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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/5345/2004 – SM[BR] Date 08/01/2010

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

To :
M/S DOIWALA SUGAR COMPANY LTD.
DEHRADUN, (UTTRANCHAL)

M/S DOIWALA SUGAR COMPANY LTD. Appellant

Vs

C.C.E. MEERUT-I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 22 / 2010 –SM[BR] dated 1.1.2010 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. MEERUT-I
   UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)

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)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 5345 of 2004-SM

(Arising out of Order-in-Appeal No. 494-CE/MRT-I/2004 dated 6.8.2004 passed by the Commissioner (Appeals), Central Excise, Meerut-I)

M/s Doiwala Sugar Company Ltd. Appellant

Vs.

CCE, Meerut-I Respondent

Date of Hearing: 22.12.2009

Appearance :

Appeared for Appellant - Shri Alok Arora, Advocate
Appeared for Respondent - Shri I. Baig, SDR

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

Final Order No. 22/2010 SM(BR) dated............

Per D.N. Panda:

While no enquiry was made by Authority below to give a clear finding as to whether the brass tubes were used by the Appellant for its manufacture of sugar, ld. Appellate Authority decided the issue *suo motu* relying on the Notification No. 214/86 dated 25.3.86 as amended. Ld. Counsel Shri Alok Arora submits that the ld. Adjudicating Authority no where has discussed about the applicability of the notification in his discussion and finding portion of the order. The Appellant has followed entire procedure laid down by law for sending the goods for job work and the goods job worked were received. On receipt of such goods, those were used in the manufacture. The Appellant is not liable to duty on the goods so manufactured by job worker. Ld. Appellate Authority has made a finding that the goods job worked were not used in manufacture which is in page-2 of the Appellate order without any basis. Therefore, he prays that the matter may go back for an appropriate finding of fact to test the matter in accordance with notification aforesaid and the matter may be decided appropriately.

2. Ld. DR Shri Baig submits that it was the duty of the Appellant to submit that the job worked goods were used in the manufacture. In absence of any evidence, the Appellate Authority was proper to make a finding against the Appellant. Accordingly, the Appellate order sustains.

3. Grievance in this Appeal is on a very narrow compass as to the goods job worked for its determination whether those were actually used in the manufacture of final product of the Appellant. A crystal finding to this effect is necessary. But that is absent in Adjudication order. Ld. Counsel has buttressed his claim for no evidence before the Appellate Authority to give a contrary finding as to no use of the job worked goods for manufacture. There is force behind this argument.

4. In order to resolve the controversy aforesaid and for an appropriate finding, it would be proper to send the matter back to

the ld. Adjudicating Authority who shall first determine whether the job worked goods have followed proper procedure under law and were used in the manufacture or in relation to manufacture of final product. According to his findings and on the basis of outcome of tests, he shall test the applicability of notification relied upon by the Appellant as aforesaid. If such a procedure is followed, there may not be any grievance in future.

5. Ld. Counsel lastly argues that imposition of penalty was undesirable since it was a question of applicability of law and interpretation thereof to the facts and the circumstances of the case. Once it is proposed to send the matter back, there is no necessity to decide on the likely outcome of de novo adjudication. It is left to the learned Adjudicating Authority to examine penalty issue at de novo adjudication stage.

6. In view of the aforesaid findings and discussions, the matter is sent back to the ld. Adjudicating Authority for re-examination of the matter and appropriate resolution of the dispute, granting fair opportunity of hearing. Consequently, the impugned order is set aside and the matter is remanded back to the extent indicated above.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM