TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/3872/2005-EX[DB]

Dated: **13/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
EUREKA FORBES LTD.
Bhowali Nanithal Distt-U.A

EUREKA FORBES LTD. (Appellant)

VS

C.C.E. MEERUT II (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/809/2012-EX[DB]** dated **04/07/2012** 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**
C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat)
Delhi Road, Meerut (UP)

2. **Advocate(s) / Consultant(s):**
B.L.Narsimhan
B-6/10, Safdarjung Enclave, New Delhi-110029

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. Office Copy

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/ decision: 04.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 should 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 Departmental authorities?	

Excise Appeal No. 3872 of 2005
(Arising out of order-in-Original No. 13/Comm/M-II/2005 dated 27.07.2005 passed by the Commissioner of Central Excise, Meerut-II).

M/s Eureka Forbes Limited — Appellants

Vs.

CCE, Meerut-II — Respondent

Present Shri B.L. Narasimhan, Advocate for the appellant.
Present Sh. Nagesh Pathak, AR for the respondent.

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

FINAL Order No. A/809/2012-Ex(BR)

Per. Rakesh Kumar (Oral):

The appellant in their unit at Bhowali, Bhimtal, Uttarakhand manufacture of vacuum cleaners which are cleared to their depots from which the same were sold. According to the department while during 1997-98, the total value of the goods in stock transferred to depot was Rs.4,32,47,326/-, as per their balance sheet the value of the goods sold from the depot was Rs.7,46,43,772/- . The department was of the view that the differential amount is unreported sale value in respect of the goods cleared from the factory which has been realized on sale. On this basis, the duty demand of Rs. 56,51,360/- was raised from the appellant alongwith interest besides proposal to impose penalty on them. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 27.07.2005 by which the duty demand of Rs. 56,51,360/- was confirmed alongwith interest and penalty of Rs. 10,00,000/- was imposed on the appellant. Against this order of the Commissioner (Appeals) this appeal has been filed.

2. Heard both the sides.

3. Shri B.L. Narasimhan, ld. Counsel, for the Appellant assailed the impugned order on the ground that the entire exercise is based upon audit objection. He submits that the department has proceeded to issue show cause notice and also to confirm demand only on the basis of transaction value of the goods cleared from the manufacturing unit and the sales figures at the depot. The department did not make any effort to investigate the matter whether the sales from the depots, related to the goods cleared only from the factory or some other goods were also involved. Ld. Counsel submits that in response to the show cause notice, the appellant made it clear that from the sales depot apart from the goods manufactured by the Appellant in their Bhimtal unit, other goods manufactured by various manufacturers purchased from the market and also the goods manufactured by other units of the appellant were also sold. It is submitted that even the break-up of those sales were furnished by the appellant to the department vide letter dated 01.10.2001. But the Commissioner while adjudicating the matter has not cared to consider the explanation given by the appellant and the statement

of account furnished by them. Thus, ld. Counsel has therefore, urged us to set aside the impugned order.

4. Shri Nagesh Pathak, ld. AR for the department has argued in support of the impugned order and reiterated the reasoning given in the order-in-original.

5. We have considered the rival submissions and perused the impugned order. The Commissioner adjudication has confirmed the demand with the following observations:-

> **"In the instant case it is not denied by the unit that as per the balance sheet of the unit for the relevant period under the Head "Statement of allocation of Expenses" they have shown a figure of Rs. 7,46,43,772.09 as dealers turnover. They have shown the total turnover to be Rs. 2,12,42,50,597/-. If one sees their Annual Report 1997-98 (Relevant Period) it would be seen that the same total turnover, figures in Schedule-I. However, in their Annual Report, the "Dealer's Turnover" as shown in the 'allocation of expenses' does not find any mention. This shows that the 'Dealers Turnover' does not form a part of the audited balance sheet. But at the same time they are claiming this to be the 'dealers turnover' and have also stated that the dealers deals with many other's goods apart from their Vacuum Cleaners and hence the same value cannot be taken. They failed to explain as to how sale of goods belonging to others by their dealers can form part of their financial statements/ reports as they are allocating a percentage expense of the dealers turnover to their total turnover. This only goes to prove that the unit is not coming clear on this aspect, and has failed to explain with proof/ evidence that this value is the value of dealers other goods. In the circumstances, going by this, I hold that they failed to satisfactorily explain the above. They are liable to pay the duly on the value of Rs.7,46,43,772/-. In a number of judgements of the higher Judicial Forum it has been held that the department need not prove every thing to the last straw, and circumstancial evidence is enough to proof the case. For this, I rely on the judgement of Apex Court in the case of Collector vs. D. Bhoormull- 1983 (13) ELT 546 (SC)."**

6. On perusal of the above, we find that the Commissioner has not properly considered the defence taken by the appellant in his reply to show cause notice dated 24.05.2002 and the further communication dated 28.04.2004 and 22.06.2005. He has not even considered the certificate issued by M/s Batliboi & Purohit, Chartered Accountant dated 28.04.2004. Thus, on consideration of record, we find that impugned order-in-original has been passed on superficial analysis of turnover given in the annual report of the appellant company for the

year 1997-98. The adjudicating authority has also not cared to look into the Appellant's plea that the goods sold from the depots, in addition to the goods manufactured by the Appellant's unit at Bhimtal also included the goods purchased by them from other manufacturers. Therefore, we are unable to sustain the impugned order. The impugned order is set aside and the matter is remanded back to the adjudicating authority for denovo decision after taking into account the defence taken by the appellant and allowing them to adduce evidence in their support. Since this is an old matter, we expect the Commissioner to decide the matter within six months.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant