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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/3123/2006-SM[BR] Date 12/05/2008

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

To :
M/S LML LIMITED
C-10,PANKI INDUSTRIAL ESTATE,KANPUR
208022

M/S LML LIMITED Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 737 /2008 –SM[BR] Dated 7.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. KANPUR
   117/7,SARVODAYA NAGAR,KANPUR.
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No.3123 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.193/CE/APPL/KNP/2006 dated 18.5.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur (U.P.)]

Date of Hearing/ Decision:7.4.2008

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? :

No.

M/s. LML Limited ...Appellants
[Rep. by Shri R. Santhanam, Advocate]

Vs.

CCE, Kanpur ...Respondent
[Rep. by Shri Sumit Kumar, DR]

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

Final Order No.737/08-SM(BR)/Dated:7.4.2008

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

Heard both sides and perused the records.

2. The Appellant filed this appeal against the denial of Deemed Credit during the period 30.05.1988 to 11.9.90. It is seen that the Tribunal vide Final Order No.A/887-888/98-NB (SM) dated 14.8.98 remanded the matter to the Adjudicating Authority with specific direction. The relevant portion of the said order is reproduced below:-

> "I however, find that while in the other appeal No.E/1117/94-NB decided by me as stated above, evidence was available regarding the suppliers of the inputs being themselves the manufacturers thereof who had availed full exemption from duty under the relevant exemption notification admissible to them on account of their manufacturing the said goods from duty paid material. There is no such information available in the present case. It is stated in the impugned order that the appellant had stated that the inputs had been received by them from various suppliers like:-
>
> (1) M/s. Silverton Metal (P) Ltd., Calcutta.
>
> (2) M/s. Viraj Industries, Kalyan, Maharashtra.
>
> (3) M/s. Metachem Industries, Jabalpur.
>
> (4) M/s. Emmes Metal (P) Ltd., Bombay.
>
> (5) M/s. Delhi Alloy (P) Ltd., Faridabad.
>
> It is not indicated that they were also manufacturers of aluminium alloy ingots manufacturing the same from duty-paid aluminium ingots and had availed full exemption from duty. This aspect needs to be looked into for appropriate

> decision on the basis of the factual position. The impugned order is set aside and the appeal allowed by remand of the matter to the adjudicating authority for de-novo adjudication in the light of the above observations after granting personal hearing to the appellant."

3. On perusal of the de novo Adjudication Order, it is seen that the Adjudicating Authority allowed the Deemed Credit on the quantity supplied by M/s. Delhi Alloys Pvt. Ltd., Faridabad, after examining the documents. It is noted that no finding was given in respect of the other suppliers as recorded in the order of the Tribunal. So, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to examine the matter in the light of the direction of the Tribunal by Final Order dated 14.8.98 in so far as other ~~five~~ suppliers as recorded in the said order. The appeal is allowed by way of remand.

Order dictated & pronounced in open Court on 7.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.