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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 **08/08/2011**

Appeal No. E/2922/2004-2923/2004 - EX[DB]

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

To :
M/S. NORTHERN DOORS PVT.LTD. ← 15. MOHD.KHALID ANWAR DIRECOTR
79/29,BANS MANDI, KANPUR

NORTHERN DOORS PVT.LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. **707-708/** 2011 **EX[DB]** dated 05-8-11 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult SH. AMIT AWASTHI, ADV.,
MR. 113/145, SWAROOP NAGAR, KANPUR-208002

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.
16. MS. SUKRITI DAS, ADV,
B-1/1289-A, VASANT KUNJ
N.DELHI-70

Assistant Registrar
(Excise Appeal Branch)

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

Date of hearing: 08.06.2011
Date of decision: 5 · 8 .2011

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?	Yes

Excise Appeal No. 2922 of 2004

M/s Northern Doors (P) Ltd. — Appellants

Vs.

CCE, Kanpur — Respondent

AND

Excise Appeal No. 2923 of 2004

[Arising out of common Order-in-appeal No. 549-551-CE/ALLD/2004 dated 17.3.2004 passed by the Commissioner of Central Excise, Allahabad].

Mohd. Khalid Anwal, Director — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Rep. by Sh. Amit Awasthi & Ms. Sukriti Das, Advocates for the appellants.
Rep. by Sh. Sunil Kumar, 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. 707-708/2011-EX

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

Heard at length the learned Advocate for the appellants and DR for the respondent. We have also perused the written submissions.

2. The present appeals arise from the common order dated 17.03.2004 passed by the Commissioner (Appeals), Allahabad. By the impugned order, the lower appellate authority confirmed the demand of excise duty amounting to Rs. 1175026/- alongwith interest thereon and penalty of Rs.25,000/- against the appellant company and Rs. 5,000/- against the Director of the company. The said appeals were filed by the assessee as well as by the department against the order dated 11.02.2002 by the Additional Commissioner, Central Excise, Kanpur wherein the duty demand of Rs.11,15,026/- alongwith the interest had been confirmed and penalty of Rs. 25,000/- against the company and Rs. 5,000/- against the Director had been imposed.

3. The issue involved in the matter is whether there was clandestine removal of flush door in the name of panel door during the period 1995-96, 1996-97 and 1997-98 in order to avail the benefit of exemption from payment of duty in relation to panel doors.

4. The appellants are manufacturer of flush door, panel door, wire mesh, shutter etc. classifiable under chapter sub-heading No.4410.00 of the schedule to the Central Excise Tariff Act, 1985. Pursuant to intelligence information, search of the appellant's premises was conducted on 11.06.1998 and consequent to the investigation carried out, show cause notice came to be issued on 04.09.2000 on the ground that the investigation had revealed that the appellants had suppressed the facts of their manufacturing activity relating to both excisable goods (flush door) and non-excisable good (panel door) by not maintaining any stock register prior to 1998 by deliberately not disclosing the complete and correct description of the goods supplied by the appellants even to the Government department even though the purchase orders by the Government clearly indicated their requirement for supply of ISI marked flush door shutter and by not obtaining the Central Excise registration even after the crossing of the exemption limit prescribes for SSI units prior to 1998 and also not furnishing any declaration under Rule 174 of Central Excise Rules, 1944.

5. On facts, both the authorities below have arrived at concurrent findings on detailed analysis of material on record. In fact, the findings clearly revealed that inspite of specific charge of clandestine removal of flush door under the guise of clearance of panel door, the appellants failed to produce any material in support of their claim that the goods cleared were in fact panel door as claimed by them and not the flush door as contended by the department. As against this, the Government orders pursuant to which the supply was made by the appellants clearly disclose that the demand was for flush door and this fact was never disputed by the appellants. On the

contrary, in the statements recorded of the Director of the appellants company, it was contended that records might have been destroyed or damaged and thus he did not even co-operate with the department in the course of investigation nor could establish that the supply to the Government was contrary to the orders placed by the Government. Besides, the rates for which the doors were cleared were identical with the rates of the flush doors, details of which were provided by the Government department and the same was never disputed.

6. The description in the invoices issued to private suppliers also discloses that the appellants did not describe the goods with correct description. However, the rates disclosed clearly tallied with those of the flush doors.

7. The above facts clearly establish that the appellants not only cleared the goods clandestinely and also suppressed the same from the department and even in the course of investigation, failed to produce necessary documentary evidence in support of their claim.

8. Though various contentions are sought to be raised on behalf of the appellants once the basic facts establishing clandestine removal of the goods having been clearly established by the department, and the appellants having failed to disprove the said case against the department merely by referring to numerous reported cases, it would not justify or warrant interference by the Tribunal in the impugned order. Each case will have to be considered on the facts of the particular case. Undoubtedly, the charge of clandestine removal is a serious charge and has to be established by cogent evidence. In the case

in hand, the materials referred above are more than sufficient to establish the case of the clandestine removal of the goods by the appellants and failure of the appellants to pay the duty on such goods. In our considered opinion, therefore, there is no case made out for interference in the impugned order and hence the appeals fail and are hereby dismissed.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:8.6.2011

Central Excise Appeal No.2922 of 2004

M/s Northern Doors (P) Ltd. .. Appellant

Vs.

C.C.E., Kanpur .. Respondent

Central Excise Appeal No.2923 of 2004

Mohd. Khalid Anwar, Director .. Appellant

Vs.

C.C.E., Kanpur .. Respondent

Appearance:

Ms. Sukriti Das and Shri Awasthi, Advocates for the appellants
Shri Sunil Kumar, Authorised Departmental Representative (DR) for the respondent

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

ORDER

Oral submission on behalf of the Advocate for the appellants stands concluded. On request by the Advocate for the appellants, appellants are permitted to submit synopsis in writing latest by Monday i.e. 13.6.2011. Respondent if so desire can submit synopsis latest by Wednesday i.e. 15.6.2011. For order on 17.6.2011.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/