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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/6281/2004 - EX[DB]

Date 06/09/2010

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

To :
M/S EID PARRY (INDIA) LTD.

MR. DINESH KUMAR.B, DY.MANAGER-TAXN.
REGISTERED & HEAD OFFICE DARE HOUSE, 4TH
FLOOR, NSC BOSE ROAD, CHENNAI-600001
M/S EID PARRY (INDIA) LTD.

Appellant
Vs
Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order No. 634/2010 EX[DB]** dated 24-8-10 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. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/ decision: 24.08.2010

For approval and signature:

Hon'ble Shri 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.	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?	See
4	Whether Order is to be circulated to the Departmental authorities?	Y

Excise Appeal No. 6281 of 2004

[Arising out of Order No. I(Gen)30-134/2003/CX/T dated 28.09.2004 passed by the Commissioner of Central Excise, Indore].

M/s EID Parry (India) Ltd., Appellants

Vs.

CCE, Indore Respondent

Appearance: Mr. Ramesh Nair, Advocate for the appellants.
Rep. by Sh. Nitin Anand, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral Order No. 634/10 — EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and learned DR for the respondent.

2. By the impugned order, the Commissioner, Indore has rejected the application filed by the appellants for remission of duty. The said application was filed on the ground that the goods had been rendered non-marketable for various reasons. The Commissioner by the impugned order has held that the appellants failed to produce sufficient material in support of their claim that the goods was unfit for marketing and that they did not establish that they had ever tried to sell the goods in question either by way of auction or tender process. In that view of the matter, it has been held that the appellants failed to satisfy the Excise Officers about unfitness of the goods for marketing.

3. Learned Advocate for the appellants drawing our attention to Rule 21 submitted that the said provision of law requires that if the manufacturers claim the goods to be unfit for consumption or for marketing at any time before removal of the goods, he may apply for remission and thereupon would be entitled for appropriate order by the Excise Officer. On the other hand, learned DR submitted that it is not a mere claim but the claim has to be substantiated with proper evidence to the satisfaction of the Commissioner to enable the manufacturer to secure the order for remission of duty.

4. Rule 21 of the said rules provides that where it is shown to the satisfaction of the Commissioner that the goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such

conditions as may be imposed by him by order in writing. The first proviso provides that in case where such duty does not exceed one thousand rupees, the provisions of the said rule shall have effect as if for the expression Commissioner, the expression Superintendent of Central Excise has been substituted. Second proviso provides that in case where the duty exceeds one thousand rupees but does not exceed two thousand five hundred rupees, it would be for the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise and third proviso provides that in case where duty exceeds two thousand five hundred rupees but does not exceed five thousand five hundred rupees it would be for the Joint Commissioner or the Additional Commissioner of Central Excise in place of Commissioner to be satisfied for necessary order under the said rule.

5. Undoubtedly, the rule provides that it is for the manufacturer to claim that the goods are unfit for consumption or for marketing. Nevertheless, the order granting remission has to be passed by the competent authority specified under the said rule on being satisfied about such claim. For the purpose of satisfaction of such claim, obviously the manufacturer has to produce necessary material in support of such claim.

6. In the case in hand, the appellants had filed an application for remission on the ground that the goods in question had been rendered non-marketable for the following reasons:-

i) Quality of the stocks is very poor;

ii) Patterns and color not in demand;

iii) Stock gloss and other characteristic deteriorated due to age;

iv) Incomparable with the present quality – both our's & competitors;

v) Breakage of wares in the storage area, goods being fragile in nature;

vi) Huge storage area has been occupied by this non-saleable goods; and

vii) Most importantly, sale of sub-standard goods will spoil existing market.

7. Undisputedly, apart from some letters either of the Officer of the appellants or some of the dealers no other material was placed on record. On the other hand, the Commissioner appears to have referred to some random survey made by the Officers of the department on the point of method of marketability of similar type of goods. However, there does not appear any analysis of whatever material in the form of letters placed on record by the appellants in support of their claim. It is one thing to say that the appellants have not produced any proof and another thing to express opinion in relation to materials already produced on record. Certainly, the Commissioner could have ascertained on analyses of those letters whether the same revealed in any manner information regarding non-marketability of the goods in question. Apparently, the impugned order does not disclose any such analysis.

8. In case of an application claiming the goods to be unfit for marketing, undoubtedly, it would be also necessary for the claimant to produce evidence regarding the same.

9. The provision of law comprised under Rule 21 which speaks about the satisfaction of the Commissioner relates to the claim made by the manufacturer. Such a claim may not necessarily relate only to the conditions in which the goods are found. While deciding about genuineness of the claim, it would be necessary for the adjudicating authority to take into consideration all the grounds based on which such claim is made. Merely because the goods can be sold either by way of auction or tender that cannot be a ground to refuse the claim by the manufacturer. It has also to consider

whether disposal of goods by way of auction or tender process would be in any manner prejudicial to the goodwill gained by the claimant in respect of goods manufactured by them as also whether it would affect their existing market for the goods manufactured by them. All these aspects are to be taken into consideration while deciding genuineness of the claim. Ultimately, it is for the manufacturer to decide the method which he has to choose for sale of the product manufactured by him. The Revenue authorities cannot have ultimate say in that regard.

10. Considering the above aspects, we do not find the Commissioner having applied its mind to the matter in issue in the manner it was required to be and, therefore, the impugned order cannot be sustained and is liable to be set aside. Matter is, therefore, remanded to the Commissioner to decide the application afresh bearing in mind all the important points stated above with liberty to the appellants to produce further evidence if so desire in support of their claim. Appeal is accordingly disposed of in the above terms.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/