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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/2213/2008 – SM[BR] WITH E/ MISC/ 200/2011-SM[BR] **Date** **05/09/2011**

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

To :
M/S RUNGTA IRRIGATION LTD
101, PRAGATI TOWER, 26, RAJENDRA PLACE, NEW
DELHI-110008

M/S RUNGTA IRRIGATION LTD Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 556 / 2011-SM[BR]** Dated 19.7.2011 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult SHRI KAMALJEET SINGH ADV.
J-144, PATEL NAGAR-I, GHAZIABAD.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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
Court-IV

Excise Appeal No.2213 of 2008-SM with
E/Misc/200/11-SM

Date of Hearing/Decision: 19.07.2010

(Arsing out of Order-in-Appeal No.492/CE/Chd/2008 dated 23.09.2008 passed by the CCE(A), Chandigarh)

For approval and signature:

Hon'ble Mr.Ashok Jindal, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Rungta Irrigation Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Present for the Appellant: Shri Kamaljeet Singh, Advocate
Present for the Respondent: Ms.R.k.Jagdev, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 556/2011 SM (Br)

PER: ASHOK JINDAL

The appellants have filed miscellaneous application for correction of amounts of duty demand and penalty imposed.

2. Learned Advocate submitted that the amount of duty is Rs.1,22,791/- and penalty of Rs.1,22,791/- and inadvertently the duty amount is mentioned as Rs.1,22,187/- and penalty of Rs.1,22,187/-. Therefore, he sought rectification of the amounts in the records. The application is taken up on record and the appeal memorandum may be amended accordingly. Amended memorandum of appeal is taken on record. He further argued as appellants' factory closed since 2004 and in the order in original it was recorded that since the factory closed for the last more than two years. During the course of hearing, the notice was pasted at the factory gate. Therefore, it is not proper service of notice. Therefore, the principle of natural justice has been violated. He further submitted that the impugned order has been passed on the ground of limitation without considering the merits wherein it has been held that the order in original has been served properly. The appellants are required to file appeal within 60 days of the communication of the order. Therefore, the appeal is time barred. Accordingly the appeal was dismissed. The said order is not sustainable. As admitted fact that during the course of personal hearing before the adjudicating authority wherein it has been recorded that the factory of the appellants is closed for the last two years and other person is holding the possession of that premises, therefore there is no service effected on the appellants. They came to know the order only on communication by the Inspector vide letter dated 9.2.2007 at their head office, New Delhi. Therefore, the impugned order is to be set aside.

3. On the other hand, learned SDR reiterated the impugned order and submitted that as the service of order in original has been effected at the premises of the appellants by pasting at their factory only on 6.12.06 and the same is proper service. Therefore, the appellants cannot take the plea that they have not been served the order in original. Therefore, the impugned order is to be upheld.

4. Heard both sides.

5. After hearing both sides and perusal of the records, I find that in the order in original in para 7, the adjudicating authority has recorded as under:-

"The personal hearing in the case under adjudication was fixed for 12,13 & 15.09.2006 to meet principle of natural justice under Section 33A of the Central Excise Act, 1944. But neither the noticee nor any authorised persons on their behalf of the noticee appeared for personal hearing on the appointed date and time. The jurisdictional Sector Officer, Kala Amb informed vide his letter C.No.CE-20/Demand/Rungta/38/Paonta/97/pt/371 dated 8.9.2006 that M/s.Rungta Irrigation Ltd.,Village Ogil (Khali), Kala Amb has been closed since last 2 years and the said premises of the unit has been sold to M/s.Micro Decorative (P) Ltd., Kala Amb and the letter of personal hearing was pasted on the main gate of the known address of the noticee by drawing Panchnama dated 5.9.2006 in the presence of two independent witnesses."

6. From the perusal of the said order in original, it is clear that principle of natural justice has been violated. Moreover when the notice of personal hearing has not been served on the appellants, therefore, proper service of order in original by pasting at the factory gate on 6.12.2006 does not arise. Therefore, the appeal filed by the appellants before the Commissioner (Appeals) is within time as they have filed appeal after obtaining order in original on 15.2.2007 and filed the appeal on 12.4.2007 which is within 60 days i.e. period of limitation. Therefore, the appeal filed by the appellants is within time. As the order of the Commissioner (Appeals) is without merits, therefore, the matter is sent back to the Commissioner (Appeals) to decide the issue on merits considering the submissions of the appellants on the ground violation of principle of natural justice. Accordingly the matter is remanded to the Commissioner (Appeals) by setting aside the impugned order with the direction to the appellants that they may appear before the Commissioner (Appeals) on 01.09.2011 to fix the date for finalization of the issue.

7. The appeal is allowed by way of remand. The miscellaneous application is also disposed of as discussed hereinabove.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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