RAM : CEGCANAL
e : 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/227 /2006-228 /2006 - EX[DB] Date 12/10/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
R.R. ISPAT LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 768-769/ **2009 EX[DB]** dated 01-10-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   R.R. ISPAT LTD.
   PLOT NO. 490/1, URLA INDUSTRIA AREA, RAIPUR
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 227-228 of 2006-Ex.

(Arising out of Order-in-Appeal No. 118-119/RPR-I/2005 dated 14.10.2005 passed by the Commissioner (Appeals), Central Excise, Raipur)

CCE, Raipur — Appellant

Vs.

M/s R.R. Ispat Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri S.R. Meena, DR

Appeared for Respondent: Shri K.K. Anand, Advocate

Date of Hearing: 16.9.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 768-769/09-Ex dated............

Per D.N. Panda :

Revenue has come in Appeal against the order passed by the ld. Commissioner holding that there was no evidence showing deliberate under-valuation with intent to evade payment of Excise duty nor evidence exists suggesting that price charged by the Appellant was not sole consideration for sale.

2. Ld. DR Shri S.R. Meena appearing on behalf of Revenue submits that there is discussion by the Adjudicating Authority as to inter connection of the buyer and seller which brings the present Respondent to the fold of law for making sale to the related person. Such sale has caused under-valuation and has reduced assessable value for which Revenue has been prejudiced.

3. Shri K.K. Anand, ld. Counsel appearing on behalf of Respondent submits that not only ld. Commissioner was satisfied on evidence but also he has gone into details to examine the sales made to other persons and found nothing discriminatory. He relies on the decision of the Tribunal in the case of **R.B. Agarwalla & Co. P. Ltd. Vs. CCE** reported in 2007 (217) ELT 417 (Tri.-Kol.) and submits that price at which the Respondent had sold the goods has not demonstrated any under-valuation. Therefore cost construction method is not applicable in the present case. The Tribunal while deciding **R.B. Agarwalla's** case cited (supra) has taken into consideration the ratio laid down by the Apex Court in the case of **Alembic Glass Industries Ltd. V. Collector** - 2002 (143) ELT 244, **Commissioner Vs. Beacon Neyrpic Ltd.** - 2006 (193) ELT 16, **Commissioner Vs. Besta Cosmetic Ltd.** - 2005 (183) ELT 132 and **Union of India Vs. Playworld Electronics Pvt. Ltd.** - 1989 (41) ELT 368 and also the decisions of the Tribunal. Therefore, Revenue's Appeal is unsustainable.

4. Heard both sides and perused the record.

5. Specifically we called for evidence from Revenue to show whether price was not sole consideration, which is a pre-requisite of Section 4 of Central Excise Act, 1944. There may be inter connection. But Revenue has to discharge burden of proof if it alleges that the transaction in respect of each removal was not inconsonance with the principles of law relating to valuation. A bald decision cannot be taken when law is codified in respect of valuation. Finding no evidence to impeach the finding of the ld. Commissioner (Appeals), we are inclined to follow earlier judgment of Tribunal in the case of **Agarwalla's & Co.** (cited *supra)* and dismiss Revenue's Appeals.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM