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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/2386/2006 - EX[DB]

Date 02/03/2009

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE

Appellant
Vs
Respondent

M/S BRIDGESTONE INDIA PVT.LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 183/2009- **EX[DB]** dated 23-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S BRIDGESTONE INDIA PVT.LTD.
   PLOT NO-12,KHEDA INDUSTRIAL GROWTH CENTER SECTOR-III,
   SAGORE PITHAMPUR DISTT DHAR M.P.
2. Adv. / Consult SH. S. THIRUMALA, SH. ANJALIKA CHOPRA, ADV.,
   C/O RESPONDENT

3 C.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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2386 of 2006

[Arising out of Order-in-Appeal No. IND-I/140/06 dated 31.3.2006 passed by Commissioner (Appeal I) Customs & Central Excise, Indore.]

For approval and signature:

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

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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 should 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

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Commissioner of Central Excise Indore — Appellant

Vs.

M/s. Bridgestone India Pvt. Ltd. — Respondent

Appearance:

Mr. Virender Choudhary, DR for the Appellant
Mr. S.Thirumala with Ms. Anjalika Chopra, Advocates for the Respondent

CORAM:

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

Date of Hearing/Decision: 23.2.2009

FINAL **ORDER NO. 183/09 – EX.**

Per M. Veeraiyan (for the Bench):

This is an appeal filed by the Department against the order of the Commissioner (Appeals) No. IND-I/140/06 dated 31.3.2006.

2. Heard both sides.

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

a) The respondent, a manufacturer of tyre was transferring the goods to their various depots and selling to their dealers from the said depots. During the period from April, 2001 to June, 2004, the respondents claimed to have given discounts under various heads while selling the goods from the depots. They also claimed that they have passed on such discounts by the end of each quarter by issue of credit notes to the concerned dealers.

b) At the time of clearance from the factory, duty has been paid without taking into account the discount which was passed on later on and they preferred in all 13 refund claims one for each quarter totally amounting to Rs. 1,90,53,661/-

c) The original authority rejected the refund claims, *inter alia,* on the ground that the respondents did not satisfy that the discounts were available at the time of removal from the factory and that the dealers were not made aware of such scheme in advance; that they have also not produced copies of transfer invoices from factory to the depots and sales invoices from depots to the dealers and the copies of credit notes. It appears that the respondents made available some records and the same were verified by the Range Superintendent by visiting their factory and as recorded by the original authority, the said reports were based on test checks, did not prove as to whether the ultimate buyers has borne the tax incidence or not.

d) In the appeal before the Commissioner (Appeals), it is claimed that the respondent produced relevant documents including letters (which indicated that the discounts were being made available on a quarterly basis) copies of the invoices from the depots and copies of credit notes. Commissioner has analysed the said documents quarter-wise and in some cases the claims have been totally rejected by him as time barred and in some cases he has allowed partly the refunds claimed by the appellant, and in some cases where he could not quantify the exact amount refundable he has left to the original authority to satisfy about the quantification of the amount based on worksheet to be provided by the respondents.

e) In pursuance of the said order of the Commissioner (Appeals) and after taking into account the worksheet furnished, it is submitted that the original authority has allowed the refund claim to the extent of Rs.1,24,14,073/-.

4. Learned DR assails the order of the Commissioner on the following grounds.

(a) The respondents did not produced the relevant documents before the original authority to determine the eligibility of the refunds and if eligible, the quantum of refund that was to be granted. The respondents produced voluminous documents before the Commissioner (Appeals) and he has quantified the refund himself in some cases and in some cases, he has left the quantification to be done by the original authority and the entire exercise has been done without involving the department and without seeking their comments about the veracity of the claims made by the respondents.

(b) He also submits that Commissioner himself has recorded that the claims made by the party held to be correct to a large extent and that the Commissioner was not sure about quantum of refunds to be sanctioned. It would have been appropriate that he has taken the views of the Department before arriving at the decision against the department.

5. Learned advocate for the respondents submits that the Commissioner was entitled to receive the evidence and pass appropriate order stepping into the shoes of original authority. He relied on decision of the Hon'ble Supreme Court in the case MIL India Ltd. vs. CCE, Noida [2007 (210) ELT 188 (SC)]. He also submits that the Commissioner (Appeals) has after examining the documents has given detailed finding for every quarter and therefore, the order should be upheld.

6. We have carefully considered the submissions from both the sides. We also take note of the fact that there was dispute whether the Commissioner (Appeals) could remand the matter to the original authority after the amendment to section 35A(3) w.e.f. 11.5.2001 which was subsequently settled holding the Commissioner has inherent powers to remand. As held by the Hon'ble Supreme Court in the case of MIL India Ltd. cited supra, the Commissioner (Appeals) was within his power to take the evidence and examine himself and pass appropriate order.

7.1 We enquired from the learned DR as to whether the Department conducted any verification to find out any error in the order of the Commissioner (Appeals), he submits that the documents said to have been made available to the Commissioner (Appeals) was not before the original authority and the Department. In the absence of such documents, it was submitted he is not in a position to confirm whether the discount has been rightly allowed and whether the quantum has been correctly arrived. He also submits that in pursuance of the order of the Commissioner (Appeals), the respondents has also received substantial amount as refund and therefore no prejudice will be caused to them if the matter is remanded to the original authority and that the respondents are directed to produce these documents to see the correctness or otherwise of the discount and ~~effers and~~ the amount of the refund admitted.

7.2 While we find that the Commissioner (Appeals) has taken enormous efforts, perhaps to avoid remand proceedings, we think that he could have conveyed the result of his verification to the departmental authorities before taking such a decision. Only on this ground, we take the decision to set aside the order of the Commissioner (Appeals) and remand the matter to the original authority. The respondents are directed to produce the evidence which they have placed before the Commissioner (Appeals) before the original authority within 45 days of receipt of this order. The original authority shall within two months from the date of expiry of the time limit for filing the documents shall decide the issue afresh after giving the reasonable opportunity of hearing to the respondents. We clarify that we express no comments on the merits of the case.

8. Appeal allowed by way of remand on the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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