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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/3869/2004 - EX[DB] Date 19/02/2009

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

To :
M/S AMRITSAR FORGING
M/S AMRITSAR FORGING E-591, PHASE-VII, FOCAL POINT LUDHIANA
M/S AMRITSAR FORGING Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 137/2009-**EX[DB]** dated 11-2-09 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. LUDHIANA
THE COMMISSIONER OF CENTRAL EXCISE, LUDHIANA, F BLOCK , RISHI NAGAR, LUDHIANA
2. Adv. / Consult SH. KULVINDER SINGH, ADV., 393-L, MODEL TOWN LUDHIANA - 141002
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

COURT – III

CENTRAL EXCISE APPEAL NO. 3869 OF 2004

[Arising out of Order-in-Appeal No. 333/CE/APL/LDH dated 8.4.2004 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Amritsar Forging — Appellant

Vs.

CCE, Ludhiana — Respondent

Appearance:

Shri Kulvinder Singh, Advocate for the appellant;
Shri Virender Kumar Chaudhary, SDR, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 11th February, 2009

FINAL ORDER NO. 137/09-EX **dated** ________

Per M. VEERAIYAN:

This is an appeal against the order of the Commissioner (Appeals) No. 333/CE/APPL/LDH/2004 dated 8.4.2004.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The appellant is engaged in the manufacture of forging and they supply the forging as original equipment to manufacturers of parts and components of motor vehicles. In respect of such supplies, the name/logo of the buyer, is indicated and they have treated such forgings as branded and cleared on payment of duty. The appellant has also sold part of their production of forgings to others without any brand name and availed concessional rate of duty under notification No. 9/2001 dated 1.3.2001. During the year 2000-01, it is submitted, that they have affected total clearances of Rs. 3,37,11,140/- out of which only about Rs. 23,77,783/- was without brand name availing concessional rate of duty.

(b) Show cause notice dated 5th July, 2002 has been issued alleging that inasmuch as the value of clearance has exceeded Rs. 3 crores, they are not eligible for exemption under notification No. 9/2001 and, accordingly a demand of Rs. 1,52,178/- has been confirmed along with interest and equal penalty imposed. The Commissioner (Appeals) upheld the order of the original authority.

4. Learned Advocate submits that the goods supplied to original equipment manufacturers were branded goods and they have paid the duty and the value of such clearances should not have been taken into account to arrive at the limit of 3 crores for the year 2000-01 and, to determine the eligibility of exemption for the subsequent i.e. year 2001-02. In addition, he submits that they were paying duty on the clearances of branded goods and they were filing returns on monthly basis and they also intimated to the department vide declaration filed on 3.4.2001 that the overall clearances made by them was more than 3 crores. Therefore, the demand by the show cause notice dated 5th July, 2002 is clearly time barred.

5. Learned D.R. submits that they were availing small scale exemption and were required to file returns quarterly only and, therefore, show cause notice dated 5th July, 2002 is within the normal period of limitation.

6. These issues are vital to the demand which has been raised. These issues have not been raised specifically by the appellant before the original authority as well as before the Commissioner (Appeals). Further, it appears from the show cause notice dated 5th July, 2002 that they have included the value of the clearances in the declaration. As these issues have not been considered we deem it proper to set aside the order of the Commissioner (Appeals) and the order of original authority and remit the matter for fresh decision by the original authority. The

appellant is directed to produce all the evidences which they want to rely upon before the original authority within 45 days from the date of receipt of this order. The original authority will thereafter decide the matter after granting reasonable opportunity of hearing.

7. The appeal is allowed by way of remand. All the issues are kept open.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK