TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

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/1474/2007 – SM[BR] Date 09/11/2009

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

To :
M/S SWASTIKA CONDUCTORS

B-311(A), ROAD NO 16,V.K.I, ARREA, JAIPUR

M/S SWASTIKA CONDUCTORS Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1413 / 2009 –SM[BR] dated 3.11.09 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

   SHRI K.K.ANAND ADV.

   A-5, BASMENT LAJPAT NAGAR-III NEW DELHI-24.

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
NEW DELHI

COURT NO. II

Excise Appeal No. 1474 of 2007-SM

(Arising out of common Order-in-Appeal No. 37(GRM)CE/JPR-I/2006 dated 23.2.2007 passed by the Commissioner, Central Excise (Appeals-I), Jaipur)

M/s Swastika Conductors — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance:

Appeared for Appellant : Shri Hemant Bajaj, Advocate
Appeared for Respondent: Shri Sunil Kumar, DR

Date of Hearing: 23.10.2009

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

Final Order No. 1413/2009 SMBD dated............

Per D.N. Panda :

Ld. Counsel Shri Hemant Bajaj is fair to submit that part of the refund to the extent of Rs.53,955/- is not admissible since that part is barred by limitation. Rest of the balance of refund of Rs.60,338/- is admissible since this has arisen out of price variation clause due to reduction in price and the purchasers have not borne duty burden. According to Shri Bajaj, certificate issued by Chartered Accountant as appearing at page 63 and 65 shows that the same buyer who had purchased the goods under price variation clause, while making payment to the Appellant had deducted excise duty element as that was admissible to him and claimed by him. According to these two certificates, duty element of Rs.22,262.76 under page 63 and Rs.91,966.63 under page 65 were deducted by the buyer making payment to the Appellant. This clearly shows that the Appellant has not passed on the duty burden to the buyer. Therefore barring the amount of refund of Rs.53,955/-, balance amount of Rs.60,338/- is refundable to the Appellant.

2. While the Appellant's grievance is as above, Revenue's objection is that ld. Commissioner in para-6 of his order has confirmed the finding of Adjudication showing that the Appellant failed to adduce evidence. Therefore, no refund is to be given to the Appellant.

3. Heard both sides and perused the record.

4. Ld. Counsel's fair submission is that he should loose part of the refund to the extent of Rs.53,955/- following the decision of the Tribunal in the case of **M/s Swastika Concab (I) Pvt. Ltd. Vs. CCE, Jaipur** vide Final Order No.268/09-SM dated 24.3.09 is appreciable. Therefore, enquiry was conducted to the rest of the refund of Rs.60,338/- claimed in the course of hearing of the Appeal. Reading of page 63 and page 65 of the Appeal folder it appears that the Appellant has discharged its burden of proof as to no unjust enrichment made by him. When such evidence was led there was nothing on the part of the Revenue on record to contradict such evidence and even in para-6, while dealing with evidence claimed by Appellant supporting its case nothing has been repelled. Once evidence is led by Assessee is not repelled that stands to speak and admits the claim of the Appellant. Therefore, the appellant is entitled to the refund of Rs.60,338/- for no unjust enrichment made by him. Accordingly, the appeal is partly allowed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM