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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/2683/2005,2692/2005 - EX[DB] Date **03/06/2011**

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

To :
C.E.NOIDA

OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL
EXCISE AND SERVICE TAX, C-56/42, SECTOR-62,
NOIDA - 201307

C.C.E.NOIDA Appellant

Vs

M/S CONTROL & SWITCHGEARS CONTACTORS Respondent

I am directed to transmit herewith a certified copy of **Final order No.450-451/ 2011 EX[DB]** dated 06-4-11

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 CONTROL & SWITCHGEARS CONTACTORS
C-58 PHASE-II,NOIDA U.P

2. Adv. / Consult SH. PRASHANT SHUKLA, ADV.,
C/O RESPONDENT.

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

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

DATE OF HEARING : 06/04/2011.
DATE OF DECISION : 06/04/2011.

Excise Appeals No. 2683 and 2692 of 2005

[Arising out of the Order-in-Appeal No. 67-68/CE/Appl/Noida/2005 dated 09/05/2005 passed by The Commissioner (Appeals), Customs & Central Excise, Noida.]

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 would 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? : Seen
4. Whether order is to be circulated to the Department Authorities? : Yes

CCE, Noida — Appellants

Versus

M/s Control & Switchgears Contractors Ltd. — Respondent

Appearance

Shri I. Beg, Authorized Representative (DR) – for the Appellants.

Shri Prashant Shukla, Advocate – for the Respondent.

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

FINAL Order No. 450-451/2011-EX Dated : ____________

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

Heard DR for the appellants and learned advocate for the respondent. These appeals arise from common order dated 11th May 2005 passed by Commissioner (Appeals), Noida. By the impugned order the Commissioner (Appeals) allowed the appeal filed by the respondent to the extent the department had denied the benefit of Rule 34 of Standards of Weight and Measures (Packaged Commodities) Rules, 1977.

2. The Commissioner (Appeals) while rejecting the contention of the department about non-availability of the benefit under the said rule to the respondent has relied upon the earlier decision in relation to the same party that is the respondent.

3. Rule 34 of the said rules provide that nothing contained in those rules shall apply to any package containing a commodity, if the marketing on the package unambiguously indicate that it has been specially packed for the exclusive use of any industry as a raw material or for the purpose of servicing any industry, mine or cosy, while specifically excluding from such benefit to the items specified thereunder which admittedly does not include the product in question.

4. The Commissioner (Appeals) while granting the said benefit to the respondent has arrived at a clear finding that the goods in question are sold directly to the industrial consumer as well as sold through a network of the dealers and products are packed in unit size with detail description of the product and with specific

mention on the packing that the packed material is meant for exclusive use of the industries as raw material. We have not been pointed out any material which would disclose disposal of such product by the respondent to retail consumer or any consumer other than the industrial one. The disposal through the network of dealers is also admittedly to the industrial consumers and no material has been collected which could disclose sale of the goods to the customers other than industrial units. In order to deny the benefit of the said provision of law comprised under Rule 34 of the said rules, it was necessary for the department to produce some evidence on record to show that the goods in question were either sold or meant for retail sale or for sale to the customers other than industrial units. In the absence of such evidence on record, no fault can be found with the findings arrived at by the Commissioner (Appeals) regarding entitlement of benefit to the respondent in relation to the provision of law comprised under Rule 34 of the said rules.

5. As no other ground of challenge is canvassed in the matter, we do not find any case for interference in the impugned order. Hence, the appeals are fail and are hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK