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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/281 /2009 – SM[BR] Date 12/01/2010

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

To :
M/S VALCO INDUSTRIES LTD.
H.O., S.R-37, SECTOR-26, MADHYA MARG,
CHANDIGARH-160019.

M/S VALCO INDUSTRIES LTD. Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 50 / 2010 –SM[BR] dated 6.1.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
MR.SAURABH KAPOOR, ADVOCATE
11-YADVINDRA COLONY, THE MALL, PATIALA 147001
3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Custom Appeal No.281 of 2009

(Arsing out of Order-in-Appeal No.13/CUS/REV/AC/PSWC/08 dated 26.02.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

Date of Hearing: 16.12.2009
Date of Decision: 16.12.2009

M/s.Valco Industries Ltd. — Appellant

Vs.

Commissioner of Customs, Amritsar — Respondent

Present for the Appellant: Shri Saurabh Kapoor, Advocate
Present for the Respondent: Shri V.K.Saxena, Joint CDR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Final **ORDER NO.** 50/2010 SM (Br)

PER: D.N.PANDA

Ld.Counsel for appellants submits that refund of Rs.2,22,105/-, Rs.26,832/- and Rs.1,47,738/- aggregating to Rs.3,96,675/- was admissible to appellants and that was directed by learned adjudicating authority in terms of Order dated 11.7.2008 on convincing grounds. The first appellate authority allowed the appeal of revenue in terms Order dated 26.2.2009 for no good reason. While allowing the appeal of Revenue, he rejected chartered accountant's certificate showing claim of appellant that there was no unjust enrichment made by the appellant. Although on examination of balance sheet his observation is that the amount of Rs.3,96,681/- was appearing in the balance sheet at page 63 of the appeal folder, but he noted that the same did not tally with the claim. These reasons were incredible to discard the good reasons of the learned adjudicating authority who allowed refund. Therefore the first appellate order requires set aside and the order of adjudication calls for restoration.

2. Ld.DR on behalf of Revenue submits that chartered accountant's certificate are appearing at pages 52 to 55 of the appeal folder describing the amount Rs.2,22,105/-, 26,832/- and Rs.1,47,738/-. He also agrees that a copy of balance sheet is available at page 63 of the appeal record depicting the amount of Rs.3,96,681/-. But he supports the reasoning of the Commissioner (Appeals) for the order passed.

3. Heard both sides and perused the records.

4. There is no disagreement that the material portion of records has been perused by both sides today to the extent stated above. Realizations made by assessee towards sales proceed does not provide scope to presume that duty element was passed on by the assessee to customers. It is followed practice to adopt certificate of chartered accountant in the matter of refund unless that is liable to be ignored for any cogent reason or evidence showing contrary. Therefore, evidence on record to the extent indicated above, having provided ground in favour of the appellant that does not call for upholding first Appellate order.

5. In the result, the appeal of the assessee is allowed setting aside impugned order to the extent indicate above.

(D.N.PANDA)
JUDICIAL MEMBER

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