

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

Appeal No. ST/438 /2008-SM[BR] ST /STAY/ 1333/ 2008-SM[BR]

Date 12/08/2008

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

To :
M/S JYOTI RUBBER ENGINEERS,
E-32, INDUSTRIAL AREA,
GOVINDPURA,
BHOPAL-462023.

M/S JYOTI RUBBER ENGINEERS,

C.C.E BHOPAL

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No 1132 /2008 –SM[BR] & S/ 467/2008 dated 6.8.2008
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

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 Publications (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

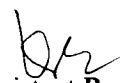
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15

15. Office Copy

16. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 06.8.2008

St/Stay Application No. 1333/2008-SM(BR) in
Appeal No.438/2008-SM(BR)

M/s. Jyoti Rubber Engineers	Appellant
vs.	
C.C.E. Bhopal	Respondent

Appearance:

Shri J.K. Jain for the Appellant/Applicant
Shri Sansar Chand, DR for the Respondent

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

Final Order No. 1132/2008-SM(BR) & 8/467/2008

Per: P.K. Das

After hearing both the sides and on perusal of the records, it is seen that the issue involved in the case is in narrow compass and therefore after granting stay the appeal is taken up for hearing.

2. After hearing both the sides and on perusal of the records. It is seen that the Deputy Commissioner of Central Excise sanctioned the refund claim of Rs. 1,18,329.00. It has been held that the claim is not hit by doctrine of unjust enrichment as the credit notes have been issued by the Applicant. The Adjudication Orders was revised by the Commissioner of Central Excise. By order-in-revision dated

05.5.08, Commissioner of Central Excise held that the refund of Rs. 1,18,329.00 sanctioned to the Applicant would be recovered along with interest and the same be credited to the Consumer Welfare Fund. It has been held that the Applicant failed to establish that the incidence of Tax was not passed on to any other person.

3. On perusal of the Commissioner of Central Excise, it is seen that the Applicant produced Chartered Accountant's Certificate, Customers' Certificate and Balance Sheet etc. before the Commissioner to establish that the incidence of Tax was not passed on to the Customers.

4. I find that the Commissioner proceeded on the basis of issue of credit notes and failed to consider the evidence placed by the Applicant. So, the impugned order is set-aside and the matter is remanded back to Commissioner of Central Excise to decide afresh after considering the evidences placed by the Applicant. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta