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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/25 /2006 Date 11/07/2008

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

To :
M/S SUMO STEELS (P) LTD
B-45/50, JASHODHARPUR INDUSTRIAL AREA
KOTDWAR (UTTRANCHAL)
M/S SUMO STEELS (P) LTD Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**445/2008- **Excise** dated 10-7-08

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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI - 70
3. C.D.R.

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 7.7.2008

Central Excise Appeal Nos.25 of 2006

Arising out of the Order in appeal No.207/CE/MRT-I/2005 dated 2.12.2005 passed by the Commissioner (Appeals I), Customs & Central Excise, Meerut.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, 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?	No
2	Whether it should be released under Rule 27 of 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

Appellants	Respondent
M/s Sumo Steels (P) Ltd. vs.	C.C.E., Meerut I

Appearance:

Shri B. Garg, Advocate for the appellant(s) and
Shri C,S, Rajput, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Order No. 445/08-EX.

Per Archana Wadhwa:

As per facts on record, one M/s Vaibhav Steels Ltd. was engaged in the manufacture of excisable goods and demand of duty of Rs.15 lakhs was confirmed against them and penalty of identical amount was imposed. Subsequently, the said unit was acquired by U.P. Financial Corporation, who sold the same to the present appellant vide Sale Deed dated 22.5.2003. In the Sale Deed , it was mentioned that the said unit is free from all charges or encumbrances. The appellant got themselves registered with the Central Excise Authorities and started manufacturing goods.

2. Subsequently, vide letter dated 2.3.2005, the Deputy Commissioner directed the appellant to pay the dues pending against M/s Vaibhav Steels Ltd. It also contended that in the event of their failure to do so within specific period, the proceeding under Section 11 of Central Excise Act and 142 (1) (c) (ii) of Customs Act, 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Customs Dues) Rules, 1995, as made applicable to Central Excise matters will be initiated against them.

3. The said letter of the Deputy Commissioner was appealed against by the appellant before the Commissioner (Appeals), who rejected the same by observing as under:

> " *The provisions of Section 142 (1)(ii) of the Customs Rules, 1962 are very clear so far as the recovery of the Govt. dues is concerned. The provisions of Section 142 (1)(ii) ibid (made applicable to central excise matters by Notification No.63/63-CE, dated 4.5.63) clearly indicates that recovery of govt. dues can be made by way of detention and sale of even immovable property (land & building) belonging to or under the control of the concerned person or defaulter. It is worth mentioning that in a similar cae, Hon'ble Supreme Court in the case law of Macson Marbles Pvt. Ltd. vs. Union of India – 2003 (158) ELT*

424 (SC) held that if an industrial unit is sold/transferred in terms of Section 29 of the State Financial Corp. Act, 1951, such sale is deemed to be made by the owner of the property and necessarily Rule 230 (2) of the erstwhile C.Ex. Rules, 1944 (relevant amended Section 11 of C.Ex. Act, 1944) would be attracted. Thus, consequent upon sale of such property the liability of the predecessor unit will obviously be transferred to the successor unit.Therefore, the contention of the appellant that the said land and building (B-45/50, Jasodharpur, Kotdwar) was purchased by them form U.P.F.C. Ltd. and they (appellant) are not liable to pay any dues pertaining to their predecessor unit, is not acceptable."

4. The appellant's contention is that the applicability of Section 142 (c) (ii) by Commissioner (Appeals) is not correct, inasmuch as the said Section authorizes the officer to recover the dues from the property belonging to or under the control of <u>such person</u>, meaning thereby that it has to be recovered from the person against whom the demand stands confirmed. He submits that the proviso to said Section authorizing the Revenue to recover the dues from the property which has been sold to another person was introduced with effect from 2004 and also was available on the statute books till 2001, in terms of Rule 230 of Central Excise Rules. However, during the period relevant in the present case, there was no such proviso to recover dues from the property in possession of the successor to whom the same has been sold. Similarly, it has been contended that the Hon'ble Supreme Court judgment in the case of Macson Marbles Pvt. Ltd. vs. UOI – 2003 (158) ELT 424 (SC) relied upon by the Commissioner (Appeals) is not applicable, inasmuch as the same is in terms of Rule 230 of Central Excise Rules, 1944, which was not in the statute book for the period under reference.

5. After carefully appreciating the submissions made by both sides, we find that Section 142(c)(ii) is that – "if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b)", the same is to be recovered in the manner provided thereunder. Sub-clause (ii) of clause (c) of Section 142 refers to movable or immovable property belonging to or under the control of such person. As such, it is clear that such person in the above Section refers to the person from whom the dues are to be recovered. It is only the proviso which authorizes the Revenue officer to recover the dues from the property even if they are in the possession of the person so succeeding and in the hands of the person who has bought the property. However, the said proviso was introduced in the year 2004 and was not on the statute book during the relevant period. Inasmuch as the Commissioner (Appeals) has not considered the said issue and has not examined the dispute from the above angle, we set aside the impugned order and remand the matter to him for fresh decision in the light of the observations made by us in the preceding paragraph. The appeal is disposed of in above terms.

(Pronounced in the open Court)

10/7/08

(Archana Wadhwa)
Member (Judicial)

10/7/08

(M. Veeraiyan)
Member (Technical)

scd/