TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/6279/2004 - EX[DB] Date 05/02/2009

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

To :
M/S U.T.LTD
14,PRINCE STREET, KOLKATA-72

M/S U.T.LTD Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 97/2009- **EX[DB]** dated 2-2-09

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. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult SH. B.N. CHTTOPADHYAY, CA
L/C. APPELANT

3 C.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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI.

Excise Appeal No.6279/2004-Excise

[Arising out of Order in Original No.45/JKB/Adj/2003 dated 24.11.2003 of Commissioner, Central Excise, Faridabad].

Date of hearing: 02.01.2009.

For approval and signature :

Hon'ble Ms. Jyoti Balasunderam, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporters 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 the 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

M/s. U.T. Ltd. ... Appellant
[Represented by Mr.B.N.Chatopadya, Advocate]

Vs.

CCE, Delhi IV ....Respondent
[Represented by Mr.M.M. Singh, SDR]

CORAM: Hon'ble Ms. Jyoti Balasunderam, Vice President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL ORDER NO. 97/2009-EX /DATED:

Per Jyoti Balasunderam

The Commissioner of Central Excise has confirmed a duty demand of Rs.36,42,340/- applying the extended period of limitation, together with interest and also against penalty of equal amount on the ground that the assessees, who are engaged in the manufacture of Hydraulic Pump assembly and parts thereof etc. and availing Modvat credit were undervaluing their parts of Hydraulic Pumps assembly and parts in as much as they had been stock transferred/cleared from their factory at Faridabad to their sister concern at Hosur for the reason that ~~parts of the~~ prices of the said parts supplied to independent buyer, namely, M/s. Tractor and Farm Equipment Ltd. Spare Parts Division, Chennai, were much higher than the prices at which Faridabad Unit of the assessee supplied to the Hosur Unit.

2. We have heard both sides on merits as well as limitation (the show-cause-notice has been issued on 13.11.2001 covering the period from 30.6.97 to Jan., 2000 which is clearly beyond the normal period of limitation).

3. We find that in the case of the same assessee, the Tribunal has already accepted the explanation of the assessee that the transfer of goods to the Hosur Unit were of semi finished goods which required further processing, while the sales to the independent buyer were of fully finished items, resulting in difference in price. Further, the extended period of limitation is also not applicable against the assessees for the reason that the entire amount of duty paid was available by way of credit to the sister concern at Hosur and this resulted in revenue neutrality, so there could be no intention to evade payment of duty as held by the Tribunal in the case of Sundaram Industries vs. CCE Madurai reported in 2007 (209) ELT 369.

4. Therefore, both on merits and limitation, the assessees have made out a case. We, therefore, set aside the impugned order and allow the appeal.

(Order dictated & pronounced in the open Court on 02.01.2009)

(JYOTI BALASUNDARAM)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

aj