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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/2209/2005-EX[DB]

Dated: **19/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E LUDHIANA
Central Excise House, Rishi Nagar,
Ludhiana

C.C.E LUDHIANA (Appellant)

VS

ALFA PRODUCTS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1232/2012-EX[DB]** dated **18/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
ALFA PRODUCTS
E-590, Phase-VII, Focal Point, Ludhiana

2. **Advocate(s) / Consultant(s):** SH. B. L. NARASIMHAN, ADV, B-6/16, S.D. ENCLAVE, N. DELHI-29

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038
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Assistant Registrar
EXCISE Appeal Branch

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

COURT NO. I
DATE OF HEARING : 10/07/2012.
DATE OF DECISION : 18/10/2012.

Excise Appeal No. 2209 of 2005

[Arising out of the Order-in-Appeal No. 156/CE/Appl/Ldh/2005 dated 22/03/2005 passed by The Commissioner (Appeals), Central Excise Commissionerate, Ludhiana.]

Hon'ble Shri Justice Ajit Bharihoke, 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? :
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 Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

CCE, Ludhiana — Appellant

Versus

M/s Alfa Products — Respondent

Appearance

Shri Nagesh Pathak, Authorized Representative (DR) – for the appellant.

Shri B.L. Narasimhan, Advocate - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1232/12-Bench Dated : ________

Per. Rakesh Kumar :-

The respondent are manufacturers of Copper Alloys (Brass), Zinc Pellets and Copper Wire chargeable to Central Excise duty under sub-heading 7403.21, 7901.20, 7408.11 of the Central Excise Tariff. During the period of dispute i.e. during period from 2000-2001 to 31/05/2001, they were availing of SSI exemption under Notification No. 9/2000-CE dated 1/3/2000 as amended by Notification No. 9/2001-CE dated 1/3/2001 in respect of their final products. The department was of the view that since some of their final products were Brass Pellets and Brass Granules falling under sub-heading 7403.21 and since the goods covered by sub-heading 7403.21 with the exception of certain items as mentioned in the SSI exemption notification were excluded from the purview of SSI exemption, the respondent were not eligible for SSI exemption in respect of clearances of these items i.e. Brass, Pellets/granules falling under sub-heading 7403.21 and to the extent the SSI exemption has been availing in respect of these items, the duty would be recoverable from them. On this basis, a show cause notice dated 2/8/2001 was issued to the respondent for denial of SSI exemption in respect of the above items and recovery of allegedly short paid duty amounting to Rs. 2,75,076/- in respect of clearances of these items alongwith interest thereon under Section 11AB and also for imposition of penalty on the respondent under Rule 173Q of the Central Excise Rules.

1.1 The above show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 12/9/03 by which the above mentioned duty demand was confirmed alongwith interest and penalty of Rs. 2,75,000/- was imposed on the respondent under Rule 173Q of the Central Excise Rules. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide impugned order-in-appeal held that the Brass Granules and Brass Pellets which are used for brazing are correctly classifiable under sub-heading 7419.99 of the Central Excise Tariff as articles of Brass and, hence, would be eligible for SSI exemption. Accordingly, he set aside the duty demand confirmed against the respondent and also penalty imposed on them. Against this order of the Commissioner (Appeals), this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri Nagesh Pathak, the learned Departmental Representative, assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeals and pleaded that the Brass Granules and Brass Pellets which are manufactured by pouring molten brass into water and which are used for the purpose of brazing are nothing but un-wrought copper alloys and, hence, the same would be correctly classifiable under sub-heading 7403.21, that these Brass Granules and Pellets cannot be called "articles of brass" as the same have not been made by working on un-wrought brass, that since the goods, in question, are classifiable under sub-heading 7403.21, which is excluded

from the purview of SSI exemption, the respondent were not eligible for SSI exemption in respect of these items, and that in view of this, the impugned order is not correct.

4. Shri B.L. Narasimhan, Advocate, the learned Counsel for the respondent, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and pleaded that the Brass Brazing Granules/ Pellets, which are used for jointing two pieces of metal are ready to use articles and, hence, the same are correctly classifiable under sub-heading 7419.99 of the Tariff. He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have considered the rival submissions and perused the records.

6. The dispute in this case is about classification of Brass Brazing Granules/Pellets. These Granules/Pellets are made by pouring molten brass into water and the same are used for the purpose of welding/brazing.

6.1 According to the department, these items are covered by heading 7403.21 while according to the respondent these items are classifiable as articles of Brass under sub-heading 7419.99. If the goods, in question, are classifiable under sub-heading 7419.99, the same would be eligible for SSI exemption.

7. Heading 7403.21 covers – "Copper Zinc Base Alloys" (Brass). There is also another heading in Chapter 74 – heading

7406, which covers the Brass Powder or flakes but the since goods, in question, are not in form of Brass Powder or flakes, the classification under this sub-heading is ruled out. In our view, the Brass Brazing Granules/ Pellets would be correctly classifiable under sub-heading 7403.21 as the goods, in question, are in the nature of un-wrought metal and this sub-heading covers that "Copper Zinc Base Alloys". In our view, it would not be correct to classify these Brass Granules/ Pellets as 'articles of Brass' as the articles are something which are made by working on the Metal while the goods, in question, as mentioned above, are in the nature of un-wrought metal. Since the goods are correctly classifiable under sub-heading 7403.21 and since the same are other than the Brass Rods/Bars used for making wire, the same would not be covered by SSI exemption. Therefore, the impugned order classifying the goods, in question, under sub-heading 7419.99 of the Tariff and extending the benefit of SSI exemption in respect of the same, is not correct. The same is set aside and on this point the order-in-original passed by the original Adjudicating Authority is restored. The Revenue's appeal is accordingly allowed.

(Pronounced in the open court on 18/10/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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