(16)

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

Date 06/06/2008

Appeal No. E/1875TO 1877 /2006-SM[BR]

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL — Appellant
Vs
M/S BHARAT EXPLOSIVES LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 879 -881 /2008 –SM[BR] dated 10.4.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S BHARAT EXPLOSIVES LTD
   WAIDHAN,DISTT SIDHI(MP)
   [2]M/S NAV BHARTAT FUSE CO. LTD. WAIDHAN DISTRICT SIDHI[M.P]
   [3]M/S BLAASTAC [INDIA] PVT. LTD. WAIDHAN, DISTRICT SIDHI[M.P]
2. Adv. / Consult
   NONE;------------
3. S.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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal Nos.1875 to 1877 /2006-SM

(Arising out of order in appeal No. 77/CE/BPL/06 dated 28.3.06, No.51/CE/BPL/06 dated 21.3.06 and No.76/CE/BPL/06 dated 28.3.06passed by the Commissioner of Central Excise (Appeals), Bhopal)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the 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 ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

M.

CCE, Bhopal .. Appellants
(Rep. by Shri S.L. Meena, DR)

Vs

1. M/s Bharat Explosives Ltd
2. M/s Navbharat Fuse Co. Ltd
3. M/s Blastac India Pvt Ltd

.. Respondents
(Rep. by none)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 10.4.2008

Final Order No. 879 to 881 /2008-SM(BR)

Per P.K. Das:

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

2. Heard the learned DR on behalf of the Revenue. None appeared on behalf of the Respondents inspite of issue of notices.

3. The Adjudicating Authority rejected the refund claims as the amount of duty had been passed on to their buyers and directed to credit the amount to the Consumer Welfare Fund. By the impugned order, the Commissioner (Appeals) allowed the refund claims and set aside the Adjudication Order. Hence the Revenue filed these appeals.

4. After hearing the learned DR and on perusal of the records, I find that the respondents were supplying the explosives to M/s Northern Coal Field Ltd., a subsidiary company of M/s Coal India Ltd . The price was fixed on provisional basis. The respondents cleared the goods at the price of Rs.14,144/- per MT. Subsequently, the price was fixed at Rs.13,282/- per MT and duly certified by M/s Coal India Ltd. The Commissioner (Appeals) has observed that Respondents issued credit notes to the buyer and the difference in the price was adjusted by the buyer from the outstanding payment of Respondents and it is not hit by bar of unjust enrichment, since the incidence of duty was not passed on to the buyers.

5. The learned DR on behalf of the Revenue submits that the Commissioner (Appeals) passed the order without considering the decision of the Tribunal in the case of Sangam Processors Vs CCE reported in 1994 (71) ELT 989 (T) which was upheld by the Hon'ble Supreme Court. He

further submits that Board Circular No. 317/33/97-CX dated 18.6.97, clarified that even if credit notes are issued, doctrine of unjust enrichment is applicable.

6. I find that the Commissioner (Appeals) has passed the order following the decision of the Tribunal in the case CCE Vs Solar Capitals Ltd reported in 2006 (205) ELT 403 (T-Mum). For the purpose of proper appreciation, the relevant portion of the said decision is reproduced below:-

"The appellants supply the impugned goods to M/s Coal India Ltd (CIL), a public sector company. They had a contract with CIL for the period 2001-2002 for supply @ Rs.14,414/- PMT, which was valid upto 30.6.2002. By a letter dated 12.8.03, CIL requested them to continue supply at the same rate provisionally. Such supply was made provisionally for the impugned period from 1.7.03 to 29.2.04. However, it is not in dispute that the contract was renewed for this period for supply Rs.13,282/- PMT and that the appellants have paid back the excess amount and excess duty to M/s CIL. Hence the impugned order passed by the lower appellate authority allowing the refund to the appellants appears to be in order and is also in conformity with the precedent decisions of the Tribunal cited by him. Hence the same requires no interference.

2). Accordingly, the department's appeal is dismissed. The stay application also stands disposed off."

7. I find that the present case is identical to the case of M/s Solar Capital Ltd (supra). I also find that the Commissioner (Appeals) has examined the issue that the price was adjusted by the buyer from the outstanding payment of appellants, after settlement of price. The Commissioner (Appeals) rightly

held that the refund claim filed by the respondents is not hit by the doctrine of unjust enrichment. So, I do not find any reason to interfere with the order of Commissioner (Appeals). Accordingly, all the Appeals filed by the Revenue are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*