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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/1780/2006-SM[BR] Date 28/07/2008

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant
Vs
M/S EASTMAN CAST & FORGE LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1089 /2008 –SM[BR] dated 17.6.2008

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 EASTMAN CAST & FORGE LTD.

   G.T. ROAD, LUDHIANA
2. Adv. / Consult SHRI KAMALJEET SINGH ADV.

   N /V ; -------------------

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.1780/06-SM

(Arising out of order in appeal No.195/CEChd/06 dated 17.3.06 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

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?

CCE, Ludhiana — Appellant (Rep. by Shri S.L. Meena, DR)

Vs

M/s Eastman Cast & Forge Ltd — Respondent (Rep. by Shri Kamaljeet Singh, Advocate)

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

Date of Hearing: 17.6.08

Final Order No. 1089 /2008-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against the order of Commissioner (Appeals) whereby adjudication order was set aside and refund was allowed.

2. The relevant facts on record, in brief, are that the respondents were engaged in manufacturing and selling of hand tools to various parties and giving discount on annual basis ranging from 2% to 11% depending upon the delivery of the goods. The respondents issued credit notes to the customers at the end year for turnover discount. They claimed refund ~~claim~~ on the said amount. The Adjudicating Authority rejected the refund claim on the ground that the respondents failed to discharge the principle of unjust enrichment. It has been held that the respodents issued credit notes which is not sufficient for fulfillment of principle of unjust enrichment. The Commissioner(Appeals) set aside the Adjudication order and allowed the appeal on the ground that the respondents had stated that they have not collected the amount from the customers and followed the decision of the Hon'ble Surpeme court in the case of CC Bombay Vs Sangli Bank Ltd reported in 1997 (93) ELT 3 (SC).

3. The learned DR on behalf of the Revenue submits that it is revealed from the record that the refund claim on the basis of credit note, is not sufficient to prove that duty burden has not been passed on to other persons. He relied upon the decision of the Tribunal in the case of CCE Chandigarh Vs Him Cylinders Pvt Ltd reported in 2007 (207) ELT 681 (Tri. Del). He further submits that the Tribunal in the case of Hanilers Textile Ltd Vs CCE reported in 2008 (225) ELT 117 (Tri.-Bom) held that Chartered Accountant certificate is not sufficient to discharge burden cast upon the appellant on unjust enrichment.

4. The learned Advocate on behalf of the respondents submits that the Adjudicating Authority did not consider the evidences placed by the

respondents. He drew the attention of the Bench to the relevant portion of the adjudication order. He submits that the Commissioner (Appeals) after considering the evidence and decision of the Hon'ble Supreme Court allowed the refund claim.

5. After hearing both the sides and on perusal of the record, I find that the Commissioner (Appeals) allowed the refund claim on the basis of affidavit filed by the respondents which was not verified at all. It is revealed from the adjudication order that the respondents entered into an agreement with their buyer to pass the turnover discount based on quantity produced. It has been contended by the respondents before the adjudication authority that they did not receive the payment of bills.

6. In my view, the principle of unjust enrichment is to be satisfied on the basis of evidences. In the present case, both the authorities below had not looked into the evidences. So, I set aside the impugned orders and remand the matter back to the adjudicating authority to examine the evidences and to pass order in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*