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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/73 /2005 - EX[DB] Date 27/01/2011

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S KEJRIWALA BEE CARE (I)LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 132/ 2011 **EX[DB]** dated 24-1-11

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 KEJRIWALA BEE CARE (I)LTD.
VILLAGE JALAPUR, RAJPUR

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-
III NEW DELHI-24

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. 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. 73 of 2005

[Arising out of the Order-in-Appeal No. 616/CE/CHD/2004 dated 27/08/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

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? :

CCE, Chandigarh Appellant

Versus

M/s Kejriwal Bee Care (I) Ltd. Respondent

Appearance

Shri V. Choudhary, Authorized Representative (DR) – for the appellant.

S/Shri Jatin and K.K. Anand, Advocates – for the Respondent.

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

DATE OF HEARING : 08/04/2010.
DATE OF DECISION : 24/1/2011

FINAL Order No. 132/2011-EX Dated : ______

Per. Rakesh Kumar :-

The respondent are a 100% EOU engaged in Apiculture that is production of honey for export. As per Annexure I to Notification No. 22/03-CE dated 31/3/03, they are eligible to acquire free of central excise duty, the capital goods and their spares and accessories and other items as listed in the Annexure I to the Notification. The respondent requested the Deputy Commissioner, Central Excise, Patiala to allow them to bring free of Central Excise Duty, the capital goods namely pre-fabricated structures, PUFF doors, PUFF panels and RPF panels falling under sub-heading 9406.00 of the tariff under CT-3 Certificate, as according to them these goods are required for cold room in the warehouse and to carry out the manufacturing activity in the cold room. The Deputy Commissioner disallowed the respondent's request on the ground that the items requested by them are not covered by the definition of "capital goods", as given in Rule 2 of Cenvat Credit Rules, 2002. Against the Deputy Commissioner's decision communicated to the respondent vide letter dated 25/8/04, the respondent filed an appeal before the CCE (Appeals), Chandigarh and the CCE (Appeals) vide the impugned order-in-appeal No. 616/CE/CHD/04 dated 27/8/04 allowed the appeal holding that the production and processing of honey for export requires certain environment conditions and precautions for the purpose of which the processing machinery has to be installed in a cold room and the goods required by the respondent are required for the cold room. It is against this order of the Commissioner (Appeals) that the Department has come in appeal.

2. Heard both the sides.

2.1 Shri Virender Choudhary, the learned Departmental Representative, assailed the impugned order reiterating the grounds of appeal in the Department's appeal emphasized that the goods, in question, i.e. pre-fabricated structures, PUFF Panels and RPF panels are not capital goods and hence the same are not covered by Sl. No. 1 of Annexure I to the exemption notification, that since notification does not ~~has~~ disclose any definition of the terms "capital goods", the definition of this term as given in the Cenvat Credit Rules, 2002 has to be adopted, that the items, in question, are not covered by the definition of capital goods, as given in Rule 2 of Cenvat Credit Rules, 2002 and that the Tribunal's judgment in the case of **CCE, Pune – I vs. Weikfield Agro Products** reported in **2002 (143) E.L.T. 596 (Tri. – Mumbai)** relied upon by the Commissioner (Appeals) is not relevant, as pre-fabricated structures/PUFF Panels etc. were not the items sought to be acquired free of duty by 100% EOU in that case and in view of this, the impugned order is not correct.

2.2 Shri K.K. Anand, Advocate, the learned Counsel for the respondent, reiterating the findings in the Commissioner (Appeals) order pleaded that cold room is a must for a 100% EOU engaged in production of agricultural items for export, that in this case the respondent unit is engaged in production of honey and by product wax for export, that for processing and storage of honey, cold room is a must and the items, in question, are used in the cold room and that in view of this, there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records.

3.1 The respondent are an agricultural EOU engaged in production of honey and Beewax a by-product for export. There is no dispute about the fact that the items, in question, are required for the cold room, which is a must for the storage and processing of honey. The only ground on which the department seeks to deny the benefit of the notification to the respondent is that since there is no definition of the term "capital goods" in the exemption notification, it is the definition of this term, as given in Rule 2 of Cenvat Credit Rules, 2002 which has to be adopted and that the goods, in question, are not covered by the definition of term "capital goods" as given in the Cenvat Credit Rules. This contention of the Department is totally wrong as the definition of the term "inputs" and "capital goods" as given in the Cenvat Credit Rules 2002 or Cenvat Credit Rules 2004 is relevant only for the purpose of Cenvat credit and there is no justification to apply the same to an exemption notification meant for 100% EOUs. Since there is no definition of term "capital goods" in the exemption notification No. 22/03-CE, the term has to be interpreted in the sense in which it is understood in common parlance and on this basis, the pre-fabricated structures, PUFF panels and RPF panels required by the respondent for cold room would have to be treated as items of capital goods. We find that same view has been taken by the Tribunal in the case of CCE, Pune – I vs. Weikfield Agro Products (supra), wherein Tribunal held that FRP panels sandwiched with PUFF insulation, cold insulation materials, fibre woven reinforced plastic sheets etc. used for insulation purpose in the mushroom production room to prevent loss of chilled water temperature, have to be treated as capital goods or their components and would be eligible for the benefit of exemption under Notification No. 1/95-CE.

4. In view of the above discussion, we hold that there is no infirmity in the impugned order. The revenue's appeal is dismissed.

(Pronounced in the open court on 24/1/2011)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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