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

Appeal No. E/2962/2004 - EX[DB] Date 22/01/2009

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

To :
M/S BHILWARA PROCESSORS LTD.
P.O.NO-16,MANDPAM BHILWARA RAJASTHAN
M/S BHILWARA PROCESSORS LTD. Appellant
Vs
C.C.E.JAIPUR-II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 56/2009- **EX[DB]** dated 16-1-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.JAIPUR-II
N.C.R.B.STATUE CIRCLE C-SCHEME JAIPUR
2. Adv. / Consult SH. RAVI RAGHAVAN, ADV., B-6/10, S. J. ENC. N. DELHI-29
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 - 3
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
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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Excise Appeal No. 2962 of 2004

M/s Bhilwara Processors Ltd. — Appellant
[Shri Ravi Raghavan, Advocate]

Versus

CCE, Jaipur — Respondent
[Shri R.K. Verma, Auth. Rep. (DR)]

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 14/01/2009.

FINAL Order No. 56/09-EX. Dated : ____________

Per. D.N. Panda :-

Learned Counsel Shri Ravi Raghavan submits that while the appeal was pending before the Tribunal, the Hon'ble High Court of Rajasthan, which is the Jurisdictional High Court has delivered a judgment in the case of **Union of India vs. M/s A.K. Spintex Ltd. & Anr.** reported in **2009-TIOL-12-HC-RAJ-CX**. He submits that this judgment comes to his rescue. He explains the facts in the manner that this appellant is a job worker who receives the raw material from the principal and the raw material so received under goes processing by the appellant. The appellant was discharging duty liability on the basis of the assessable value determined following the ratio laid down in the Ujagar Print's case. He further submits that consequent upon resolution of certain disputes in the industry itself, this appellant was bound to issue credit notes to the principal who supplied the raw materials. The reason of issuance of the credit note was that this appellant has to pay some money to the principal for the transaction due to decrease of price. Therefore, when this appellant suffered, it was bound to get back the refund of the duty it paid on the goods manufactured for the principal and there was slash of the assessable value. But the learned Appellate Authority having no advantage of reading the Jurisdictional High Court judgment delivered on November 26, 2008, he decided against the appellant. He further submits that the facts of the case of the appellant are in similar parameteria and covered by the judgment.

2. Learned DR submits that this appellant is not entitled to refund, in view of the decision of the learned Appellate Authority in para '6'. The duty paid was ultimately passed on by the appellant to customers at the time of clearance of goods. Therefore, he supports the order of the Appellate Authority below.

3. Heard both sides and perused the records.

4. We significantly noticed that there was no clearance made by this appellant to customers directly. Rather the job worked goods had again gone back to the principal. When the credit note was issued by the appellant to the principal, this implies that this appellant has to suffer for the payment covered by the credit notes and the principal shall pay him sale proceed lower that was earlier charged in the invoices. It appears that appellants claim has arisen because of high duty liability incurred in past. When the suffering is for the duty liability, whether such a suffering requires any mitigation is to be examined. We are unable to find whether any thorough examination was done by the learned Appellate Authority since manner of examination was not satisfactory. Nature of the credit note, legitimacy of the credit note and if anything that shall be payable by the appellant to the principal need

to be brought to record in no uncertain terms. It is necessary to examine that the methodology adopted to get less amount from the principal whether gives rise to refund is to be brought to record. Thorough examination of the entire fact being necessary on the touch stone of the law, the learned Adjudicating Authority is directed to provide reasonable opportunity of hearing to the appellant and thoroughly examine the manner how refund, if any, arises to the appellant and while examining he is required to take into consideration the judgment of the Jurisdictional High Court and also any applicable decision of the Apex Court. If an exercise is carried out to demonstrate by speaking and reason order that shall bring the litigation to an end. In the manner stated above, we remand the matter to the learned Adjudicating Authority to dispose of this matter by end of **31st March 2009**.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK