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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

Date 15/11/2010

Appeal No. E/209 /2010-210 /2010 - EX[DB]

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

To :
M/S AVADH POLYTUBES PVT. LTD., G-11, JAINPUR
INDUSTRIAL AREA, KANPUR DEHAT.

Appellant

M/S AVADH POLYTUBES PVT. LTD.

Vs
Respondent

C.C.E. KANPUR

I am directed to transmit herewith a certified copy of **Final order No.** 786-87 2010 **EX[DB]** dated 08.11.2010 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.BIPIN GARG, ADV.
   B-I/1289, VASANT KUNJ,
   NEW DELHI-110070

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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
17. SH. A.K. JALAN, DIRECTOR OF
M/S AVADH POLYTUBES PVT. LTD.
G-11, JAINPUR INDUSTRIAL AREA, KANPUR DEHAT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI-110 066

CENTRAL EXCISE APPEAL NO. 209-210 OF 2010-EX

[Arising out of Order-in-Appeal No. 07-08-CE/APPL/KNP/2010 dated 12.01.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

M/s. Avadh Polytubes (P) Ltd., Shri A.K. Jalan, Director — Appellants

Versus

CCE, Kanpur — Respondent

Appearance:
Shri Bipin Garg, Advocate for the appellants;
Shri Amrish Jain, D.R. for the respondent

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Rakesh Kumar, Technical Member

Reserved on : 14th September, 2010

Pronounced on: 08th November, 2010

FINAL ORDER NO. 786-787/10-EX **dated** 8/11/2010

Per D.N. Panda:

The appellants came in appeal against Order-in-Appeal No. 07-08-CE/APPL/KNP/2010 dated 12-01-2010 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur upholding the order passed by the adjudicating authority.

2. According to the impugned order brief facts of the case noticed by the learned Commissioner (Appeals) was that Avadh Poly Tubes Pvt. Ltd. was engaged in the manufacture of Polymer Flexible Pipes which is excisable goods and part of such goods were

cleared paying excise duty to M/s. Bharti Airtel Ltd. considering that to be brand name goods in view of printing of the mark "Bharti Airtel" on such goods printed with inkjet printer. For the rest of the clearances the appellant company was availing exemption under Notification No. 8/2003-CE dated 1.3.2003.

3. According to Revenue, the mark "Bharti Airtel" printed on the goods was not brand name and the goods were not branded goods in the light of Board's Circular No. 71/71/94-CX dated 20.7.94 as Bharti Airtel is not the brand name but is the name of a company and the goods are not traded in the market. Therefore, para 3(a) of the exemption Notification No. 8/2003-CE dated 1.3.2003 was not applicable and the value of clearances made to Bharti Airtel Ltd. could not be excluded while determining the aggregate value of clearances of all excisable goods for home consumption for 2006-07 and in view of this, the aggregate value of clearances of all excisable goods during 2006-07 would exceed Rs. 4 crores and the Appellant would not be eligible for SSI exemption during 2007-08. In the same manner the Appellant would not be eligible for SSI exemption during 2008-09.

4. With the above view of the matter, Revenue proceeded to issue show casue notice dated 8.5.2008 for the year 2007-08 and a show cause notice dated 25.3.2009 for the year 2008-09 proposing to club the branded and unbranded goods denying notification benefit and proposing levy of duty. In adjudication, on the conception that no branded goods were manufactured by the appellant company, both branded and unbranded goods were clubbed and that exceeded Rs. 1.5 crores limit during the year 2007-08 and similarly for 2008-09. The duty involved for the year 2007-08 was Rs. 24,71,882/- and similarly for the year 2008-09 duty involved was Rs. 21,63,091/-. Apart from duty levied for both

years, penalty of equal amounts of duty was imposed and interest on demand for both the years demanded. While making adjudication there was penalty of Rs. 8 lakhs on the Director Shri A.K. Jalan under Rule 26 of the Central Excise Rules, 2002 who is also in appeal.

5. Learned First Appellate Authority found that the mark "Bharti Airtel" appeared on the pipes as per direction of the customer M/s. Bharti Airtel Ltd. was just to identify their cables put in the duct along with pipes of other companies underground. Accordingly, the Appellate Authority opined that the name of the customer cannot be considered as a trade name or brand name; the trade name and brand name should be specific to the goods and the goods should be recognized in the trade with the brand name; there is no specific trade of the product but it is only the name of the customer which was affixed to DWC Ducts; two conditions laid down in the definition of trade mark that there must be trade of the goods in the open market and the goods should be identified in the market is not fulfilled in the present case. Accordingly, the first Appellate Authority held that printing of the name of the purchaser i.e. Bharti Airtel Ltd. did not bring the goods to be branded goods for which demand was confirmed as that was made in the adjudication order. He upheld the adjudication order in toto.

6. Learned Counsel Shri Bipin Garg appearing on behalf of the appellants submitted that the goods manufactured by the appellants for the years 2007-08 and 2008-09 was specifically marking brand name for Bharti Airtel Ltd. The goods so marked

were cleared on payment of excise duty and the unmarked goods were enjoying SSI benefit in terms of Notification No. 8/2003-CE dated 1.3.2003. Department clubbed both, printed and unprinted goods baselessly and unjustly but under the assumption that the goods marked as "Bharti Airtel" shall not be branded goods and entire clearances for the year 2007-08 having exceeded Rs. 1.5 crores whole clearance shall be leviable to duty. So also for the year 2008-09.. Thus, the duty demand arose. There was also alternative claim by the learned Counsel that if there shall be liability, Cenvat credit should be allowed for the unprinted goods because of levy proposed by the department. It was also his further claim that the authority did not look to cum-duty aspect when they proposed to levy duty resorting to clubbing both printed and unprinted clearances. The authorities have found in the year 2005-06 that there were goods cleared with the mark as "Duraline" cleared to Duraline India (P) Ltd. No adjudication was done for that year. Learned Counsel placed para 9 to 11 appearing at page 4 & 5 of the adjudication order to demonstrate such view.

7. Shri Bipin Garg, learned Counsel further submitted that when the Department holds that any mark on the goods make the goods branded one and imposes duty there cannot be any reverse view when the same norms were followed by the appellants for the years 2007-08 and 2008-09 which are under appeal. He invited attention to page 19 of the order-in-original to submit that there was no denial of brand name used in the year 2006-07. Also, he invited attention to page 178 of the paper book to submit that Bharti Airtel

Ltd. specifically required by its letter dated 7.6.2006 to print the mark "Bharti Airtel" on all supplies of DWC Ducts along with ISI mark. Such a feature has been noticed by Adjudicating Authority at page 21 of order-in-original which reads as under:-

"["Bharti Airtel" 117/100 MM(ISI) manufactured at Avadh Polytubes, Kanpur]"

Learned Counsel further submitted that even the buyer required that the appellants should not mark the above printed name on any other goods cleared to parties other than Bharti Airtel Ltd.

8. The thrust of the arguments of the appellants was that the goods with printed name having suffered duty that cannot be treated as unbranded one and clubbed with other clearances for levy of duty following Apex Court decision in Kohinoor Elastics Pvt. Ltd. vs. CCE, Indore – 2005 (188) ELT 3 (SC). He also submitted that Circular No. 71/71/94-CX dated 27.10.94 relied upon by the Revenue was withdrawn in terms of letter No. 354/124/2008-TRU dated 1.9.2008. Withdrawal was made following the decision of the Apex Court in the case of Kohinoor Elastics (P) Ltd. vs. CCE, Indore – 2005 (188) ELT 3 (S.C.). The view expressed by the Board in terms of para 2 of TRU letter dated 1.9.2008 to withdraw the above circular reads as under:-

> "Disputes have arisen in the past about the applicability of this condition to goods that bear the brand name of another person but which are sold under that brand name by the buyer of the goods and not by the SSI unit affixing the brand name. Such goods are normally manufactured by the SSI unit as per the orders of the

customer for further use by the latter in the manufacture of the final product. Examples of such goods are elastic tapes used in the manufacture of undergarments, castings, packing materials such as printed cartons of paper, HDPE bags, Polypropylene caps, metal containers etc. On the basis of circular/clarifications issued by the government, from time to time, the brand name restriction was not being applied to such goods and the benefit of the exemption was being extended on the ground that there is no nexus between the person manufacturing the goods and the brand name. In the case of Kohinoor Elastics Pvt. Ltd. v. CCE, Indore - 2005 (188) ELT 3 (S.C.)], the Hon'ble Court has held that the wording of the notification does not allow the benefit of the exemption in this situation as the notification does not envisage a nexus between the manufacturer and the brand for it to attract the mischief of the brand name restriction. Accordingly, the mere affixation of brand name of another person is adequate to disqualify the goods for SSI exemption."

Shri Garg, therefore, submitted that adjudication based on erroneous circular has no legs to stand and to support his arguments. He relied upon the following decisions:-

(i) CCE, Trichi vs. Grasim Industries - 2005 (183) ELT 123 (SC);

(ii) Kohinoor Elastics Pvt. Ltd. vs. CCE, Indore - 2005 (188) ELT 3 (SC);

(iii) CCE, Trichi vs. Rukmani Packwell Traders - 2004 (165) ELT 481 (SC); and

(iv) CCE, Chandigarh-I vs. Mahaan Dairys - 2004 (166) ELT 23 (SC)

9. Shri Garg submitted that when brand name goods cleared by a SSI unit are not eligible to exemption the appellant has correctly

paid duty on branded goods without claiming SSI exemption. In respect of penalty levied on the company as well on the Director, learned Counsel submitted that there was no mis-declaration made. The knowledge of the department about brand name is vividly clear from the material available on record as early as from the year 2006-07 as has been mentioned in the adjudication order itself. Returns were filed were with the exemption claim for unbranded goods and duty was paid on branded goods. SSI status was well known to the Department. When clubbing was not warranted under the law the appellant is not at all liable to any penalty. Such defence is available to the Director also. The Director appellant did not make any deliberate breach of law nor any willful suppression of the material fact was made. Therefore, invoking of the extended period to levy duty and penalty was unwarranted.

10. On the other hand Revenue argued that "Bharti Airtel" was not brand name. The plea of the appellants that the goods were branded goods is untenable when such goods are not sold in the market with the name printed on them by inkjet machine. When the appellants manufactured the goods for captive consumption of Bharti Airtel Ltd. with some marks printed over such goods that shall not be a brand name since the pipes were layed in the ducts and identification mark thereon was to distinguish the pipes from other pipes. Bharti Airtel Ltd. was not at all regularly dealing with the goods manufactured by the appellants for its own use. The goods manufactured by the appellants for Bharti Airtel Ltd., are never sold in the market with brand name

claimed by the appellants. Consumer do not ask for pipe for consumption since the word "Bharti Airtel" is only an identification mark to distinguish pipe inside the ducts. Inkjet print was neither trade mark nor signifies a brand name. Therefore, the whole claim of the appellants is misconceived.

11. Learned D.R. with the aforesaid averments supported the order of the authorities below relying on the judgment of the Apex Court in the case of Astra Pharmaceuticals (P) Ltd. vs. CCE, Chandigarh - 1995 (75) ELT 214 (SC). He also relied upon the decision of the Hon'ble High Court of Madras in the case of BHEL Ancillary Association vs. CCE - 1990 (49) ELT 33 (Madras). Relying on this judgment, he submitted that the exemption given to SSI being a creation of the statute must be construed strictly. Marking an inscription on the components manufactured by a unit should not be construed to be trade name or brand name. Learned D.R. pleaded that the marking or inscription individually do not go to constitute name or mark to claim exemption. Learned D.R. further relied on the Tribunal's decision in the case of Srinivasan Cable (P) Ltd. vs. CCE, Hyderabad - 2000 (126) ELT 1057 (Tri.) and also relied upon the decision in the case of Electro HMS (P) Ltd. vs. CCE, Bangalore - 2000 (116) ELT 265 (Tri.) to argue that mere fixation of a word on the product does not amount to use of brand name.

12. Heard both sides and perused the record.

13. There is no dispute by either side about the period involved in adjudication i.e. 2007-08 and 2008-09 during which the word "Bharti Airtel" was used by the appellants in pipes manufactured for

Bharti Airtel Ltd. There is also no dispute that there was no allegation for use of brand name in the year 2006-07. It is also on record that the appellant is undisputedly an SSI unit. Manufacture of goods by the appellants for Bharti Airtel Ltd. and also Duraline India (P) Ltd. was known to the Department. The only dispute arose was as to whether the word "Bharti Airtel" appearing on pipes manufactured by the appellants for Bharti Airtel Ltd. was brand name. The circular that was relied by the Revenue to bring the appellants to the fold of law was withdrawn by TRU letter No. 354/124/2008-TRU dated 1.9.2008. The withdrawal was on the basis of decision of the Apex Court in the case of Kohinoor Elastic (P) Ltd. (supra) and the decision in that case had touched notification No. 1/93-CE dated 28.2.93. Hon'ble Supreme Court analyzing the notification in question dealt clause (4) of the said notification in para 4 and 5 of the judgment which reads as under:-

> "4. The relevant portion of the Notification reads as follows : -
>
> The exemption contained in this notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person :
>
> Provided that nothing contained in this paragraph shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and cleared from a factory for use as original equipment in the manufacture of the said machinery or equipment or appliances and the procedure set out in Chapter X of the said Rules is followed :

Explanation IX. - "Brand name" or "trade name" shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, [Code number, design number, drawing number, symbol, monogram, label,] signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person."

5. Clause 4 of the Notification is unambiguous and clear. It specifically states that the exemption contained in the Notification shall not apply to specific goods which bear a brand name or trade name (registered or not) of another person. It is settled law that to claim exemption under a Notification one must strictly comply with the terms of the Notification. It is not permissible to imply words into the Notification which the Legislature has purposely not used. The framers were aware that use of a brand/trade name is generally to show to a consumer a connection between the goods and a person. The framers were aware that goods may be manufactured on order for captive consumption by that customer and bear the brand/trade name of that customer. The framers were aware that such goods may not reach the market in the form in which they were supplied to the customer. The framers were aware that the customer may merely use such goods as an input for the goods manufactured by him. Yet Clause 4 provides in catagoric terms that the exemption is lost if the goods bear the brand/trade name of another. Clause 4 does not state that the exception is lost only in respect of such goods as reach the market. It does not carve out an exception for goods manufactured for captive consumption. The framers meant what they provided. The exemption was to be available only to goods which did not bear a brand/trade name of another. The reason for this is

obvious. If use of brand/trade names were to permitted on goods manufactured as per orders of customers or which are to be captively consumed then manufacturers, who are otherwise not entitled to exemption, would get their goods or some inputs manufactured on job work basis or through some small party, freely use their brand/trade name on the goods and avail of the exemption. It is to foreclose such a thing that Clause 4 provides, in unambiguous terms, that the exemption is lost if the "goods" bear a brand/trade name of another. [Emphasis supplied]

14. Hon'ble Supreme Court in the Kohinoor Elastics case (supra)held that, Clause 4 of the Notification is clear and unambiguous. It says that the exemption is lost if the "goods" bear the brand/trade name of another. There are no other qualifying words. The term "goods" admittedly refers to "goods" which are otherwise excisable except for the exemption granted by the Notification. In that case admittedly "goods" were the elastic manufactured by the Appellants of that case. As stated above, Clause 4 does not provide that exemption is lost only for "goods (elastic)" which are sold in the market or on those "goods (elastic)" which reach customers without any change in form. Clause 4 does not provide that the exemption will not be lost if the "goods (elastic)" are only used as inputs in the manufacture of other goods.

15. It was further held by Apex Court in Kohinoor Elastics case (supra) thatmost importantly Clause 4 of the Notificaiton does not provide that exemption is not lost if the "goods (elastic)" are manufactured as per orders of a customer and for use only by that

customer. Explanation IX nowhere detracts from this position. It is correct that the words "that is to say" qualify the words "Brand name" or "Trade name". However the words "used in relation to such specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark" cannot be read de hors Clause 4. They have to be read in the context of Clause 4. The words "used" indicates use by the manufacturer. It was the manufacturer, in the case of Kohinoor Elastics the Appellant, who was applying/affixing the brand/trade name on the goods. Thus the words "for the purpose of indicating" refers to the purpose of the manufacturer (Appellant). The "course of trade" was of that manufacturer and not the general course of trade. Even if a manufacturer only manufactures as per orders of customer and delivers only to that customer, the course of trade, for him is such manufacture and sale. In such cases it can hardly be argued that he has no trade. In fairness it must be stated that it was not argued that there was no trade. Such a manufacturer may, as per the order of his customer, affix the brand/trade name of the customer on the "goods" manufactured by him. This will be for the purpose of indicating a connection between the "goods" manufactured by him and his customer. In such cases it makes no difference that the "goods" as manufactured did not reach the market. The "use" of the brand/trade name was "in the course of trade" of the manufacturer for the "purpose of indicating a connection between the goods and the customer who used the brand/trade name". Clearly in such a case the exemption is lost.

16. Following the ratio laid down in Kohinoor Elastics case (supra) the "course of trade" of the present Appellant is making pipes for specified customers. It is also an admitted position that the Appellants are affixing the brand/trade name "Bharti Airtel" of their customers on the pipes. They are being so affixed because the Appellants and/or the customer wants to indicate that the "goods (elastic)" have a connection with that customer. This is clear from the fact that the pipes on which brand/trade name of "Bharti Airtel" was affixed will not and cannot be used by any person other than the person using that brand/trade name. Once a brand/trade name is used in the course of trade of the manufacturer, who is indicating a connection between the "goods" manufactured by him and the person using the brand/trade name, the SSI exemption is lost. In any case it cannot be forgotten that the customer wants his brand/trade name affixed on the product not for his own knowledge or interest. The pipes supplied by the Appellants is becoming part and parcel of the activity undertaken by Bharti Airtel Ltd.. The customer is getting the brand/trade name affixed because he wants others to know that there is a connection between the product and him. Of course the intention of the customer is not relevant for the purposes of Notification aforesaid. When the wording of the Notification are clear and unambiguous, they must be given effect to. By a strained reasoning benefit cannot be given when it is clearly not available. In view of the ratio laid down by Hon'ble

Supreme Court the Notification has to be interpreted in the context in which the words are used in the Notification. Context in which such words are used under the Trade Marks Act or under principle governing trade marks have no relevance for purposes of interpreting Notification granting SSI exemption. Thus the words "Bharti Airtel" used by appellant in the pipes of Bharti Airtel Ltd. was a brand name.

17. It is succinctly clear by the ratio laid down in the case of Kohinoor Elastic (supra) that the expression "in the course of trade" used in the notification refers to the course of manufacture for the purpose of indicating a connection between the goods and the customer who used the brand name/trade name. The course of trade of the present appellant is making pipes for specified customer i.e. Bharti Airtel Ltd. While doing so, the appellant affixed the brand/trade name of its customer i.e. Bharti Airtel Ltd. on the pipes. Those were being so affixed because the appellant and/or customer wanted to indicate that the goods (pipe) have a connection with the customer i.e. Bharti Airtel Ltd. This is clear from the fact of the case that pipes will not and cannot be used by any person other than the present using that brand/trade name. The name so affixed brings goods and the user thereof to the proximity. When a customer wants brand/trade name affixed on the product is for his knowledge or to serve his interest. The whole intention behind affixing the word "Bharti Airtel" was to know the connection between the product and Bharti Airtel Lltd. The Small Scale Industry like the present appellant affixing the brand name on

the goods opted to forgo SSI exemption benefit in respect of goods so affixed with the brand name "Bharti Airtel" and pay duty. Consequently, affixing of brand name "Bharti Airtel" is established in this case following the ratio laid down by Apex Court in Kohinoor Elastic case (supra).

18. Learned Counsel for the appellant relied on the decision in the case of CCE, Chandigarh-I vs. Mahaan Dairies (supra). This judgment being on the aspect of selling of the goods using own brand name on the goods manufactured by Mahaan Dairies that judgment is of no help to the appellant. The judgment in Rukmani Packwell Traders (supra) relied on by the appellant is in the context of use of brand name of another person, whether registered or not. The case of the present appellant is in different context. Therefore, the citation made by the appellants shall be of no help. The appellant further placed reliance on the judgment in the case of Grasim Industries Ltd. (supra). This judgment comes to the rescue of the appellant insofar as the ratio laid down in that judgment holding that even a part name or part mark is sufficient, if that indicates the connection between the product and the company and it is not necessary that the name or writing must always be a brand name or trade name in the sense that it is normally understood. (Ref: para 15 of the judgment)

19. Revenue relied on the decision of the Apex Court in the case of Astra Pharmaceuticals (supra). The judgment in that case was that duty is leviable if the distinct mark so as to establish relation

between the product and the manufacturer is ultimate outcome and it was also held that identification of medicine should not be equated with the produce mark. There is no such context in the present case. Revenue further relied on the decision of the Tribunal in the case of Sri Nissan Cables (supra). That case was on the point of identification mark on the goods so to bring a difference between the goods supplied to different customers. Rather the judgment of Tribunal in Sri Nissan Cable case relied upon by the Revenue supports the case of the appellant. Revenue further relied on Tribunal's decision in the case of Electro HMS (supra). That decision was made following the Apex Court decision in the case of Astra Pharmaceuticals (supra). For the reasoning given in the judgment of the Apex Court in Astra Pharmaceuticals, Revenue's reliance is misplaced. Revenue further relied on the judgment of the Hon'ble Madras High Court in the case of BHEL Ancillary Association (supra). The decision of the Hon'ble Madras High Court was rendered much before the judgment of the Apex Court in Kohinoor Elastics case (supra). Therefore, Apex Court's decision in Kohinoor Elastics case holds the field. Revenue's reliance on the judgment of Hon'ble High Court of Madras is not profitable to them.

20. For the facts settled above and tested in the light of the law laid down by Apex Court in the case of Kohinoor Elastics (supra) we hold that the words "Bharti Airtel" was a brand name and clubbing of clearances, both branded and unbranded was unwarranted for which orders of the authorities below are set aside. Also we hold that there was no mis-declaration made by the appellant and

invoking of extended period was unwarranted when material facts were within the knowledge of the Department. For the reason of no liability there shall be no penalty on either of the appellants. For the decision we made as above, we did not deal the alternate pleas of appellant. Consequently, both the appeals are allowed in the above terms of setting aside the impugned order.

Pronounced in the open court on 08/11/2010.

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK