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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/4152/2004 - EX[DB] Date 02/02/2009

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

To :
M/S INTERACH BUILDING PRODUCTS PVT. LTD.
29, UDYOG VIHAR, GREATER NOIDA

M/S INTERACH BUILDING PRODUCTS PVT. LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 72/2009-**EX[DB]** dated 21-1-09 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. NOIDA
   B-123, SECTOR-5, NOIDA (U.P.)
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 L.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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 4152 of 2004-Ex.

(Arising out of Order-in-Original No. 10/Commissioner/Noida/2003 dated 6.5.2004 passed by the Commissioner of Central Excise, Noida)

M/s Interarch Building Products Pvt. Ltd. — Appellant

Vs.

CCE, Noida — Respondent

Appeared for Appellant : Shri A.R. Madhav Rao, Advocate
Appeared for Respondent : Shri Surender Singh, DR

Date of Hearing: 13.1.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 72/2009-Ex dated............

Per D.N. Panda:

Ld. counsel Shri Madhav Rao submits that the purchase order they received from the respective buyer were for pre-fabricated buildings. The ultimate clearance of the pre-fabricated building materials is covered by the Entry 94.06 and exigible to duty @ 4%, Revenue's plea is that steel items were cleared and exigible to duty @ 16% under cover of Chapter 72 and 73. But that plea has no legs to stand. The reason that was stated by ld. Adjudicating Authority in para-19 itself demonstrates that purchase order placed with the appellant was for pre-fabricated building but not any other goods classifiable differently. It is the understanding of both the sides i.e. the Appellant and purchaser that a pre-fabricated building is to be erected for purchaser and that being a composite contract, such a contract was to be performed. This is clear intention and understanding of both sides. Therefore, the authorities below who passed the order on 6.5.04 having no benefit of the judgment of the Hon'ble Suprme Court in the case of **Mittal Pipes Manufacturing Co. Vs. CCE** reported in 2008 (231) ELT 196, held the issue against the appellant. The issue in that particular case was that the department itself conceived that the appellant had supplied pre-fabricated buildings. While that was the case of the appellant, Revenue intended to tax that appellant invoking Chapter 73. Tribunal held that the goods delivered were pre-fabricated building and attracts the sub-heading 94.06. Such position is reflected in para-7 of the Apex Court's judgment. Therefore the ld. Counsel prays that when there is already a Tribunal's decision on the issue and that is settled, this appellant should get similar benefit. He has no hesitation to satisfy the authority below on the basis of the apex Court's judgment and can claim appropriate relief.

2. Ld. DR does not dispute the factual aspect ~~and~~ as averred by the learned counsel and agrees that if an opportunity is granted to the lower ld. adjudicating authority, he shall do justice to the appellant.

3. Heard both the sides and perused the record.

4. We fully agree that ld. adjudicating authority below had no benefit of Reading of the apex Court's judgment in **Mittal pipes** case (supra). It appears that the present appellant's case may also be governed by the decision in view of the factual matrix apparent from para-3 of the apex court judgment. We appreciate that judicial discipline should be followed and this appellant should not be denied of justice if the ld. authority below comes to similar conclusion what the Tribunal had in **Mittal pipes** case and as apparent from para-7 of the apex court judgment.

5. In view of our aforesaid observation we send the matter back to ld. Adjudicating Authority and expect that both sides shall sort out their litigation following the ratio laid down by the apex Court in **Mittal pipes** case.

6. In view of the remand proceeding, we keep the matter open for both the sides to argue on all issues arising out of show cause notice. The Authority below granting fair opportunity of hearing shall pass speaking and reasoned order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM