2010.

FINAL Order No. 541/10-EX Dated : ____________

Per. Rakesh Kumar :-

Heard both the sides. In this appeal, the appellant challenge the Commissioner (Appeals)'s order disallowing the deduction of Trade discounts and insurance charges for determining the assessable value of the goods. The learned Counsel for the appellant pleads that the question of deduction of trade discounts and insurance charges had never been raised in the show cause notice, but still the Deputy Commissioner, while adjudicating the show cause notice vide his order dated 23/2/2001 specifically dealt with these two issues and allowed the deductions of insurance charges and trade discounts while the show cause notice issued to the appellant had never sought to disallow the deduction of trade discounts and insurance charges. The department filed appeal before the Commissioner (Appeals) against the Deputy Commissioner's order permitting the deduction of trade discounts and insurance charges and though it was pleaded before the Commissioner (Appeals) that these two issues had never been raised in the show cause notice, the Commissioner (Appeals) dealt with these issues and reversed the Deputy Commissioner's order holding that the deduction of trade discounts and insurance charges is not permissible for determining the assessable value.

2. Shri B.L. Soni, the learned Departmental Representative, agrees that the question of permitting deduction of trade discounts and insurance charges had not been raised in the show

cause notice and show cause notice did not seek deductions of these two items. It is, thus, clear that the Adjudicating Authority and thereafter the first Appellate Authority had traveled beyond the show cause notice and dealt with the issues, which had never raised in the show cause notice. It is settled law that show cause notice is the foundation and the Adjudicating Authority cannot go beyond the show cause notice and deal with an issue which had not been raised in the show cause notice. In view of this, the impugned order is not sustainable. The same is set aside and the appeal is allowed.

(Operative part of the order pronounced in the open court.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK