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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/4140/2004-4142/2004 - EX[DB] Date 15/01/2009

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

To :
M/S VISHAL MOTOR COMPANY
NEAR RAILWAY CROSSING TIFRA, BILASPUR (C G)

M/S VISHAL MOTOR COMPANY Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 33-35/2009- **EX[DB]** dated 13-1-09

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. RAIPUR

DHAMTARI ROAD, TIKRAPARA, RAIPUR (C G)

2. Adv. / Consult SH. MANEESH SHARMA, C/O
MR.ASHUTOSH,

CHAMBER NO.143, PATIYALA HOUSE COURT, NEW DELHI

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 - 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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

17. M/S. RISHI'S VISHAL METALS (P) LTD., C/O
18. SHRI ASHOK RISHI S/O MULAKH RAJ RISHI, C/O M/S RISHI'S VISHAL METALS (P) LTD.,
PLOT NO 51, SEC 'D', SIRGITTI, VILL. TIFRA, DISTT. BILASPUR
(C G)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH – Excise
E/4140-42/04

(Arising out of Order-in-Appeal No.117 to 119/RPR-I/2004 dt.25.5.04 passed by Commissioner(Appeals), Raipur)

M/s. Vishal Motor Co. & Others — Appellant

vs

CCE, Raipur — Respondent

Coram : Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Appeared for the Appellant : Shri Maneesh Sharma, Adv.
Appeared for the Respondent: Shri B.S.Suhag, DR

Date of Hearing: 6.1.09
FINAL Order No. 33-35/09 -EX Dt.

Per D.N.Panda:

Ld. Counsel Shri Maneesh Sharma submits that in terms of order dt.4.10.05 the Ld. Commissioner granted relief to M/s. Rishi Vishal Metal Pvt. Ltd. and M/s. Vishal Motors and that is in terms of para 17 of the order. When he has taken such decision, he should also have take similar decision in respect of the present three appellants. He submits that two appellants M/s. Rishi Vishal Metals Pvt. Ltd. and M/s. Vishal Motor Co. who are also appellants in these appeals today, were also appellants in order dt.4.10.05 before Commissioner(Appeals) being appellant before him. It was held that they were not dummy units nor there was financial flow back nor profit sharing or financial control and there were no sufficient evidence to hold as dummy. Similarly the self same parties not being intimately connected with each other, clubbing of the clearance is unwarranted. He also submits that Revenue has no evidence of transfer of funds in all the three concerns. Therefore, he prays that if the matter goes back to the Ld. Appellate Authority below, he would consider the matter in the light of the decision dt.4.10.05 in respect of present appellants.

2. Ld. DR vehemently opposes the submissions of the Ld. Counsel of the Appellant. He submitted that the factual aspects in order dt.4.10.05 is different from the factual matrix of the present cases. Therefore, both the orders are independent of each other and the appellant is not entitled to any immunity from clubbing.

3. Heard both the sides and perused the records. We have gone through the impugned order. We find that the Ld. Appellate Authority who passed the order on 4.10.05 after the impugned order was passed, has considered various aspects in his subsequent order and granted relief to the appellants. The consideration of the Ld. appellate authority was that the Revenue has failed to adduce any cogent evidence to establish either the appellants are dummy units, existence of financial

flow back, profit sharing or financial control. We are of belief that the appellants if given an opportunity to present their case, they may be considered by the learned Appellate Authority appropriately. Therefore, we direct the appellant to appear before the Ld. Commissioner(Appeals) by end of Jan'09 and make an application for fixing date of hearing and dispose the matter by 31.3.09. If such an application is made, Ld. appellate authority below, shall, following due process of law pass appropriate order in accordance with law.

4. In the result, all the three appeals are remanded to the Ld. Appellate Authority, setting aside the impugned order.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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