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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/2141/2005 - EX[DB]   Date 13/06/2011

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

To :
M/S PERMALI WALLANCE PVT.LTD.
HOSHANGABAD ROAD M.P.NAGAR BHOPAL

M/S PERMALI WALLANCE PVT.LTD.   Appellant
Vs
C.C.E BHOPAL   Respondent

I am directed to transmit herewith a certified copy of **Final order No.473/ 2011 EX[DB]** dated 08-6-11 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 (Harvana)
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.

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. 2141 of 2005

[Arising out of the Order-in-Appeal No. 747-CE/BPL/2004 dated 29/10/2004 passed by The Commissioner (Appeals) – II, Customs & Central Excise, Bhopal.]

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?	:
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 Permali Wallace Private Limited — Appellant

Versus

CCE, Bhopal — Respondent

Appearance

Shri B.L. Narsimhan, Advocate – for the appellant.

Shri B.K. Singh, Authorized Representative (Jt. CDR) - for the Respondent.

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

DATE OF HEARING : 16/12/2010.
DATE OF DECISION : 8/6/11

Final Order No. 473/2011-EX Dated : 08/06/11

Per. Rakesh Kumar :-

The appellant are manufacturers of electrical insulators, insulation fittings, wood partition, densified wood and articles thereof etc. chargeable to Central Excise Duty. The period of dispute in this case is June 1998. The appellant, in terms of their contract with ONGC, were required to supply to the ONGC wooden panels, partition panels, doors and channels. For manufacture of these items, the wood battens are first treated and covered with veneer sheets using resin at room temperature and, thereafter, the same are assembled in form of doors, partitions and panels. Thereafter the same were covered with resin and glass cloth and this assembly was subjected to pressing and heating. The dispute is about the classification of these items – while according to the appellant, these items are classifiable under sub-heading 4410.90 of the tariff "as other articles of wood not elsewhere specified", according to the department these items are classifiable under sub-heading 4408.90 of the Tariff as "other plywood, veneered panel, and similar laminated wood". If the classification of the product is as claimed by the appellant, the tariff rate itself would be nil, while if the same is classified under heading 4408.90 duty @ 18% adv. would be chargeable. The Assistant Commissioner vide order-in-original dated 29/3/2000 held that the goods, in question, as classifiable under sub-heading 4408.90 and the Assistant Commissioner's order was upheld by the Commissioner (Appeals) vide order-in-appeal dated 29/10/04. Against this order of the Commissioner (Appeals), the present appeal has been filed challenging the Commissioner (Appeals)'s decision upholding the classification of the goods in question under sub-heading 4408.90 of the tariff.

2. Heard both the sides.

2.1 Shri B.L. Narsimhan, Advocate, the learned Counsel for the appellant, reiterating the findings of the Commissioner (Appeals) in the impugned order, pleaded that the appellant are manufacturing wood partitions with GRP skin, that Chapter Note 5 of Chapter 44 relied upon by the department in support of its plea for classification of the product, in question, under sub-heading 4410.90 is not applicable to these goods, that the goods, in question, are nothing but articles of wood not elsewhere specified, that these goods cannot be called "similar laminated wood", as the same do not answer to its description, as given in Chapter Note 5 of Chapter 44, that the judgment of Hon'ble Supreme Court in the case of **CCE, Shillong vs. Wood Craft Products Ltd.** reported in **1995 (77) E.L.T. 23 (S.C.)** relied upon by the department is not applicable to the facts of this case, that Tribunal in the case of **Sitapur Plywood Mfg. vs. CCE, Kanpur** reported in **1999 (107) E.L.T. 637 (Tribunal)** has held that non-decorative laminated window cleared in form of rectangular wooden frame is an article of wood and, hence, classifiable under sub-heading 4410.90 'as other articles of wood, and that the goods, in question, being ready to use partitions, are articles of wood and same are correctly classifiable under heading 4410.90 of the tariff.

2.2 Shri B.K. Singh, learned Jt. CDR, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the goods, in question, are nothing but laminated wood, that this fact is clear from the manufacturing process of the goods, that judgment of Hon'ble Supreme Court in the case of **CCE, Shillong vs. Wood Craft Products Ltd.** (supra) has been correctly relied upon by the Commissioner (Appeals) and is squarely applicable to the facts of this case 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.

4. The goods in question are wood partition with GRP skin and are manufactured by laminating wood battens with veneer sheet and glass cloth with the help of resin at room temperature. According to the appellant these goods are "articles of wood not elsewhere specified" covered under sub-heading 4410.90, while according to the department, these goods are classifiable under 4408.90 "other plywood veneered panels and similar laminated wood". We find that heading 44.08 covers "plywood veneered panels and similar laminated wood". Since in this case, there is no dispute that the wooden partitions and panels are covered with veneer, which subsequently are further laminated with fibre glass cloth, in our view the goods in question would have to be

treated as veneered panels and hence the same would be correctly classifiable under sub-heading 4408.90.

5. Heading 44.10 of the Central Excise Tariff is identical to HSN heading 44.12 and as per explanatory notes to HSN heading 44.12, this heading among other items, covers veneered panels which are consisting of thin veneered of wood affixed to a base sheet of inferior wood under pressure. Since in this case, the process of the manufacture of the goods involves fixing of veneer on the wooden doors, panels and partition, in our view the goods, in question, would be are correctly classifiable under sub-heading 4408.90. In view of this, we do not find any infirmity in the impugned order. The appeal is dismissed.

(Pronounced in the open court on 8/6/11)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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