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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/4444/2004 - EX[DB]   Date 27/11/2008

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

To :
KAMACHI GRANITES PVT. LTD.
RIICO INDL. AREA, MADANGUNJ, KISHANGARH
KAMACHI GRANITES PVT. LTD.   Appellant
Vs
C.C.E. JAIPUR-II   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 889/2008-**EX[DB]** dated 24-11-08 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. JAIPUR-II
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. S.D.R
4. ~~JCDR~~
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 - 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). Thyagaraya Road. T. Nagar.Chennai
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

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

E/Appeal No.4444/2004 -Ex(Br)

(Arising out of order in appeal No. 428/RM/cE/JPR.II/04 dated 7.7.04 passed by the Commissioner of Central Excise (Appeals), Jaipur)

M/s Kamachi Granites Pvt Ltd — Appellant
(Rep. by Shri K.K. Anand, Advocate)

Vs

CCE, Jaipur — Respondent
(Rep. by Shri B.S. Suhag, DR)

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

Date of Hearing:17 .11.08

Final Order No. 839 /2008-Ex(BR)

Per D.N. Panda:

Learned Advocate Shri K.K. Anand argued that the activity cutting of granite slabs carried out by the appellants not being manufacturing, there will be no duty liability on the appellant. Once it is held that there was no manufacture, charge of clandestine removal shall not be sustainable. According to him, any departure to the process of law cannot bring the appellant to duty liability. He relied on the judgment of the Hon'ble Supreme Court in the case of Aman Marble Industries Pvt Ltd Vs CCE Jaipur reported in 2003 (157) ELT 393 (SC) and judgement of the Hon'ble Rajasthan High Court in the case of Anmol Granites Vs Union of India reported in 2006 (199) ELT 769 (Raj), and submitted that the appellants grievance is not on the clandestine removal at this stage but on the principal issue whether there was any manufacture of dutiable goods done.

2. The learned DR appearing for the Revenue clarifies that. the case of Aman Marble Industries Pvt Ltd case was decided on 18.9.2003. Learned Adjudicating Authority passed the order on 04.06.2003. That authority had no occasion to go through the judgement of the Hon'ble Supreme Court. Similarly, judgment in Anmol Granite case was delivered on 20.1.2006. In view of such a situation, the appellants may get an opportunity of hearing before the Adjudicating Authority on the basis of law.

3. Heard both sides and perused the record. There is no dispute that the argument of the learned Counsel has force since the law laid down by the Apex Court as pleaded by them was not before the learned Authority to determine whether the activities which was carried out by the appellant amounted to manufacture since such a issue was not dealt by the order of adjudication. Therefore, the appellate order to this extent calls for interference.

4. To resolve the dispute, we send the matter back to the learned Adjudicating Authority who shall determinate the activity of manufacture in the light of Apex Court's decision and the decision of the Hon'ble High Court of Rajasthan cited (supra). The authority while re-examining the issue shall give reasonable opportunity of hearing to the appellant. Without expressing any opinion at this stage, we merely remand the matter back for fresh adjudication by end of March, 2009, granting fair opportunity to the appellants to lead its defence as admissible by law.

5. In the result, the impugned order is set aside and the appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member