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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/1857/2011 - EX[DB]
E/S/2458/2011-EX

Date **17/04/2012**

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

To :
M/S INTERNATIONAL PANAACEA LTD.

A-30 & 31/B-1, MOHAN CO-OPERATIVE INDUSTRIAL
ESTATE, MATHURA ROAD, NEW DELHI.
(PRESENT MAILING ADDRESS: E-34, 2ND FLOOR,
CONNAUGHT CIRCUS, NEW DELHI.110001
110044

M/S INTERNATIONAL PANAACEA LTD. Appellant

Vs

C.C.E. DELHI II **STAY ORDER NO. 657/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/440 2012 EX[DB]** dated 12-3-12 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. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.TARUN GULATI, ECONOMIC LAWS
PRACTICE 405-406, 4TH FLOOR, WORLD TRADE CENTRE, BARAKHAMBA
LANE, NEW DELHI-110001.

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 NEW DELHI

Date of Hearing/decision:12.03.2012
Excise. Stay Application No.2458 of 2011
In Excise Appeal No.1857 of 2011

[Arising out of Order No.01/2011 dated 29.04.2011 passed by the Commissioner of Central Excise, Delhi-II].

M/s.International Panaacea Ltd. — Appellant

Vs.

CCE, Delhi-II — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. — No

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? — Yes.

Appearance: Rep. by Shri Sparsh Bhargava, Advocate for the appellant.
Rep. by Shri R.K. Verma, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 657/2012-EX (BR)
FINAL Order No.A/1440/2012-EX(BR) Dated:12.03.2012

Per Archana Wadhwa:

The dispute in the present appeal relates to classification of the product Bio-Control Agents being manufactured by the appellant whereas they have claimed the classification of the same under Heading No.30029030 based upon the precedent decision, ~~of~~ the Commissioner vide impugned order has classified the said product under Heading No.38.089910.

2. After hearing both the sides, duly represented by Shri Sparash Bhargava ld. Advocate and Shri R.K. Verma, ld. AR, we find that the appellant ~~are~~ were earlier classifying their products under Chapter 38 till Feb., 2009. However, they came across the Tribunal's decision in the case of NMS Babu Vs. CCE, Bangalore reported in 2006 (198) ELT 528 (Tribunal-Bang), which classified an identical product under Chapter Heading No.30. They addressed a letter dated 27.2.2009 to their Central Excise Authorities indicating that since a formulation of Soil micro-organisms being used as bio-control agent, the microbes itself is a living fungi and the Tribunal has held that the same would fall under Chapter 30, they would assesse their product under Chapter 30.02 which attracts nil rate of duty. Such request of

the appellant was responded to by the Department directing them to continue paying duty on the clearances of their Bio fertilizers as the matter is being examined by the Revenue. However, it is seen that the appellant started clearing their product without payment of duty under intimation to the Revenue.

3. Subsequently, a show cause notice was issued on 23.4.2010 raising demand of duty in respect of the clearances effected during the period 1.4.2009 to 31.1.2010. The appellant contested the confirmation of demand by relying upon the precedent decision of the Tribunal in the case of NMS Babu (supra). The ~~contention~~ attention of the adjudicating authority was also drawn to the subsequent decision of the Tribunal in the case of T. Stanes and Co. Vs. CCE, Coimbatore reported in 2009 (235) ELT 183 (Tribunal-Chennai). It stands held in the said decision that heading no.3002 includes cultures of micro-organisms for technical purposes like auditing plant growth. Microbes under heading no.3002 does not cover fertilizers but also those that aid plant's growth and treat disease in plants. It was accordingly held by the Tribunal that under Heading No.3808 covers insecticides and fungicides and not cultures of microbes as basis.

4. The Adjudicating Authority, without referring to the above decision of the Tribunal, held against the assessee and confirmed the demand. Hence, the present appeal.

5. The appellant's grievance is that the said two decisions cover the disputed issue and should have been followed by the Adjudicating Authority. They have also submitted that the samples were drawn by the Revenue. However, there is no result of the same. The impugned order stands passed by the Commissioner in utter disregard to the judicial discipline in asmuch as he was bound by the pronouncement of law by the two decisions of the Tribunal.

6. Ld. SDR appearing for the revenue draws our attention to the merits of the case as also to the description of the goods which would fall under Chapter 30 and 38. He also draws our attention to the advertisements made by the appellant indicating that product is being advertised as insecticides and pesticides. As such, he supports the impugned order of the Commissioner on the ground that inasmuch as the appellant have themselves adrvertised ~~advised~~ the product as insecticides and pesticides, the same are correctly classi~~fying~~fied under Chapter 38.

7. We have gone through the impugned order of the Commissioner and have appreciated the submissions made by both the sides. It seems that there is no dispute about the fact that the appellant's products are formulation of micro organisms as is itself mentioned in the show cause notice as also in the impugned order. Though the appellant have placed strong reliance on the precedent decisions of the Tribunal, the Adjudicating Authority has chosen to ignore the same and have decided the issue independently, without taking note of the earlier judgements. The fair ~~production~~ process of adjudication requires the adjudicating authority to deal with each and every plea raised by an assessee and specifically the decisions, which apparently covers this issue. In its fairness, even if the adjudicating authority was of the view that the relied upon decision deal with a different products or appellant's product is not covered by the said decisions, he was within his rights to distinguish the same, instead of a convenient pass over or skip.

8. In view of the ~~above~~ foregoing discussion, we deem it fit to set aside the impugned order, remand the matter to the Commissioner for de novo decision, in the light of the two precedent decisions of the Tribunal referred supra. We make it clear that the remand is being made only on the above ground and we have otherwise not expressed any opinion on the merits of

the case. The appellant are at liberty to raise all the issues, as they may deem it fit before the Commissioner, in remand proceedings.

9. The stay application as also appeal get disposed of in the above terms.

[order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.