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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

Appeal No. E/3493/2006-SM[BR] Date 16/06/2008

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

To :
M/S LAXMI STEEL INDUSTRIES
LALITPUR ROAD, BIJOLI, JHANSI

M/S LAXMI STEEL INDUSTRIES Appellant
Vs
C.C.E.KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 964 /2008-SM[BR] dated 23.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E.KANPUR
   117/7, SARVODAYA NAGAR, KANPUR.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B -1/1289 –A, VASANT KUNJ NEW DELHI -70
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 No.3493/06-SM

(Arising out of order in appeal No.159/CE/Appl/KNP/06 dated 27.4.06 passed by the Commissioner of Central Excise (Appeals), Kanpur)

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?

N.

M/s Laxmi Steel Industries — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Kanpur — Respondent
(Rep. by Shri B.S. Suhag, DR)

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

Date of Hearing: 23.4.08

Final Order No. 964 /2008-SM(BR)

Per P.K. Das:

Heard both the sides and perused the records.

2. The present proceedings has arisen out of the Remand Order of the Tribunal vide Final Order No. A/184-199/NB(DB) dated 17.3.99. The relevant portion of the Order of the Tribunal is reproduced below:-

"*We have heard both the sides. While agreeing that the appellants would be entitled to take the amount in PLA as a consequence of their appeal being allowed by the Tribunal, since the Modvat Scheme is not available on hot re-rollable products and therefore, payment in RG 23A Part II would not amount to any benefit or relief to the appellants, we hold that the appellants will have to satisfy the Assistant Commissioner regarding non-passing of duty burden during the period covered by the appeal namely 1994-95. The Assistant Commissioner is directed to satisfy himself with the evidence that may be adduced before him as to whether the doctrine of unjust enrichment would be applicable i.e. whether the appellants have passed on the duty burden to their customers during the period in question and if he is satisfied that the bar of unjust enrichment is not attracted, if i.e. the appellants satisfy him that they have not passed on the duty burden to their customers, only then he is directed to allow the appellants to take the credit in their PLA. The matter is thus remanded to the Assistant Commissioner for decision in the above terms.*"

3. In compliance of the Order of the Tribunal, the Deputy Commissioner of Central Excise, allowed the Appellants to take credit of Rs. 5,72,657/- in their PLA and same should be utilized towards payment of duty.

4. The Revenue filed appeal before the Commissioner (Appeals) against the Adjudication Order. The Commissioner (Appeals) set aside the Adjudication Order and allowed the appeal filed by the Revenue.

5. The learned Advocate submits that the Adjudicating Authority had directed to take credit in their PLA and held that burden of duty was not passed on to any other person after examining the Chartered Accountant certificate and the report of the Central Excise officers. He submits that the Revenue in their Appeal before the Commissioner (Appeals) has not disputed the evidences. He relied upon the decision of the Tribunal in the case of R.C.C. (Sales) Pvt Ltd Vs. CCE Hyderabad-IV reported in 2008 (223) ELT 53.

6. The learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that the Adjudicating Authority relied upon the decision of the Hon'ble Bombay High Court in the case of Solar Pesticides which was over-ruled by the Hon'ble Supreme Court. He further submits that the Appellants failed to discharge the burden of proof of unjust enrichment.

7. After hearing both the sides and on perusal of record, I find that the Adjudicating Authority in compliance of the Tribunal's order held that the duty was not passed on to any other person. It is seen that the Adjudicating Authority examined the various evidences and reports. The relevant portion of the finding of the Adjudicating Authority is reproduced below:-

"I have carefully gone through the facts of the case, the submission made by the party, the contents of the affidavit submitted by the party, the certificate submitted by the Chartered Accountant and the report submitted by the Jurisdictional Central excise Range Officer. I find that the party had not taken credit of the amount of deemed modvat credit either in their RG 23-A Part II or in their PLA. Further, they have not passed on the duty

burden of that credit to their customers. Further that they have never received back any amount from any person on this account."

8. The learned Advocate on behalf of the Appellants drew attention of the Bench to the Grounds of Appeal before the Commissioner (Appeals). It appears that the Revenue filed appeal before the Commissioner (Appeals) on the ground that the Adjudicating Authority followed the decision of the Bombay High Court which was over-ruled by the Hon'ble Supreme Court.

9. It transpires from the Adjudication Order that the Adjudicating Authority after examining the evidences, observed that the Appellant had not passed the duty burden of that credit to their customers. In addition to that, he relied upon the decision of the Hon'ble Bombay High Court.

10. It is noted that the Revenue had not disputed the evidences relied upon by the Adjudicating Authority in their grounds of appeal. The Commissioner (Appeals) observed that the deemed credit is allowable only when duty has been paid by the seller of input but the name has not been filled due to the reason that proof of payment of duty is not available with them. It appears that the observation of the Commissioner (Appeals) on merits of the case is beyond the remand order of the Tribunal, which is not permissible under the law.

11. I find that Commissioner (Appeals) has not disputed the Affidavit, Chartered Accountant Certificate and the report of the Jurisdictional Central

Excise officers and, therefore, the observation of the Commissioner (Appeals) is not sustainable. The Tribunal in the case of R.C.C. (Sales) Pvt Ltd (Supra) held that burden of duty whether passed on to the customers, Chartered Accountant certificate has to be accepted.

12. In view of the above discussion, I find that the order of the Commissioner (Appeals) is not acceptable and accordingly, it is set aside. The order of the Adjudicating Authority is restored. The appeal is allowed.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*