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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/6068/2004 - EX[DB]

Date 02/12/2009

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

To :
C.C.E.LUDHIANA
F-BLOCK RISHI NAGAR,LUDHIANA

C.C.E.LUDHIANA — Appellant
Vs
M/S KAY JAY FORGINGS PVT.LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1266/ 2009 EX[DB]** dated 11-11-09 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 KAY JAY FORGINGS PVT.LTD.
   C-3,FOCAL POINT,LUDHIANA
2. Adv. / Consult SH. VIKRANT KAKRIA, ADV., H. NO. 631 (F.F.) SECTOR-11-B, CHANDIGARH
3. C.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
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – I

Date of hearing/decision: 11th November, 2009

Central Excise Appeal No. 6068 of 2004

[Arising out of Order-in-Appeal No. 607-609/CE/Appl/Ldh/04 dated 27.09.2004 passed by the Commissioner (Appeals). Central Excise, Ludhiana]

For approval and signature:

Hon'ble Justice R.M.S. Khandeparkar, President;
Hon'ble Shri Rakesh Kumar, Member (Technical)

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

CCE, Ludhiana
Appellant

Vs.

M/s. Kay Jay Forgings Pvt. Ltd.,
Respondent

Appearance:

Shri K.P. Singh, Authorized Departmental Representative (DR) for the Revenue;
Shri Vikrant Kakria, Advocate for the respondents

Coram:

Hon'ble Justice R.M.S. Khandeparker, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. 1266/09-SM dated ________

Per Justice R.M.S. Khandeparkar:

Heard.

2. This appeal arises out of order dated 27.9.2004 passed by the Commissioner (Appeals), Ludhiana. By the impugned order the Commissioner (Appeals) has set aside the order passed by the adjudicating authority solely on the ground that the adjudication authority had failed to comply with the basic principle of natural justice inasmuch as that the copies of relied upon documents were not furnished to the respondents assessee before finalizing the adjudication proceedings.

3. Joint Commissioner, Central Excise, Ludhiana by his order dated 25.3.2004 had confirmed the demand of Rs. 5,16,587/- along with interest thereon and has also imposed penalty of equal amount besides penalty of Rs. 20,000/- against the Director of the respondent company and also penalty of Rs. 10,000/- against M/s. Nicks India Tools and penalty of Rs. 10,000/- against M/s. Tannen Steel Pvt. Ltd.

4. Said order has been set aside by the impugned order for the reasons stated therein. It is well settled principle of law that merely because principle of natural justice was not complied with, that itself cannot be a ground to grant whole exemption from the liability to pay duty by the assessee. Undoubtedly, if there is failure on the part of the adjudicating authority to furnish the required copies of the documents to the assessee and that being made a ground of challenge to the order passed by the adjudicating authority nothing can prevent the appellate authority from complying with the said requirement relating to the supply of copies of such documents to the appellant and to give an opportunity to the assessee to meet case against him or her as the case may be, and there upon to decide the matter on merits.

5. In the facts and circumstances, the impugned order cannot be sustained and is liable to be set aside and the matter is remanded to the adjudicating authority with the direction to furnish the required copies of the documents to the assessee and give him opportunity of being heard in the matter and thereafter pass an appropriate order afresh in accordance with the provisions of law.

6. The appeal, therefore, succeeds on limited ground and matter is remanded to the adjudicating authority. Appeal stands disposed of in above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

RK