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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/2262/2006- SM[BR]   Date 05/09/2008

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

To :
CCE,GHAZIABAD

CGO COMPLEX-II,KAMLA NEHRU NAGAR
GHAZIABAD
CCE,GHAZIABAD   Appellant

Vs

M/S U T LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No 1263 / 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

M/S U T LTD.

SITE-IV,INDL AREA,SAHIBABAD GHAZIABAD
2. Adv. / Consult SHRI. R.C.GUPTA ADV.
H. NO. 557 / SECTOR19, FARIDABAD-121003[H.R.]

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 Appeal No.2262 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.40-CE/GZB/2006 dated 12.04.2006 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

Date of Hearing/ Decision:14.08.2008

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? : No.
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE. Ghaziabad ....Appellants
[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. U.T. Ltd. ...Respondent
[Rep. by Shri R.C. Gupta, Advocate]

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

Final Order No.1263/08-SM(BR)/Dated:14.08.2008

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal No.40-CE/GZB/2006 dated 12.4.2006.

2. The relevant facts of the case, in brief, are that the Respondent deposited a sum of Rs.10,94,263/- during investigation. The Tribunal settled the issue by way of ~~payment~~ demand of Rs.2,88,047/- and penalty of Rs.10,000/-. Thereafter the Respondent filed refund claim for Rs.7,96,216/-. The Adjudicating Authority sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appals), which was rejected.

3. After hearing both the sides and on perusal of the records, it is seen that the main contention of the ld. DR is that the refund claim is hit by principles of unjust enrichment. He submits that the Commissioner (appeals) erroneously followed the decision of the Gujarat High Court and ignored the decision of the Hon'ble Supreme Court. On perusal of the order of the Commissioner (Appeals), I find that the Commissioner (Appeals) examined the principle of unjust enrichment in the impugned order as under:-

> " I find that the contention of the department that the amount of Rs.10,94,263/- was deposited by the party on their own has not been shown in balance sheet of relevant year 1997-98 in the schedule of loans and advances to be recovered for the department is not sustainable as the party had deposited this amount under protest as an advance payment of central excise duty pending enquiry and investigation and intimated this fact to the Additional Director General of DGAE, Central Excise New Delhi vide their letter dated 06.12.1997 and has also shown in their Balance Sheet of the company for whole of the group in the relevant year 1997-98 in the schedule of "OTHER CURRENT ASSETS".

4. I find that the Revenue had not disputed the above facts of examination of balance sheet in their Grounds of Appeal. So, it is evident from the record that the Commissioner (Appeals) allowed the refund claim after examining the unjust enrichment. Hence, I do not find any

reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 14.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.