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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/2465/2006-SM[BR] Date 22/07/2008

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

To :
ALBERT DAVID INDIA LTD.
B-12, MEERUT ROAD, INDL. AREA, GHAZIABAD
201003

ALBERT DAVID INDIA LTD. Appellant
Vs
C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1064 /2008 –SM[BR] dated 1.7.2008 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. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult SHRI D. CHITLANGIA, REP;
   M/S APPELLANT;-------------

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. 2465/06-SM

(Arising out of order in appeal No.46/CE/Gzb/06 dated 25.4.06 passed by the Commissioner of Central Excise (Appeals), Ghaziabad))

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 Albert David Ltd — Appellant (Rep. by Shri Chitlangia, Rep.)

Vs

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

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

Date of Hearing: 1.7.08

Final Order No. 1064 /2008-SM(BR)

Per P.K. Das:

The appellants filed this appeal against the rejection of refund claim of Rs.75,000/-.

2. The relevant facts of the case, in brief, are that by order in original dated 26.9.05, the Assistant Commissioner sanctioned the refund claim of Rs.75,000/- and adjusted the said amount against the recovery of Government dues arising under order in original No.34-35/JC/Gzb/05 dated 25.1.05. The Commissioners (Appeals) upheld the Adjudication order.

3. The learned Representative of the Appellants, submits that the appellants filed appeal against the order in original dated 25.1.2005 which was rejected. Then the Appellants filed appeal alongwith Stay Application before the Tribunal. It is revealed from the Order No.55/06-Ex dated 18.1.2006 of the Tribunal that the Hon'ble High Court granted stay upon deposit of Rs.10 lakhs. The Appellants deposited the amount of Rs.10 lakhs as per order of the Hon'ble High Court. Since the order of the Hon'ble High Court is complied with, the appeal will come up for hearing in due course. He submits that the Tribunal granted stay against the order and therefore, adjustment of refund claim of Rs.75,000/- is illegal. He further submits that the Adjudicating Authority has made adjustment without giving proper opportunity of hearing.

4. The learned DR reiterates the finding of the Commissioner (Appeals). He further submits that the Tribunal in the case of Mardia Chemicals Ltd Vs CCE Bhavnagar reported in 2004 (172) ELT 374 (Tri.Del.) held that demand of duty being outstanding against the assessee at the time of sanction of refund, demand is to be adjusted against the amount of refund sanctioned.

5. After hearing both the sides and on perusal of the record, I find that the Adjudicating Authority adjusted the refund claim against the demand, ~~in that case~~ which has been ~~stated~~ stayed by the Tribunal on the basis of decision of

the Hon'ble High Court. It is noted that the Adjudicating Authority had not given opportunity to the appellants before adjustment of refund claim. So, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to decide afresh the case after considering the subsequent developments. The Appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*