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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/5724-5825/2004 - EX[DB] Date 20/02/2009

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

To :
C.C.E.CHANDIGARH
C.R.BUILDING,SEC 17-C,CHANDIGARH
C.C.E.CHANDIGARH Appellant
Vs
M/S DHARAM STEEL INDUSTRIES, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 142-143/2009- **EX[DB]** dated 06-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S DHARAM STEEL INDUSTRIES,
G.T. ROAD MANDI GOBINDGARH

2. M/S. MOHINDRA STEEL,
AMLOH ROAD, MANDI GOBINDGARH

2. Adv. / Consult

NONE

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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.5724-5725 of 2004-Excise Branch

[Arising out of Order-in-Appeal No.635-36/CE/CHD/04 dated 06.09.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:06.02.09

For approval and signature:
Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
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? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE, Chandigarh ...Appellants
[Rep. by Shri C.S. Rajput, DR and Shri A.K. Rastogi, DR]

Vs.

(1) M/s. Dharam Steel Industries
(2) M/s. Mohindra Steel ...Respondent
[Rep. by None]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No. 142-143/09-EX Dated:06.02.2009

Per P.K. Das:

Heard the ld. DR on behalf of the Revenue. None appears on behalf of the respondents despite of issue of notice.

2. Common issue is involved in these appeals and, therefore, both are being taken up together for disposal.

3. After hearing the ld. DR and on perusal of the records, it is seen that the respondents were engaged in the manufacture of Iron Steel products. They have paid duty under the Compounded Levy Scheme under Section 3A of the Central Excise Act, 1944. It is seen from the order of the Commissioner (Appeals) that the Commissioner of Central Excise passed provisional ACP fixation order, which was set aside by the Tribunal and remanded to the Original Authority In the meantime, show cause notices were issued demanding duty on basis of ACP Fixation Order. The Adjudicating Authority confirmed the demand of duty. The Commissioner (Appeals) set aside the Adjudication Orders on the ground that the Tribunal set aside the order of the Commissioner in respect of determination of ACP and, therefore, the demand of duties are not sustainable. It has also been held that the demand of duty is partly barred by limitation.

4. On perusal of the grounds of appeal filed by the Revenue, we find that after remand order of the Tribunal, the Commissioner again passed the ACP order. For the proper appreciation of the case, the relevant portion of grounds of appeal in Appeal No.5724/04 is reproduced below:-

> " that the Commissioner (Appeals) has wrongly accepted the plea of the party that ACP fixation order dated 28.1.1998 had been set aside by the CESTAT vide Final Order No.A/I-II.99/NB (DB) dated 24.12.1998. In fact in

pursuance of the said order where under the DESTAT remanded the case, the Commissioner had again passed provisional ACP fixation order dated 12.5.99 which was made final on 9.2.2000. Vide this, ACP was fixed at the same level as in order dated 28.1.1998. This order was again challenged by the party before CESTAT who vide order A/734-52/2000-NB (DB) dated 4.9.2000 remanded the case back to the Commissioner. The Commissioner again fixed ACP vide order dated 11.1.2001 at the same level. The party again challenged ACP before the CESTAT but their appeal was dismissed by CESTAT vide order no.A/953-963/02-nb dated 8.4.2002. Although the party has filed appeal before Supreme Court vide their civil appeal no.3987, there is no stay and thus ACP fixation order dated 11.1.2001 is final as on date.

Thus the party's ACP is 11807.705 MT per annum and they are requested to pay duty as per that, the party has failed to pay differential duty till date despite dismissal of their appeal in 2002. Accordingly, the demand has been rightly confirmed and penalty has been rightly imposed."

5. We find force in the submission of the ld. DR. It appears that the subsequent development in the matter after the remand order of the Tribunal was not placed before the Commissioner (Appeals). In view of that, we set aside the order passed by the Commissioner (Appeals). The matter is returned back to the Commissioner (Appeals) to decide afresh after considering the subsequent developments as recorded in the grounds of appeal of the Revenue. Needless to say that the Commissioner

(Appeals) shall give proper opportunity of hearing to the respondent while deciding the case. All the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 6.2.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.