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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/1289/2005,1293/2005 Date 28/07/2008

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

To :
M/S SANDEN VIKAS(INDIA)PVT LTD
PLOT NO.65, SECTOR 27A, FARIDABAD
M/S SANDEN VIKAS(INDIA)PVT LTD Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order** No.534-535/08- **Excise** dated 24/7/08

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. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R.
4. ~~J.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)

~~1 M/S SANDEN VIKAS(INDIA)PVT LTD~~
~~PLOT NO. 65, SECTOR 27A, FARIDABAD~~

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 1289 & 1293 of 2005

[Arising out of Order-in-Appeal No. 1& 2/CE/APPL/Div-I/DLH-IV/2005 dated 12.1.2005 passed by Commissioner (Appeals) Central Excise, New Delhi.]

M/s. Sadan Vikas India Ltd. Appellant

Vs.

Commissioner of Central Excise Respondent
Delhi-IV

Appearance: Mr. A.R.Madhav Rao, Advocate for the Appellant
Mr. H.K. Thakur, Jt.CDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Date of decision : 23.7.2008

Final **ORDER NO. 534 - 535/2008-Ex**

Per D.N. Panda (for the Bench):

1. Both the appeals have arisen out of a common order dated 12.1.05 passed by learned Appellate Authority below giving rise to the dispute whether the appellant has supplied the goods as parts of complete air conditioner or as complete air conditioner itself and whether SED was leviable in both the appeals. Both these appeals were taken up for analogous hearing and disposed by this common order.

2. Learned Counsel Shri Madav Rao appearing on behalf of the Appellant, at the very outset of hearing pointed out that the first appellate order itself suffers from legal infirmity and gross violation of natural justice for which such order shall be unsustainable. He pointed out that the interim part of the order at page 7 throws light that to resolve the issue covered by two show cause notices, which were subject matter of the common impugned order, called for report from different Authorities exercising jurisdiction over buyers of the goods supplied by the appellant. But it would be noticed from the order itself that when a material gave rise to civil consequence of levy of duty and criminal consequence of levy of penalty, no opportunity of rebuttal was granted to the Appellant. Nothing can be gathered from the appeal order itself to reach to a conclusion that natural justice was followed by granting an opportunity to the appellant to lead its defence and evidence when there was material proposed to be used against the appellant. He submitted that what that may be the situation the factual aspect can be certainly be tested only if the appellant is fairly dealt under law and subjected to fair trial. That not being done, the appellant has suffered grave injury for which the Adjudicating authority should pass proper order after hearing the appellant before making the appellant liable to consequence of law.

3. The learned Jt. CDR, Shri H.K.Thakur, appearing on behalf of the Respondent-Revenue submitted that the appeal hinges on different

aspects but not primarily on natural justice. According to him, the issue of determination is governed by various apex court judgements and the appellate order need not be interfered.

4. Heard both sides and perused the records.

5. Bare perusal of page 33 of the appeal record gives a satisfaction from the language employed by the learned Appellate authority itself that the matter called for observation for due process of natural justice. Therefore, we were curious to notice from subsequent paragraphs of the order whether such a process was followed. It is elementary principle of jurisprudence that no one shall be condemned without being heard, We have no difference of opinion to such proposition but only consider to send the matter back to the learned Adjudicating authority below who shall do well to confront the relevant part of the report gathered and proposed to be used against the appellant. It is needless to mention that this will satisfy the course of natural justice if opportunity of rebuttal is granted. The appellant may be heard fairly granting reasonable opportunity and on submissions of the appellant as well as leading of evidence, if any, matter may be set to rest.

6. In view of our observations aforesaid, we remit the matter back to the learned Adjudicating Authority setting aside the impugned order, to do justice to both the sides.

7. In the result, both the appeals are disposed of by this common order.

(Dictated & pronounced in the open Court)

(M. Veeraiyan
Technical Member

(D.N.Panda)
Judicial Member

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