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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 **27/02/2012**

Appeal No. E/1653/2005&1972 - EX[DB]
E/CO/133/2005-EX

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

To :
M/S M.P.STATE ELECTRONICS
DEVELOPMENT CORPORATION, ZONE-II,
M.P.NAGAR, BHOPAL

M/S M.P.STATE ELECTRONICS Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/227-228/ 2012 EX[DB]** dated 24-2-12 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.P.C.JAIN
332, ARAVALI APARTMENTS, ALAKNANDA, NEW DELHI-19

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Excise CO No.133 of 2005
Excise Appeal No. 1653 of 2005 & No.1972 of 2005

[Arising out of Order-In-Appeal No.454/CE/BPL/2005, dated 31.01.2005 issued by CCE, Bhopal]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	No

M/s. MP State Electronics Dev. Corpn. — Appellants

Vs.

Commissioner of Central Excise Bhopal — Respondent

And vice-versa

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri P.C.Jain, Adv. for the Appellants
Ms. Renu J., DR for the Respondent

Date of Hearing/decision : 21.02.2012

FINAL **ORDER NO . A/227-228/2012-EX(BR) DATED**

Per Ms. Archana Wadhwa:

Both the appeals, one filed by the assessee and the other by Revenue are being disposed of by a common order. Revenue's appeal is against that part of impugned order of the Commissioner (Appeals) vide which he has granted reliefs to the assessee on the point of time bar.

2. The dispute in the appellants' appeal relates to correct classification of the parts and accessories of optical fibre cables, i.e., joint closure/terminal boxes. The appellants' are claiming the classification of joint-closure/box of optical fibre cables manufactured by them under heading 9033.00. On the other hand, the authorities below have upheld the classification of the same under chapter 8544.00.

3. For proper appreciation of the dispute, both the entries are re-produced below:-.

8544.00	*Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors.*
9033.00	*Parts and accessories (not specified or included elsewhere in this Chapter) for machines, appliances, instruments or apparatus of Chapter 90.*

4. Ld. Advocate appearing for the appellants submits that during the relevant period, the dispute about the correct classification of optical fibre cables was also going on. Whereas the industry was claiming classification under Chapter 90, Revenue classified the same under Chapter 85. Such dispute travelled upto Tribunal and the Tribunal in the case of Optel Telecommunication Ltd. reported in 2005(186)ELT109(Tri.-Del.) has held that optical fibre cables are correctly classifiable under Chapter 90 and not under heading 85.44. As such, he submits that the dispute about

the correct classification of optical fibre cables stands finalised and parts and accessories of the same would get classified under heading 9033.00.

5. After hearing ld. DR, we find that heading 9033.00 covers parts and accessories of the machines, appliances, instruments or apparatus of Chapter 90. In as much as the optical fibre cables fall under Chapter 90 as held by the Tribunal in the above referred decision, the parts would fall under Chapter 90.33. As such in terms of the law declared by the Tribunal in the above referred decision, we hold the correct classification of the joint-closure/box of optical fibre cables would fall under heading 9033.00. We accordingly set aside the impugned order and allow the appeal with consequential relief to the appellants.

6. As we have allowed the appeal of the appellants on merits, the Revenue's appeal against that part of the impugned order of the Commissioner(Appeals) vide which he has held in favour of the appellants on the issue of time bar has become infractuous, the same is allowed.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I