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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/2192/2006-2193/2006- SM[BR] Date 05/09/2008

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

To :
M/S NORTH INDIA PIPES LTD.
SANGTRUR ROAD,DIRBA,
M/S NORTH INDIA PIPES LTD. Appellant

Vs

CCE,LDH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1261 – 1262 /2008 –SM[BR] dated 14.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
CCE,LDH
CE HOUSE,F BLOCK RISHI NAGAR,LDH
2. Adv. / Consult SHRI KAMALJIT 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. 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

1 M/S DIRBA POPES P LTD.
SANGRUR ROAD,DIRBA,

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeals Nos.2192-2193 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.321 & 322/CE/CHD/06 dated 28.04.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:14.08.2008

For approval and signature:

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

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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? :

No.

4. Whether Order is to be circulated to the Departmental authorities? : Yes.

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(1) M/s. North India Pipes Ltd.
(2) M/s. Dirba Pipes Pvt. Ltd. ....Appellants
[Rep. by Shri Kamaljit Singh, Advocate]

Vs.

CCE, Ludhiana ...Respondent
[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No. 1261-1262/08-SM(BR) /Dated:14.08.2008

<u>**Per P.K. Das**</u>:

Both the appeals are arising out of a common order and, therefore, both are taken up together for disposal.

2. Ld. Advocate submits that the Appellant reversed the Credit of Rs.2,40,000/- at the instance of Central Excise Officers and filed refund claim by letter dated 30.05.2003. The refund claim application was returned back to the Appellant as the show cause notices were issued on this time. He further submits that the Appellant availed suo moto Credit of the said amount in the month of August, 2003. He further submits that the Adjudicating Authority decided the issue in their favour in the said show cause notice. So, the Appellant rightly availed suo moto Credit and demand of interest and penalty are not justified.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He relied upon the Larger Bench decision of the Tribunal in the case of B.D.H. Industries Ltd. Vs. Collector of Central Excise – 2008 (TIOL) 1211 CEGAT (M-LB).

4. After hearing both sides and on perusal of the records, I find that the Appellant filed the Refund claim application and availed credit suo moto. The Larger Bench of the Tribunal in the case of B.D.H. Industries Ltd. (supra) held that all types of refunds have to be filed under Central Excise Act and Rules made thereunder and no suo moto credit of the duty paid in excess may be taken by the assessee. In view of the decision of the Larger Bench of the Tribunal, the Appellant is not entitled to avail suo moto Credit. I find that disallow of Credit taken suo moto and the demand of interest are justified. Regarding imposition of penalty, it is seen that the Larger Bench of the Tribunal decided the issue. So, the imposition of

penalty is not warranted. Accordingly, disallow of credit and interest are upheld and penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 14.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.