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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

Date 08/01/2010

Appeal No. ST/538 /2009 – SM[BR]

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

To :
C.C.E. MEERUT I
EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN
SINGH UNIVERSITY MANGAL PANDAY NAGAR,
MEERUT - 250005.

C.C.E. MEERUT I — Appellant

Vs

M/S ANAND TRACK & FIELD EQUIPMENT PVT. LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 28 / 2010 –SM[BR] dated 1.1.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S ANAND TRACK & FIELD EQUIPMENT PVT. LTD.
   A-29, MOHKAMPUR INDL. AEA, DELHI ROAD, MEERUT (U.P.)
2. Adv. / Consult SHRI N.K. CHADHA, C.A.
   299, P.L. SHARMA ROAD MEERUT [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

Service Tax Appeal No. 538 of 2009-SM

(Arising out of Order-in-Appeal No. 51-CE/MRT-I/09 dated 28.4.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I)

CCE, Meerut — Appellant

Vs.

M/s Anand Track & Field Equipment Pvt. Ltd. — Respondent

Date of Hearing: 15.12.2009

Appearance :

Appeared for Appellant - Shri I. Baig, SDR
Appeared for Respondent - Shri N.K. Chadha, C.A.

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

Final Order No. 28/2010-SM(BR) dated 1.1.2010.

Per D.N. Panda:

While Revenue has come in Appeal on the ground that refund is not admissible when the Respondent has claimed the drawback, assessee's claim is that they have not received any drawback in respect of the same export. Ld. Counsel Shri Chadha submits that the assessee has not been enriched by any double claim i.e. drawback on one hand and the refund of Service Tax of Rs.40,417/-

on the other for the same export. Therefore the order passed by the ld. Commissioner was proper. But ld. DR Shri Baig submits that there shall be no difficulty to grant refund if the Appellant has not been doubly benefited for the same export and if the same is proved from record.

2. To resolve the rivalry submissions and keeping interest of Revenue in mind, examination of record to ensure that the Appellant has not been benefited by any drawback claim for the same export. Para 5.5 of the Appellate order throws light that the Appellant did not claim any drawback of Service Tax and did not claim any dual benefit as recorded by learned Adjudicating Authority. For such findings, Appeal of Revenue shall not sustain except an observations that the refund granting Authority should ensure that the assessee is not doubly benefited by refund of Service Tax on the export and drawback claim in respect of same export is not made and not allowed. With these observations, Revenue's Appeal is dismissed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM