

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/1957/2006 – SM[BR]

Date 09/04/2009

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

To :
CCE,BHOPAL

48,ADMIN AREA ARERA HILLS HOSHANGABAD
ROAD,BHOPAL

CCE,BHOPAL

Appellant

Vs

Respondent

M/S RAJASTHAN EXPLOSIVES & CHEMICALS LTD.

I am directed to transmit herewith a certified copy of Final order No. 315 / 2009 –SM[BR] dated 31.3.2009

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


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S RAJASTHAN EXPLOSIVES & CHEMICALS LTD.

WAIDHAN,DISTT SIDHI(MP)

2. Adv. / Consult

NONE;-----

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 Publications (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), Thvagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

15 LAWCRUX Advisors (P) Ltd, Law House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 1957 of 2006-SM

(Arising out of Order-in-Appeal No. 74-CE/BPL/2006 dated Nil (recd. On 29.3.06) passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal)

CCE, Bhopal

Appellant

Vs.

M/s Rajasthan Explosives & Chemicals Ltd.

Respondent

Appeared for Appellant : Shri Sansar Chand, DR
Appeared for Respondent : None

Date of Hearing: 20.3.2009

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

Final Order No. 315/09-SM (BPL) dated 31.3.09

Per D.N. Panda:

None present for the Respondent. Ld. Commissioner has come to a conclusion that the refund is admissible to the respondent in view of reduction of the price by M/s Coal India Ltd. The Respondent was supplying explosives to M/s Northern Coal Field Ltd, which is a subsidiary company of M/s Coal India Ltd.

2. Ld. DR appearing for the Revenue submits that mere issuance of credit note shall not *ipso facto* grant right to refund to the Appellant. M/s Coal India Ltd. is a public sector and once the duty

has been paid against the clearance of the goods to M/s Northern Coal Field Ltd., appropriate duty has been realised ^{and} that duty burden has passed on to the Respondent to M/s Northern Coal Field Ltd. If there is a price reduction, records should reveal that ^a Public Sector which has already suffered duty at the time of purchase from the Respondent should not have suffered the duty burden when there was price reduction. The Authority should have examined the record of M/s Northern Coal Field Ltd. before coming to a conclusion to establish that the benefit has been passed on to M/s Northern Coal Field Ltd. In absence of verification of record, it ~~cannot~~ be said that the respondent is unjustly ^y enriched. Ld. DR relies on the judgment of Larger Bench in the case of **Sangam Processors Vs. CCE** reported in 1994 (71) ELT 989 which was subject matter of consideration by Apex Court Civil Appeal No. 4405/1993 in the case of **Rajasthan Spinning & Weaving Ltd. Vs. Collector** reported in 1999 (112) ELT A115 (SC).

3. ^{Heard Revenue.} Presumption of law under Section 12 B of Central Excise Act 1944 ^{states} that every person who has paid the duty of excise on any goods under the law shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods. Perusal of the statutory provision under Section 12 B of Central Excise Act 1944 ^{makes} it clear that the burden of proof is on claimant. There is no such burden of proof discharged by the respondent in the present case. Therefore the matter should

go back to the Id. adjudicating authority to satisfy the requirement of law and Section 12B by thorough examination of the records of respondents and M/s Northern Coal Field Ltd ^{and come} to the rational conclusion.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM