

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

Appeal No. E/4358/2004-4360/2004 - EX[DB] & E/M/434-436/08-EX

Date 05/12/2008

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

To :
EXECUTIVE ENGINEER
WORKSHOP DIVISION, MADHYA PRADESH STATE
ELECTRICITY BOARD, SEHORE (M.P.) - 466002
EXECUTIVE ENGINEER

C.C.E. BHOPAL

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 904-906/08& M.O.NO.944-46/08- EX dated
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. BHOPAL

48, ADMINISTRATIVE AREA, AREA HILLS, HOSHANGABAD ROAD, BHOPAL (M.P.)

2. Adv. / Consult

MR.L.P. ASTHANA & MS REENA KHAIR

R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

3. ~~G.D.R~~

~~1. G.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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

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

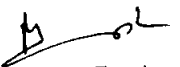
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1

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Assistant Registrar
(Excise Appeal Branch)

17. EXECUTIVE ENGINEER

FABRICATION WORDSHOP MPSEB, SEHORE - m.p.-466002

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FABRICATION WORKSHOP, MPSEB, SEHORE - m.p.-466002

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal Nos.4358-60/2004 -Ex(Br)
E/Misc 434-436/2008

(Arising out of order in appeal No.418-420/CE/BPL/2004 dated 10.6.2004 passed by the Commissioner of Central Excise (Appeals), Bhopal)

Executive Engineer, Workshop Division
MP State Electricity Board

Appellant
(Rep. by Shri L.P.Asthana, Advocate)
Ms. Reena Khair, Advocate

Vs

CCE, Bhopal

Respondent
(Rep. by Shri C.S. Rajput, DR)

Coram: Hon'ble Mr.D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing:

1.12.08

FINAL Order No. 904-906 - /2008-Ex(BR)
 MIS-ORDER NO. 944-46 / 08-EX.
 Per D.N. Panda:

The learned Counsel Ms. Reena Khair, appearing on behalf of the appellants submits that in all the three appeals, there is already a decision by the Tribunal in Appeal No.1844/2004-B dated 6.7.2004. If such decision is followed by the lower Appellate Authority; the appellants may not have any grievance further. She drew our attention to page 37 of the paper book which exhibits that the learned Appellate Authority below following its earlier decision in Appeal No. 144/98 dated 19.2.2004, decided the fate of the appellants. It is emphasis of the appellant that if the Tribunal decision made on 6.7.2004 in Appeal No. 1844/2004 followed, the matter in controversy can be resolved.

2. Learned DR appearing on behalf of Revenue agrees that the appellants may be given opportunity before the lower Appellate Authority for deciding the issues on merits in view of the Tribunal's decision cited as above.

3. Heard both sides and perused the record.

4. We find that three appeals on different matters of controversy were before the learned Appellate Authority below. The matter may touch the issue already decided by the Tribunal by order dated 6.7.2004 relied upon by the appellants today. It would be proper on the part of the learned Appellate Authority to go into the matter in controversy in different appeals independently and decide the issues on merits. But we are surprised that for the decision made on 19.2.2004 ^{that} was made applicable by the learned Appellate Authority to all the three appeals before him without deciding fate of each appeal independently.

5. We make it clear that the order of the appellate Authority should have clearly demonstrated the matter in controversy in respective appeals, the points for decision, the reasons of decision and the decision. If such a procedure is followed, the order may become self speaking and reasoned. Reason being heart beat of justice, the appellants deserve to be heard following due process of law by the learned Appellate Authority below.

6. Therefore, we direct the learned appellate Authority to grant fair opportunity of hearing to the appellants, fixing a date of hearing during January, 2009 and dispose of the matter by end of March, 2009 in the interest of justice, following direction of Tribunal in Appeal Case No. 1844/2004 disposed on 6.7.2004.

7. The appellants have filed three Misc Applications bearing Nos.434-436/2008 raising additional grounds. The learned Advocate appearing for the appellants fairly submits that if the matter goes back to the learned Appellate Authority, it is open to that authority to consider all legal pleas which touches the controversy. Therefore, it may be kept open for the learned Appellate Authority to consider admissibility of additional grounds raised by Misc applications for which these applications at this stage are not pressed. Accordingly we dismiss these applications directing the learned Appellate Authority to consider admissibility of additional grounds raised by these Misc. Applications.

8. In the result, all the three appeals are remanded and the impugned order is set aside and the three Misc. applications are rejected.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*