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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. E/3070/2007,3114/2007 – SM[BR] Date 15/01/2010

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

To :
M/S BHUPENDRA IRON ROLLING MILLS PVT. LTD.
C/O SH. NIRANJAN LAL GUPTA, PLOT NO. 8,
MAHARAJA COLONY, TEEN DUKAN, DHER KE
BALAJI, SIKAR ROAD, JAIPUR

M/S BHUPENDRA IRON ROLLING MILLS PVT. LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 80 -81 / 2010 –SM[BR] dated 12.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.YOGENDRA BANGAR, CA
   B-73, RAJENDRA MARG, BAPU NAGAR, JAIPUR
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

2. M/S BHUPENDRA IRON ROLLING MILLS PVT. LTD.
   C/O SHRI NIRANJAN LAL GUPTA, PLOT NO. 8, MAHARAJA
   COLONY, TEENDUKAN, DHER KE BALAJI, SIKAR ROAD, JAIPUR

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeals Nos.E/3070 and 3114 of 2007-SM Branch

[Arising out of Order-in-Appeal No.232-233232(GRM)CE/JPR-I/2007 dated 308.2007 of the Commissioner of Central Excise (Appeals-1), Jaipur]

Date of Hearing/ Decision:12.01.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
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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M/s. Bhupendra Iron Rolling Mills Pvt. Ltd. ...Appellants
(Rep. by Shri Bhupendra Gupta, ACC)

Vs.

CCE, Jaipur-I ...Respondent
(Rep. by Shri S.K. Bhaskar, DR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 80-81/2010 SM (BR)/Dated:12.01.2010

<u>Per M. Veeraiyan:</u>

These two appeals by the same appellant arising out of common Order-in-Appeal relate to rejection of refund claims of Rs.18,334/- (in

Appeal No.E/3114 of 2007) and Rs.40,000/- (in Appeal No.3070 of 2007).

2. Heard both sides.

3. The dispute has long background history. The appellant was working under Compounded Levy Scheme in terms of Rule 96 ZP and they were required to pay a sum of Rs.4,23,976/- for the period September, 1997 to March, 1998 based on the Annual Production Capacity determined. However, they paid an amount of Rs.76,500/-only and they have filed an abatement claim for Rs.3,63,668/-. When the abatement claim was pending, the Original Authority vide Order dated 17.08.99 confirmed the demand of Rs.3,47,476/- and the Order of the Original Authority was set aside by the Commissioner (Appeals) vide Order dated 24.01.2000 by remanding the matter to the Original Authority for fresh consideration because of pendency of abatement claim, which would have a bearing on the demand to be confirmed.

3.1 The abatement claim was considered by the Original Authority and vide Order dated 4.11.2003, only a sum of Rs.2,24,687/- was allowed. The party filed appeal against rejection of part of the abatement claimed and the appeal was rejected by the Commissioner (Appeals) vide Order dated 10.04.2004. However, the said order of the Commissioner (Appeals) was set aside by the Tribunal vide Order dated 27.08.2006. It is stated that the order of the Tribunal has been appealed against by the

Department and the matter is pending before the Hon'ble High Court of Rajasthan.

3.2 Consequent to allowing the part of abatement claim claimed by the appellant, an Order dated 24.12.2000 was issued by the Original Authority confirming demand of Rs.1,22,789/- and the appeal against the said order was rejected as time barred by the Commissioner (Appeals) vide order dated 29.06.04. Against the said order, the party came in appeal before the Tribunal. Vide Stay Order dated 21.02.2005, the party was directed to deposit a sum of Rs.40,000/-. The appeal itself was finally decided against the appellant vide order of the Tribunal dated 19.07.2006.

3.3 Though the order of the Tribunal dated 19.07.2006 relating to demand has been decided against the party, the party claimed refund of Rs.40,000/-, which was paid in terms of stay order and another sum of Rs.18,334/-. These claims are based on favourable order of the Tribunal dated 22.08.2006 on the issue of abatement.

4. Ld. Representative submits that in view of the order of the Tribunal dated 22.08.2006, the confirmation of demand amounting to Rs.1,22,789/- does not arise. If the entire abatement as claimed by them amounting to Rs.3,63,668/- was allowed, then they are entitled to refunds of Rs.18,334/- and Rs.40,000/-.

5. Ld. DR submits that the claim of refund has to be seen in the context of order of demand of Rs.1,22,789/-, the appeal against which

has been rejected both by the Commissioner (Appeals) as time barred and which has been upheld by the Tribunal vide Order dated 19.07.2006.

6. I have carefully considered the submissions from both sides. No doubt that the demand of duty and abatement are inter-linked issues. The Commissioner (Appeals) ordered for de novo proceedings vide Order dated 24.1.2000 on the issue relating to demand of duty. It would have been appropriate if both the matters were considered together and single order was passed. However, the fact remains that the issue relating to abatement and the issue relating to differential duty were dealt with by two different parallel proceedings, both of which have reached the Tribunal. In fact, the order of the Tribunal on the abatement issue, which was in favour of the party is now stated to be before the Hon'ble High Court of Rajasthan.

6.1 The limited issue before me is whether the refund claims are admissible in terms of the Tribunal Order dated 22.08.2006 which is in favour of the party or they are to be rejected in view of the Tribunal's order dated 19.07.2006, which is against the party. It is to be noticed that the demand proceedings have moved separately and the appeal against order of confirmation of duty of Rs.1,22,789/- stands rejected by the Commissioner (Appeals) and that the order of the Commissioner (Appeals) stand upheld by the Tribunal. The pre-deposit of Rs.40,000/- was in the Stay Order and the Final Order in the said appeal is clearly against the appellant. When the Final Order of the Tribunal dated 19.07.2006 is against the appellant, the question of refund of part amount pre-deposited vide Interim Order does not arise at all. The two refund claims are clearly against the payment made towards demand confirmed against the appellant. In the demand proceedings, the decision of the Tribunal is against the appellant.

6.2 The Tribunal cannot review the earlier order dated 19.07.2006 of the Tribunal. The order of the Commissioner (Appeals) rejecting the refund claims in the light of the order of the Tribunal dated 19.07.2006 can not be found fault with.

7. The appeals are, therefore, rejected.

Order dictated & pronounced in open court on 12.1.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.