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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/1047/2005-1051/2005 - EX[DB] &
E/1234/2005-EX

Date 22/03/2012

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

N/S. HAWKINS COOKER LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.338-343/ 2012 EX[DB]** dated 21-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
N/S. HAWKINS COOKER LTD. (VICE-VERSA)
PHAGWARA ROAD , HOSIARPUR,
PUNJAB

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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

Date of Hearing : 21.2.2012

For Approval & Signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
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?	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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

Excise Appeal No. 1047 to 1051 of 2005

[Arising out of common Order-in-Appeal No. 609/CE/Jal/2004 dated 30.12.2004 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Chandigarh Appellant

Vs.

M/s Hawkins Cookers Ltd. Respondents

Appearance:

Appeared for Appellant : Shri I. Baig, A.R.
Appeared for Respondent : Shri K.K. Anand, Advocate

Excise Appeal No. 1234 of 2005

(Arising out of Order-in-Appeal No. 609/CE/JAL/2004 dated 3012.04 passed by the Commissioner of Central Excise (Appeals), Jalandhar)

M/s Hawkins Cookers Ltd. Appellants

Vs.

CCE, Chandigarh Respondent

Appearance:
Appeared for Appellant : Shri K.K. Anand, Advocate
Appeared for Respondent : Shri I. Baig, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. A/338-343/2012-EX(BR) dated...........

Per Mathew John :

There are five appeals filed by Revenue against M/s Hawkins Cookers Ltd ("HCL" for short) and one appeal filed by HCL being considered in this proceeding. All the six appeals are against the same order in respect of matters initiated by five different Show Cause Notices for different periods between April 2001 to March 2003 as under:

S.No.	SCN No. & date	Period	Amount (Rs.)
1.	V-15(76)CE/107/2001/2169-71 dated 16.4.2002	4/2001 to 6/2001	1141307/-
2.	V-15(76)CE/108/2001/2172-74 dated 16.4.2001	7/2001 to 11/2001	1322426/-
3.	V-15(76)CE/80/2002/4795-97 dated 30.9.2002	12/2001 to 3/2002	1416040/-
4.	V-15(76)CE/112/2002/2363-66 dated 2.4.2003	4/2002 to 9/2002	3462361/-
5.	V-15(76)CE/ADC/124/2003/10058-60 dated 6.11.2003	10/2002 to 3/2003	981314/-
		Total	8322448/-

2. M/s HPL were manufacturing and clearing parts of pressure cooker. There were certain issues relating deductions from MRP claimed for arriving at the assessable value. There was also an issue of wrong availing of exemption notification 10/2002-CE during the period April 2002 to Sep 2002. The issue of deductions from MRP seems to be settled by the order of Commissioner (Appeal) because either party is not in appeal against the issue.

3. The appeals are not numbered in chronological order of the periods involved. We take up the six appeals in the chronological order of the periods involved.

4. E-1048/05 relating to the period 04/2001 to 06/2001

The grounds of appeal in this case do not mention any issue relating to the period 04/2001 to 06/2001. But raises the issue about short payment of duty during April 2002 to Sept. 2002. The prayer itself is that the reduction in penalty by Commissioner (Appeal) to Rs.1,00,000/- is not proper. Since no ground relating to the period in dispute is mentioned this appeal is dismissed as devoid of any merits.

5. E-1051/05 for the period 07/2001 to 11/2001

The grounds of appeal in this case do not mention any issue relating to the period 07/2001 to 11/2001. But raises the issue about short payment of duty during Apr 2002 to Sep 2002. The prayer itself is that the reduction in penalty by Commissioner (Appeal) to Rs.1,00,000/- is not proper. Since no ground relating to the period in dispute is mentioned this appeal is dismissed as devoid of any merits.

6. E-1049/05- for the period 12/2001 to 03/2002

The grounds of appeal in this case do not mention any issue relating to the period 12/2001 to 03/2002. But raises the issue about short payment of duty during Apr 2002 to Sep 2002. The prayer itself is that the reduction in penalty by Commissioner (Appeal) to Rs.1,00,000/- is not proper. Since no ground relating to the period in dispute is mentioned this appeal is dismissed as devoid of any merits.

7. Appeal E/1234/05 filed by HCL and Appeal E/1047 filed by Revenue for the period 4/2002 to 9/2002.

7.1 We note that both HCL and Revenue are not challenging the duty involved. The challenge is only about penalty of Rs. 1,00,000/- confirmed by Commissioner (Appeal). HCL in their appeal prays that this should be set aside. Revenue in their appeal prays that penalty should be increased to the amount of duty involved.

7.2 There was a concessional rate of duty at 4% for parts of pressure cookers provided in Notification 10/2002-CE dated 01-03-2002. This exemption was withdrawn vide Notification 26/2002-CE dated 27-04-2002. However HCL continued to pay duty at 4% till Sep 2002. Revenue feels that this short payment of duty was with willful intention to evade payment of duty. A show Cause notice issued to recover the duty along with interest and penalties was adjudicated confirming the demand with interest and penalty. On appeal the Commissioner (Appeal) reduced penalty to Rs. 1,00,000/-.

7.3 The submission of Revenue is that the short levy involved was detected only by the department and but for such detection the short levy would have gone unnoticed and HCL would have got away with it. Revenue points out that this is not a case where appellants themselves detected their mistake and deposited duty. Revenue prays that penalty equal to duty which was not paid during each of the months should have been imposed on them under section 11AC of the Act and the Commissioner (Appeal) has erred in imposing penalty less than the duty evaded.

7.4 The submission of HCL is that they did not notice the changes in the exemption notification made on 27-04-2002. As soon as the matter was brought to their notice they paid the differential duty even before issue of Show Cause Notice. They had no intention to evade payment of duty and the penalty imposed is not justified. The interest also was paid on 11.9.2003.

7.5 We have considered the arguments on both sides. This is case where the assesse availed exemption which was withdrawn and filed return showing that he was availing such exemption. When the error was pointed out they paid duty before issue of

SCN. Interest also was paid later. In the facts of the case we are of the view that this is a case of inadvertent mistake and not due to any intention to evade duty. So we feel that there is no case for imposition of penalty on HCL. So we set aside the penalty confirmed by Commissioner (Appeal) and thus allowing the appeal filed by HCL and rejecting the appeal filed by Revenue.

8. E/1050/2005 for the period 10/2002 to 03/2003

The grounds of appeal in this case do not mention any issue relating to the period 12/2001 to 03/2002. But raises the issue about short payment of duty during Apr 2002 to Sep 2002. The prayer itself is that the reduction in penalty by Commissioner (Appeal) to Rs.1,00,000/- is not proper. Since no ground relating to the period in dispute is mentioned this appeal is dismissed as devoid of any merits.

9. Thus the appeals filed by Hawkins Pressure Cookers Ltd ~~is~~ are allowed and Appeal filed by Revenue is rejected.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM