(16)

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1958 – 1959 /2006 –SM[BR]   Date 03/09/2008

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 INDIAN EXPLOSIVES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No 1241 – 1242 /2008 –SM[BR]**. dated 4.8.2008 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 INDIAN EXPLOSIVES LTD.
   VILL DEOHRA,DISTT SHAHDOL(MP)
   [2] M/S NAVBHARAT EXPLOSIVES CO.LTD.
   ANNUPPUR , DISTRICT SHAHDOL [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. 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.1958-59 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.138-CE/BPL/2006 dated 10.05.2006 and 139-CE/BPL/2006 dated 10.05.2006 passed by the Commissioner of Central Excise (Appeals), Bhopal (M.P.)]

Date of Hearing/ Decision:04.08.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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, Bhopal ...Appellants
(Rep. by Shri S. Chand, DR)

Vs.

M/s. Indian Explosives Ltd. ...Respondent
M/s. Navbharat Explosives Co. Ltd.
[Rep. by None.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No..1241 - 1242/08-SM(BR)/Dated:04.08.2008

Per P.K. Das:

Common issue involved in both the appeals and, therefore, both are taken up together for disposal.

Revenue filed these appeals against the orders of the Commissioner (Appeals), whereby Adjudication Orders were set aside and refund claims were allowed.

2. Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondents despite issue of notice.

3. After hearing the ld. DR and on perusal of the records, it is seen from the orders of the Commissioner (Appeals) that the Respondents were supplying Explosives to M/s. Coal India Limited under provisional assessment as the prices were provisional. The Respondents cleared the goods at Rs.14,144/- P.M.T. Subsequently, M/s. Coal India Limited fixed the price at Rs.13,282/- per M.T. It is seen that M/s. Coal India Limited certified the price and adjusted the amount from outstanding payment of the Respondents. Further, the Respondents also issued credit notes to the buyers. The Adjudicating Authority rejected the refund claim on the ground of unjust enrichment. The Commissioner (Appeals) set aside the orders and held that the refunds are not hit by the doctrine of unjust enrichment.

4. It is contended by the ld. DR on behalf of the revenue that the Commissioner (Appeals) had not taken into consideration the decision of the Tribunal in the case of Sangam Processors Vs. CCE reported in 1994 (71) ELT 989 (CEGAT) upheld by the Hon'ble Supreme Court. It has been held that even if the credit notes are issued, doctrine of unjust

enrichment is applicable. In the present case, I find that the Commissioner (Appeals) proceeded on the basis of certificate of M/s.Coal India Limited apart from credit notes. The Tribunal in the case of Commissioner of Central Excise, Nagpur Vs. Solar Capitals Ltd. reported in 2006 (205) ELT 403 (T-M) held as under:-

> " Heard both sides. 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/- P.M.T., which was valid up to 30-06-2002. By a letter dated 12.08.2003, CIL requested them to continue supply at the same rate provisionally. Such supply was made provisionally for the impugned period from 1.7.2003 to 29.2.2004. 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."

6. In view of the above discussions and the order of the Tribunal, I do not find any infirmity in the orders of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 4.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.