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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/341 /2010,415 /2010-417 /2010,2631-2632/2010 - EX[DB]
E/S/358,423-425,2393-2394/2010-EX

Date **15/02/2012**

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

To :
SHRI PRANAYADUTTA SHUKLA PROPRIETOR, OF
M/S ISHGURU HIGH TECH NATURAL CARE PRODUCTS,
2-A, FIRST FLOOR, RAJENDRA NAGAR, INDORE (M.P.)

SHRI PRANAYADUTTA SHUKLA PROPRIETOR, OF Appellant
Vs
C.C.E. INDORE **STAY ORDER NO. 241-246/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/153-158/ 2012 EX[DB]** dated 31-1-12 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. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.PRAMOD KUMAR RAI & ATHENA LAW ASSOCIATES,
808, L&T FLATS, SEC-18-B, DWARKA, NEW DELHI-110075.

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-3
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

Assistant Registrar
(Excise Appeal Branch)

P.T.O.

14. M/S G.T.M. TELESHOPPING PVT. LTD.
306, INDUSTRY HOUSE, A.B.ROAD, INDORE (M.P.) .

15. M/S GLOBAL TELE MALL
306, INDUSTRY HOUSE, A.B.ROAD, INDORE (M.P.) .

16. SHRI ANUJ AGARWAL, DIRECTOR OF
M/S G.T.M. TELESHOPPING PVT. LTD., 306,
INDUSTRY HOUSE, A.B.ROAD, INDORE (M.P.) .

17. SH. RAMESH NAIR, ADV,
LAKSHMI VIHAR, AG-192,
SCHEME NO. 54, VIJAY NAGAR,
INDORE (MP)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 24.1.2012

Coram:
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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 Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Excise Stay No. 358 of 2010 & Excise Appeal No. 341 of 2010

Shri Pranayadhutta Shukla, Proprietor
M/s Ishguru High tech Natural Care Products — Appellant

Vs.

CCE, Indore — Respondent

Excise Stay No. 423 of 2010 and Excise Appeal No. 415 of 2010

G.T.M. Teleshopping Pvt. Ltd. — Appellant

Vs.

CCE, Indore — Respondent

Excise Stay No. 424 of 2010 and Excise Appeal No. 416 of 2010

Shri Anuj Agarwal Appellant

Vs.

CCE, Indore Respondent

Excise Stay No. 425 of 2010 and Excise Appeal No. 417 of 2010

[All appeals arising out of common Order-in-Original No. 36/Commr/CEX/IND/2009 dated 25.11.2009 passed by the Commissioner, Customs & Central Excise, Indore]

Global Tele Mall Appellant

Vs.

CCE, Indore Respondent

Excise Stay No. 2393 of 2010 and Excise Appeal No. 2631 of 2010

(Arising out of Order-in-Appeal No. IND-I/142/2009 dated 30.4.2010/17.5.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore)

GTM Teleshopping Pvt. Ltd. Appellant

Vs.

CCE, Indore Respondent

Excise Stay No.2394 of 2010 and Excise Appeal No.2632 of 2010

(Arising out of Order-in-Appeal No. IND-I/145/2010 dated 30.4.2010/17.5.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore)

Anuj Agarwal Appellant

Vs.

CCE, Indore Respondent

Appearance:

Appeared for Appellant : Shri Ramesh Nair, Advocate with Shri Manish Saharan, Advocate

Appeared for Respondent : Shri R.K. Verma, JDR with Shri

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

STAY Order No. 241-246/2012-EX (BR)
FINAL Order No. A/153-158/2012-EX (BR) dated............

Per S.S. Kang :

Heard both sides.

2. Common issue is involved in both the appeals therefore are being taken up together.

3. The applicant M/s GTM Tele Shopping Pvt. Ltd. filed an application for waiver of pre-deposit of duty of Rs.36,43,498/- and M/s Global Tele Mall filed an application for waiver of pre-deposit of duty of Rs.1,00,28,856/-. The other applicants filed applications for waiver of pre-deposit of penalties only. The case of the Revenue is that M/s GTM Tele Shopping Pvt. Ltd. and M/s Global Tele Mall are receiving hair oil and shampoo powder manufactured ~~from~~ by M/s Gurukripa Consumer Care Products (hereinafter referred to as Gurukripa). M/s Gurukripa is clearing the goods i.e. hair oil and shampoo powder without payment of duty and applicants are re-packing and re-

labelling the same for retail marketing. The case of the Revenue is that the goods in question are classifiable under Heading 3305 of the Central Excise Tariff as hair oil. Therefore, as per chapter note re-packing and re-labelling amounts to manufacture hence the applicants are liable to pay duty.

4. The applicants challenged the demand on the ground that the product in question is not a hair oil but it is an ayurvedic medicine classifiable under Chapter Heading No. 3004 of the Central Excise Tariff. The contention of the applicant is that in reply to Show Cause Notice dated 21.7.2009, the applicants specifically challenged the classification as proposed in the Show Cause Notice and made averments, in respect of their claim that goods in question are classifiable under Chapter Heading 3004 of Central Excise Tariff as ayurvedic medicine. The averments made in the reply to Show Cause Notice by the applicants are not taken into consideration while passing the impugned order. The impugned order is passed on the basis that there is no challenge to the classification as proposed in the Show Cause Notice. The applicants also argued on merits to show that the goods are in question are ayurvedic medicines and not hair oil as held by the adjudicating authority. The applicants relied upon the decision

of Hon'ble Supreme Court in the case of **CCE, Vs. Sharma Chemical Works** reported in 2003 (154) ELT 328 (SC) specifically the finding of Hon'ble Supreme Court in para-12 of the judgement. The applicant also relied upon the decision of the Tribunal in the case of **CCE Vs. Saini Hair Products** reported in 2004 (164) ELT 304 to submit that the product in question is ayurvdic medicine classifiable under Chapter 30 of the Tariff.

5. The applicants also submitted that during investigation they deposited an amount of Rs. 23 lakhs in cash. The goods in question are sold through tele marketing and the applicants are entitled for the credit of service tax paid on the taxable service received for marketing of goods. In the present case the applicants are paying huge amount of service tax in respect of the taxable service received by the applicants in respect of the sale of goods.

6. The contention of the Revenue is that M/s Gurukripa manufacturer of the product in question has not claimed the classification of goods under Chapter 30 as ayurvedic medicine. The manufacturer admitted that the goods in question are classifiable under Chapter 33 of the Tariff. M/s Gurukripa only challenged the denial of benefit of small scale exemption notification. In the appeal

filed by M/s Gurukripa the Tribunal directed to deposit the entire amount of demand for hearing of the appeal and M/s Gurukripa has not complied with the condition of the stay order the appeals filed by M/s Gurukripa is dismissed.

6. As the applicants are receiving the goods manufactured by M/s Gurukripa which are classifiable under Chapter 33 of the Tariff as per the manufacturer, therefore the applicants cannot challenge the classification of the goods as the applicants are only re-packing and re-labelling the goods. It is also submitted that applicants had not obtained a license under the Drugs and Cosmetics Act which is essential for the manufacture of aryurvedic medicament. It is also submitted by Revenue that the applicants failed to show that the goods are manufactured as per the formula prescribed under the authoritative books. Therefore, the goods in question cannot be classifiable under Chapter 30 of the Tariff. Subsequent to the present investigation applicants started marketing the same product as hair oil. The contention is that in these circumstances it cannot be said that the goods in question during the period in dispute are ayurvedic medicine classifiable under Chapter 30 of the Tariff as claimed by applicants.

7. We find that the Show Cause Notice was issued to the applicants demanding duty by classifying the product in question under Chapter 33 of the Tariff as hair oil. In reply to Show Cause Notice dated 21.7.2009, the applicants specifically challenged the classification as proposed in the Show Cause Notice and claimed the same under Chapter 30 of the Tariff as ayurvedic medicament and in reply the applicants also gave the details of use of the product and ingredients in support of their claim. The adjudicating authority in the impugned order in para-78 of the order held that "it is also a fact here that the classification of the product is not a matter of contention in the impugned Show Cause Notice and the Show Cause Notice has nowhere challenged the classification of the goods. The matter seems to have been unnecessarily raked up by the applicant M/s GTM." We find that the adjudicating authority had not given any finding in respect of the claim in reply to Show Cause Notice.

8. In view of the above facts as the claim of the applicant that the goods in question are ayurvedic medicine is not gone into by the adjudicating authority in the impugned order. While admission of any fact by any of the concerned parties may be relevant, admission of legal position, like classification of goods, especially during

investigation stage, will not be sufficient to establish such legal provision. The adjudicating authority has to examine the relevant facts and law and come to his own finding. Therefore, we find the matter needs reconsideration by the adjudicating authority afresh. The impugned order is set aside in respect of the present applicants, after, waiving the pre-deposit of duty, interest and penalty, and matter is remanded to the adjudicating authority to decide afresh after affording an opportunity of hearing to the appellants.

(Dictated & pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

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