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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/3708/2004 - EX[DB] Date 19/08/2009

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

To :
C.C.E. CHANDIGARH
THE COMMISSIONER OF CENTRAL EXCISE,
CHANDIGARH, PLOT NO 19, SECTOR 17-C,
CHANDIGARH.
C.C.E. CHANDIGARH Appellant
Vs
M/S SURENDRA ENGINEERING COMPANY LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 531/2009– **EX[DB]** dated 6-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent

M/S SURENDRA ENGINEERING COMPANY LTD., GT ROAD,
NEAR SYL CANAL, VILL- CHALGERI. RAJPURA, DISTT. PATIALA

2. Adv. / Consult SH. K. K. ANAND, ADV.,
A-5, BASEMENT,
LAJPAT NAGAR-III
N. 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. 3708 of 2004
[Arising out of order-in-appeal No.321/CE/CHD/2004 dated 15.4.2004 passed by the Commissioner (Appeals), Central Excise, Chandigarh].

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?	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?	No

CCE, Chandigarh — Appellant

Vs.

M/s Surendra Engineering Works Ltd., — Respondent

Appearance:

Appeared for the Appellant –Shri V. Chaudhary, DR
Appeared for the Respondent – Shri K.K. Anand, Advocate

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

FINAL Oral Order No. 531 / 09-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned DR for the appellant and learned Advocate for the respondent. Though the impugned order is sought to be challenged on various grounds, it is not necessary to address all those grounds and suffice to refer only one ground namely the impugned order being totally non-speaking and having been passed without application of mind.

2. The assessee in the case in hand had entered into a contract for supply of M.S. Pipes on FOR delivery at site basis. It is the case of the Department that on scrutiny of purchase orders and relevant sale invoices issued by the party, it was revealed that assessee was availing some non admissible deductions from the contracted price for arriving at lower assessable value. A show cause notice dated 03.08.2001 came to be issued in that regard and by order dated 22.12.2003, the demand to the tune of Rs. 3,10,912/- was confirmed and also penalty of equal amount was sought to be imposed. Aggrieved by the same, the assessee filed the appeal before the Commissioner (Appeals) which came to be allowed by the impugned order.

3. Perusal of the impugned order discloses that the Commissioner (Appeals) after recording brief facts of the case and the contents of the memo of appeal, disposed of the appeal by following observations:-

> "At the time of personal hearing, the Appellants reiterated the submissions already made in the appeal.
>
> I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the Adjudicating Authority has disallowed the deduction on account of the Gujarat Govt. Tax on the grounds that the Appellants were not able to explain the reasons mentioned in Col. 14 of the Ann-A to the Show Cause Notice. The contention of the Appellants is that Sh. Pawan Kumar their authorized signatory had explained in his statement that these are not un-explained deductions rather are the Gujarat Tax, being charged by the Govt. of Gujarat on the goods entering the state. Any such tax being charged by any state Govt. cannot be denied without any specific evidence and has to be taken unto consideration. The said deductions are on account of taxes as per Section 4 of the Central Excise Act, 1944. Moreover there is no doubt also about the fact that this tax had to be actually paid to the Govt. under the law. The Adjudicating Authority has, not denied this type

of deduction in the order-in-original. The Order-in-Original is, therefore, set aside".

4. Bare perusal of the impugned order therefore discloses, as rightly pointed out by the learned DR that there is no application of mind by the Commissioner (Appeals) to the issues which are sought to be raised in the matter. The entire appeal was disposed of virtually by non-speaking order. On this ground itself, the impugned order is not sustainable and is liable to be set aside and matter is remanded to the Commissioner (Appeals) to hear the appeal afresh and dispose of the same by a reasoned order. Since the matter relates to the year 2004, the Commissioner (Appeals) to dispose of the appeal after hearing the parties on or before 31.01.2010. We make it clear that we have not expressed any opinion on merits of the case.

5. Appeal is accordingly disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/