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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/5733/2004 - EX[DB] Date 13/08/2009

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

To :
M/S STEEL STRIPS LTD.
S.C.O.49-50,SECTOR 26 MADHYA
MARG,CHANDIGARH
M/S STEEL STRIPS LTD. Appellant
Vs
C.C.E.LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 513/2009- **EX[DB]** dated 06-8-09

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.LUDHIANA
   F- BLOCK RISHI NAGAR LUDHIANA
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 C.D.R
~~4 J.C.D.R~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 06.08.2009

Excise Appeal No. 5733 of 2004
[Arising out of order-in-appeal No. 543/CE/APPL/Ldh/04 dated 31.8.2004 passed by the Commissioner (Appeals), Central Excise, Ludhiana].

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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 Steel Strips Limited — Appellant

Vs.

CCE, Ludhiana — Respondent

Appearance:

Appeared for the Appellant – Shri K.K. Anand, Advocate
Appeared for the Respondent – Shri B.K. Singh, Jt. CDR

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 513 / 09 – EX

Per M. Veeraiyan:

Heard both sides on the limited issue of whether unjust enrichment is involved or not in as much as the challenge was restricted to the said issue.

2. The relevant facts, in brief, are that the appellant was manufacturing cold rolled strips. They had claimed refund relating to the period 01.04.1992 to 31.03.1998 on the ground that no duty was payable on the said cold rolled strips. The matter went up to the Hon'ble Supreme Court. In pursuance of the direction

of the Hon'ble Supreme Court vide judgment dated 27.04.2003, first the issue relating to unjust enrichment of the refund claim preferred by them has to be considered and in the event of their crossing the bar of unjust enrichment, the matter should be considered on merits as well by the Tribunal. The original authority considered the aspect of unjust enrichment and held that the appellant has passed on the burden of duty to the consumers and the same has been upheld by the Commissioner (Appeals).

3. Learned Advocate for the appellant fairly conceded that during the period up to 31.03.1994 the gate passes issued for clearance of the goods indicated the duty amount and during the subsequent period also the excise invoices prepared indicated specifically the duty amount. He also submitted that the commercial invoices indicated a composite amount which was inclusive of ~~more~~ the assessable value and the excise duty indicated in the gate passes/ invoices. However, he submits that the company, during the relevant period, was running on losses and later on referred to the BIFR. He also submits that the unit is closed since 1999. He also submits that the indication of duty amount in the gate passes/ invoices was merely in terms of Section 12A of the Central Excise Act. This should not be lead to any presumption that the duty burden has been passed on to the consumers. He also submits that the duty, during the relevant period, was paid under protest.

4. Learned Joint CDR Shri B.K. Singh relying on the decisions in the cases of India Agencies vs. CCE, Chennai reported in 2007 (212) ELT 507 (Tri. Chennai, M/s Skycell Communications Ltd., vs. CCE, Chennai reported in 2007 (216) ELT 702 (Tri. Chennai), A.K. Enterprise vs. CC (Port), Kolkata reported in 2006 (199) ELT 67 (Tri. Kolkata), JCT Limited vs. CCE reported in 2006 (202) ELT 773 (P&H) and in the case of CCE, Mumbai-IV vs. Abu Jani Sandeep Khosla reported in 2006 (206) ELT 599 (Tri. Mumbai) submits that once the duty amounts are indicated in the statutory documents namely the gate passes/invoices, it is not merely the presumption that the duty burden has been passed on by the assessee to the consumers but it is an evidence that the said amount has been passed on to

the consumers. Under these circumstances, the burden to prove that the duty has not been passed on to the consumers is squarely on the appellant and they have not proved that the duty incidence has not been passed on to the consumers. Therefore, he submits that the orders of the lower authorities are legally sustainable.

5. We have carefully considered the submissions made from both sides. The requirement of Section 12A to indicate the duty amount in the gate passes/invoices is to make the buyers know the amount of duty payable by them. In the present case, the appellant have indicated the duty amount in the gate passes/ invoices which are statutory documents. The submission of the learned Jt. CDR that such mentioning of duty amount in the gate passes/ invoices will amount to evidence for passing on such burden deserves to be accepted. Doubt may arise only when the amounts are not indicated in the gate passes or invoices. Even in such cases, the burden to prove that the duty element has not been passed on to the consumer is squarely on the assessee as has been settled by the Hon'ble Supreme Court by various judgments. Further, it not even the case of the assessee that they have not collected the amounts mentioned in the invoices.

6. In the light of the above, we do not find any valid reason to interfere with the orders of the lower authorities holding that the appellant has passed on the duty incidence and that they have not been crossed the bar of unjust enrichment. Since the challenge was limited to the issue of unjust enrichment, there is no further issue survives in the appeal.

7. The appeal is, therefore, rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/